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## Draft General Treaty on the Peaceful Settlement of International Disputes: A Proposal and Report

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# Draft General Treaty on the Peaceful Settlement of International Disputes: A Proposal and Report<sup>†</sup>

## REPORT

The adoption by the United Nations General Assembly in November 1982 of the Manila Declaration on the Peaceful Settlement of International Disputes<sup>1</sup> has focused the attention of Member States on the need to strengthen the process of the peaceful settlement of disputes through progressive development and the codification of international law rules on the subject. As most Members of the United Nations have not participated previously in a detailed study of the subject, the Committee considers it useful to present a draft treaty on the subject which may be a starting point for such a study, first by an appropriate committee on the United Nations, and later by a special conference held for the purpose.

This draft is based on various studies presented to the International Law Association by its Committee on the Charter of the United Nations, which culminated in the presentation of a Draft General Treaty for the Peaceful Settlement of International Disputes to the Association's New Delhi Conference in 1974.<sup>2</sup> After a detailed discussion of the draft, drawing criticisms from both those who considered it too weak and those who found the draft too strong, the Conference confined itself to accepting the report as "a useful contribution to the study and elucidation of the matter of Peaceful Settlement of Disputes," and discharged the drafting committee.<sup>3</sup>

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\*The Draft Treaty was prepared by Professor Louis B. Sohn as a consultant to the ABA Standing Committee on World Order Under Law and was reviewed by members of that Committee in April 1983. The Section on International Law and Practice also approved the Draft Treaty. [Ed.]

†This Report was submitted by Robert F. Drinan, Chairman of the ABA Standing Committee on World Order Under Law to the ABA House of Delegates, August 1984. [Ed.]

1. 19 U.N. CHRON., Dec. 1982 at 80-81.

2. INTERNATIONAL LAW ASSOCIATION, REPORT OF THE 56TH CONFERENCE, NEW DELHI, 1974, 45-63 (1974).

3. *Id.* at x, 21-42.

The American Bar Association has now revived the concept of such a draft treaty to be presented to the Government of the United States and the United Nations for renewed consideration at a time when peace in the world is continuously threatened by the inadequacy of the means of settling international disputes before they escalate into hostilities.

The draft was prepared by Professor Louis B. Sohn as a consultant to the Standing Committee on World Order Under Law and later reviewed by members of the Committee. The draft treaty would impose on all States Parties limited obligations with respect to certain international procedures that do not contain any compulsion and depend on the cooperation of the parties, namely negotiation, good offices and mediation. In acceding to the draft treaty a State may declare that it will not be bound by one or more of the chapters relating to commissions of inquiry, conciliation, arbitration, and judicial settlement. Even if a State accepts these chapters in principle, additional declarations will be necessary to subject it to various specific obligations under those chapters. Should State accept these obligations, there is still the requirement that certain steps may be taken only when so recommended by the United Nations Security Council, whose decisions are subject to the special voting requirements of the U.N. Charter (including the consent of the five permanent members).

Although some might object to the "minimalist" character of the draft, it can be hoped that enough States might be willing to make the optional declarations, thus enabling the new machinery to function in a sufficient number of instances. If it should function well, more States would be encouraged to accept additional obligations under the draft, thus increasing the efficiency of the means for settling international disputes. But such progress cannot be achieved without taking the first step—preparing and presenting a draft treaty which would have a real chance to be adopted by consensus.

To facilitate the study of the subject, in addition to the text of the treaty, explanatory comments are included that make clear that most of the provisions of the draft treaty are derived from standard treaties on the subject, and that the proposed text does not constitute a radical departure from the past but primarily a compilation, adaptation and universalization of provisions which have been already accepted—for more limited purposes—by various groups of States.

The American Bar Association has long supported the work of the United Nations whose mission it is to encourage peaceful settlement of international conflicts. The attached draft treaty continues the significant Association effort to urge rational and peaceful settlement of disputes among nations.

**Recommendation<sup>4</sup>**

*BE IT RESOLVED* that the American Bar Association approves in principle the concept of a treaty governing peaceful resolution of international conflicts along the lines of the Draft General Treaty on the Peaceful Settlement of International Disputes dated April 1983, and supports further study, by appropriate domestic and international bodies, leading to the ultimate consideration of such a treaty.

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4. The ABA House of Delegates approved by consensus (without vote) the following Recommendation, the preceding Report and The Draft Treaty, Aug. 1984. [Ed.]

## ***PROPOSAL***

The States Parties to this Treaty,

Considering that one of the purposes of the United Nations is to maintain international peace and security, and to that end, to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,

Conscious of the large number of international agreements, multilateral, regional and bilateral, dealing with the settlement of international disputes,

Believing that it is desirable to consolidate these instruments into a comprehensive treaty on the subject,

Wishing to supplement and implement Chapter VI of the Charter of the United Nations and the Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly of the United Nations on 15 November 1982,

Desiring to maintain, at the same time, the freedom of each State to accept only those means for the peaceful settlement of international disputes which it finds appropriate,

Agree upon the following Articles:

### **CHAPTER I. GENERAL OBLIGATIONS**

#### *Article 1.*

(1) The States Parties to this Treaty solemnly reaffirm their obligation to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

(2) States Parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations.

(3) The States Parties to this Treaty also wish to make clear that nothing in this Treaty shall be construed as prejudicing in any manner the relevant provisions of the Charter of the United Nations or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the maintenance of international peace and security and the peaceful settlement of international disputes.

**COMMENT:** Article 2(4) of the U.N. Charter requires that States "refrain in their international relations from the threat or use of force" against other States. In recognition of the fact that the efficacy of this requirement is contingent on the availability of alternative processes for solving problems and changing inequitable

situations, Article 2(3) of the U.N. Charter imposes on all Member States the obligation to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Article 279 of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 118 (1982), recognizes this obligation by requiring States to settle disputes between them "by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations." This obligation is reaffirmed in Part II, paragraph 1 of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (hereinafter cited as the "Friendly Relations Declaration"). Moreover, paragraph 2 of Part I of the Manila Declaration on the Peaceful Settlement of International Disputes (hereinafter cited as the "Manila Declaration") requires that each State "settle its international disputes *exclusively* by peaceful means in such a manner that international peace and security, and justice, are not endangered" (emphasis added).

The requirement that all States refrain from actions which may aggravate the situation appears in both paragraph 8 of Part I of the Manila Declaration and paragraph 4 of Part II of the Friendly Relations Declaration.

The statement that no provision of the draft treaty shall derogate from any applicable provisions of the U.N. Charter is also contained in paragraph 6 of Part II of the Friendly Relations Declaration. Statements of similar import are found throughout the Manila Declaration, which specifically declares in the second of its final clauses that "nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights or duties of States, or the scope of the functions or powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes."

### *Article 2.*

(1) The States Parties to this Treaty agree to seek in good faith and in a spirit of cooperation an early and equitable settlement of their international disputes by any of the following means: negotiation, good offices, mediation, inquiry, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice.

(2) In seeking such a settlement, the parties to a dispute shall select such peaceful means as they consider most appropriate to the circumstances and nature of their dispute.

(3) International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with the Charter of the United Nations and with the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality of States.

**COMMENT:** Article 33(1) of the U.N. Charter requires parties to a dispute to seek a solution by "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Article 33(1) of the U.N. Charter is incorporated by reference in Article 279 of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/

122, at 118 (1982). Paragraph 5 of Part I of the Manila Declaration specifically includes resort to good offices among the alternative means for dispute settlement. Paragraph 2 of Part II of the Friendly Relations Declaration, while omitting particular reference to good offices in its enumeration of various means, stipulates that the parties "shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute."

The principle of sovereign equality and free choice of means with regard to the settlement of international disputes is contained in paragraph 5 of Part II of the Friendly Relations Declaration as well as in paragraph 3 of Part I of the Manila Declaration.

### *Article 3.*

The States Parties to this Treaty agree that, unless the parties to a dispute jointly decide otherwise, once a particular peaceful procedure has been initiated in accordance with the present Treaty or any other international agreement, no other procedure may be commenced until that procedure is concluded. At any stage of the proceedings the parties to a dispute may nevertheless decide to settle it by negotiations or to refer some aspects of it to another procedure.

**COMMENT:** Article 4 of the American Treaty on Pacific Settlement of Disputes (hereinafter cited as the Pact of Bogota) prohibits parties from commencing any other pacific settlement procedure until the originally initiated settlement procedure has been concluded. Article 3 of the draft treaty attempts to increase the flexibility of this approach by allowing the parties to decide jointly to settle the dispute or any aspect of the dispute by negotiations or by reference to another forum. A similar approach is reflected in Article 280 of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 118 (1982), which provides that "the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice" shall not be impaired.

### *Article 4.*

The States Parties to this Treaty agree that, in the event of a failure to reach a solution by the means first chosen by them, they will continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

**COMMENT:** Paragraph 3 of Part II of the Friendly Relations Declaration imposes a duty on parties to an international dispute to continue seeking settlement of the dispute by peaceful means in the event that the originally chosen dispute settlement mechanism fails. This obligation also appears in paragraph 7 of Part I of the Manila Declaration.

### *Article 5.*

(1) The States Parties to this Treaty agree that any party to a dispute may bring it to the attention of the Security Council, if the dispute is likely to endanger the maintenance of international peace and security, and if the

parties to the dispute cannot agree on the procedure to be followed in seeking the settlement of that dispute.

(2) The States Parties to this Treaty agree also that, if the Security Council considers in such a case that the continuance of the dispute is likely to endanger the maintenance of international peace and security and calls upon the parties to a dispute to settle their dispute by a particular procedure, they will endeavor to settle the dispute by that procedure, unless they agree on another peaceful procedure.

(3) The States Parties to this Treaty agree further that, in the event of a failure to reach a solution by the procedure recommended by the Security Council or chosen by the parties, any party to the dispute may bring the matter back to the Security Council which may then recommend another procedure to the parties to the dispute, and that they shall make a special effort to settle the dispute by that procedure.

**COMMENT:** Article 33(2) of the U.N. Charter authorizes the Security Council to call upon the parties to settle their disputes by the pacific means set forth in Article 33(1). Article 36(1) of the U.N. Charter authorizes the Security Council to recommend appropriate procedures or methods of adjustment to the parties to the dispute. Paragraph 7 of Part I of the Manila Declaration recognizes this authority in the Security Council by requiring the parties to refer to the Security Council a dispute which the parties have failed to resolve by pacific means and the continuance of which is likely to endanger the maintenance of international peace and security. Paragraph 4 of Part II of the Manila Declaration encourages States to strengthen this primary role of the Security Council.

## CHAPTER II. NEGOTIATIONS

### *Article 6.*

(1) The States Parties to this Treaty agree that in any dispute between two or more of them, the parties to the dispute shall, as far as possible, seek a solution by direct negotiations through diplomatic or other channels.

(2) When a dispute arises, the parties to the dispute shall proceed expeditiously to an exchange of views regarding the most appropriate negotiation channel.

(3) The parties to the dispute have an obligation to negotiate meaningfully, in order to arrive at an early settlement acceptable to all parties.

**COMMENT:** According to the International Court of Justice, the obligation to negotiate is "a principle which underlies all international relations, and which moreover is recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes." *North Sea Continental Shelf Cases*, 1969 I.C.J. 47. The Court also pointed out that the parties to a dispute are "under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its position without contemplating any modification of it." *Id.* at 47. *See also* Article



283(1) of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 118 (1982).

It is an axiom of international diplomacy that the most efficient method of settling international disputes is through diplomatic negotiations between the two governments concerned, without any meddling of third parties (other States or international organizations). See Darwin, *Negotiations*, in DAVID DAVIES MEMORIAL INSTITUTE OF INTERNATIONAL STUDIES, REPORT OF A STUDY GROUP ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES 67-71 (1966). This method is adhered to even when a difficult dispute drags on for years and becomes more complex or aggravated. The volumes of PAPERS RELATING TO FOREIGN RELATIONS OF THE UNITED STATES, the DOCUMENTS ON CANADIAN EXTERNAL AFFAIRS, the BRITISH AND FOREIGN STATE PAPERS, and similar publications of other governments are full of instances of international disputes solved by negotiations. While such negotiations are often protracted and frequently lead to temporary impasses, in most cases, with patience and perseverance, a dispute reaches finally a satisfactory solution.

#### *Article 7.*

If a party to a dispute is dissatisfied with the trend of the negotiations, and if the dispute is likely to endanger the maintenance of international peace and security, it may bring that issue before the Security Council, and may ask the Council to call upon the parties to continue to negotiate in good faith.

**COMMENT:** The Security Council is authorized by Article 33(2) of the U.N. Charter to call upon the parties to settle their dispute by the pacific means referred to in Article 33(1) of the U.N. Charter, one of which is negotiation. This obligation to continue to negotiate is reflected in the innumerable provisions in international agreements relating to the pacific settlement of disputes, which limit the sphere of applicability of these treaties to disputes "which it has not been possible to settle by diplomacy." See, e.g., the Geneva General Act for the Pacific Settlement of International Disputes, of 26 September 1928, Article 1, and the Revised General Act for the Pacific Settlement of International Disputes, of 28 April 1949, Article 1, 93 L.N. Treaty Series 345; 71 U.N. Treaty Series 101.

#### *Article 8.*

The States Parties to this Treaty agree that if the Security Council, in order to facilitate negotiations, should request the parties to a dispute likely to endanger the maintenance of international peace and security to conduct further negotiations through a special high-level meeting to be held under the auspices of the Security Council or by some other special means, they shall endeavor to comply with such request.

**COMMENT:** The obligation to comply with a request by the Security Council to conduct further negotiations through a special high-level meeting or by some other special means is consonant with the scheme established in paragraph 4(e) of Part II of the Manila Declaration. It is recommended there that States should "[e]ncourage the Security Council to make wide use, as a means to promote peaceful settlement of

disputes, of the subsidiary organs established by it in the performance of its functions under the Charter.”

### *Article 9.*

(1) The States Parties to this Treaty agree that any dispute which it has not been possible to settle by direct negotiations within a reasonable time shall be submitted to one of the other procedures established by the present Treaty or to any special procedure agreed upon by the parties to the dispute.

(2) If the parties to the dispute have established a time limit for negotiations, paragraph 1 will apply only upon the expiration of that time limit.

(3) If no such time limit has been agreed upon, each party to the dispute shall be free to decide at what moment direct negotiations should be terminated and other procedure initiated.

(4) If the other party to a dispute likely to endanger the maintenance of international peace and security disagrees with the decision to terminate the negotiations, it may bring that particular issue before the Security Council, and the States Parties to this Treaty agree to comply with the Council's decision on the subject.

**COMMENT:** The obligation to settle a dispute does not stop if negotiations fail, as sometimes they might. Article 33 of the U.N. Charter enumerates, in addition to negotiation, the following means for settling disputes: enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. The basic principle with respect to these and other peaceful means is that the parties' choice controls. While many international agreements contain the basic obligation to settle all disputes (or specified disputes) between the parties to these agreements by peaceful means provided for in these agreements, they often state expressly that this obligation does not impair the right of the parties to a dispute to agree at any time to settle the dispute between them by any other peaceful means of their own choice. *See, e.g.,* United Nations Convention on the Law of the Sea, Article 280, U.N. Doc. A/CONF.62/122, at 118 (1982); Pact of Bogota, Article 2, paragraph 2.

The right of a party which is dissatisfied with the decision to terminate negotiations to bring the issue before the Security Council is recognized in paragraph 4(f) of Part II of the Manila Declaration, which encourages States to “bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment.”

## **CHAPTER III. GOOD OFFICES**

### *Article 10.*

(1) In any dispute which it has not been possible to settle by direct negotiations, any party to the dispute may invite one or more States not parties to the dispute, or an international body, or the Secretary-General of

the United Nations or another international official, or an eminent personality of international reputation, to use good offices to bring the parties together so as to make it possible for the parties to reach an adequate solution between themselves.

(2) One or more of the States that are not parties to the dispute, or an international body, or the Secretary-General of the United Nations or another international official, may on their own initiative, offer good offices to the parties to the dispute. The States Parties to this Treaty agree that such an offer shall never be regarded by either party to the dispute as an unfriendly act.

(3) The States Parties to this Treaty agree that if they are parties to any dispute likely to endanger the maintenance of international peace and security, they shall accept any offer of good offices made to them by the Security Council or for which the Security Council has made arrangements.

**COMMENT:** When a dispute has led to the severance of diplomatic relations between the parties thereto or the parties refuse to talk to each other about a dispute, a third State may offer its "good offices." The right of one or more States not parties to a dispute to offer their good offices was recognized in Article 3 of the Hague Conventions for the Pacific Settlement of Disputes of 1899 and 1907 (hereinafter cited as the Hague Conventions of 1899 and 1907). If the parties agree, the third State will endeavor "to bring the parties together, so as to reach an adequate solution between themselves." Pact of Bogota, article 9, 30 U.N.T.S. 55, at 86.

Sometimes, instead of a State, an international organization such as the Security Council may tender its good offices and establish a committee to provide good offices. For instance, in the Indonesian Case, the Security Council of the United Nations offered its good offices and established a Committee of Good Offices, consisting of three members of the Council, which helped the parties to the dispute (the Netherlands and the Republic of Indonesia) to agree on a truce and later on basic principles for the settlement of the dispute (the so-called Renville Agreement). 1 United Nations, Repertory of Practice of United Nations Organs 119-20, 136-37 (1955).

#### *Article 11.*

Once the Parties have been brought together and have resumed negotiations, the States or persons engaged in good offices may continue to assist in the negotiations unless the parties decide otherwise.

**COMMENT:** Article 10 of the Pact of Bogota also provides that, upon resumption of negotiations, the States or citizens that have offered their good offices may, by agreement between the parties in dispute, be present at the negotiations.

#### *Article 12.*

If good offices do not result in bringing the parties together, either of the parties may declare, or the State, international body or person engaged in good offices may announce, that the procedure of good offices has come to

an end. Nevertheless, should the circumstances change, the procedure may be reopened.

**COMMENT:** In a parallel situation, Article 5 of the Hague Convention of 1907 provides that the functions of the mediator are terminated when the means of reconciliation proposed by him are not accepted.

## CHAPTER IV. MEDIATION

### *Article 13.*

(1) In any dispute which it has not been possible to settle by direct negotiations, the parties to the dispute may agree to have recourse to the procedure of mediation. A mediator in such a case may be a State, a group of States, an international body, or the Secretary-General of the United Nations or another international official, or some other eminent international personality.

(2) One or more of the States that are not parties to the dispute, or an international body, or the Secretary-General of the United Nations or another international official, may on their own initiative, offer to undertake mediation. The States Parties to this Treaty agree that such an offer shall never be regarded by either party to the dispute as an unfriendly act.

(3) The function of the mediator is to assist the parties in the settlement of their dispute through reconciling their views and claims and quieting down the feelings of resentment which may have arisen between the States in dispute.

(4) The mediator shall endeavor to bring about the settlement of the dispute in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution.

(5) The mediator shall make no public reports, and the proceedings shall be wholly confidential.

(6) Proposals made by a mediator have exclusively the character of advice and have no binding force.

(7) The functions of a mediator come to an end when a settlement is reached or when one of the parties to the dispute declares, or the mediator himself announces, that the means of reconciliation proposed by him have been found unacceptable. Nevertheless, should the circumstances change, the procedure may be reopened.

**COMMENT:** If the third party (State or person) not only facilitates communications between the parties but also actively assists the States in conflict in achieving a settlement of the dispute, good offices change into mediation. The function of the mediator has been defined by Article 4 of the Hague Conventions of 1899 and 1907 as "reconciling the opposing claims" and by Article 12 of the Pact of Bogota as "seeking an acceptable solution." Article 12 of the Pact of Bogota provides that the mediator should avoid formalities, should not make public reports and should keep the

proceedings confidential. According to Article 6 of the Hague Conventions of 1899 and 1907, the proposals made by the mediator "have exclusively the character of advice, and never have binding force." In practice, there is little distinction between good offices and mediation, and often the two functions are exercised together. For instance, the United Nations Commission for India and Pakistan was instructed by the Security Council to "place its good offices and mediation" at the disposal of the two governments in the dispute concerning Kashmir in 1948. *Repertoire of Practice of the Security Council*, 1946-51, at 346. Later these functions devolved on the United Nations Representative for India and Pakistan, who was instructed to place before the two governments "any suggestions which, in his opinion, are likely to contribute to the expeditious and enduring solution of the dispute." *Id.* at 349.

#### *Article 14.*

(1) The States Parties to this Treaty agree that, if the dispute is likely to endanger the maintenance of international peace and security and the parties to a dispute have agreed to have recourse to the mediation procedure but have not been able to reach an agreement on the selection of a mediator, any party to the dispute may bring the question of a mediator's appointment to the attention of the Security Council.

(2) They further agree that, if the Security Council appoints a mediator in such a case, or if the Security Council requests that the Secretary-General of the United Nations appoint a mediator, the parties to the dispute shall cooperate in good faith with this mediator.

(3) The Security Council may also invite the President of the International Court of Justice to appoint a mediator, or the parties may approach the President of the Court directly.

(4) A mediator appointed by the Security Council shall report to the Council on his activities, through the Secretary-General, as and when he deems it proper or when he is asked to do so by the Council.

(5) Upon termination of his mandate, a mediator appointed by the Security Council shall report to the Security Council on the success or failure of his mission.

**COMMENT:** This article recognizes that the selection of a mediator to assist in the settlement of a dispute may be entrusted to the Security Council by virtue of Article 35(1) of the U.N. Charter. By suggesting that the Security Council invite the President of the International Court of Justice to appoint a mediator, this article recognizes the common international practice of States, which often approach the President of the Court when appointments of mediators or arbitrators are required. 36 I.C.J. Y.B. 51 (1981-82). In the light of that practice, the present article also allows direct approach to the President of the Court by the parties to a dispute in order to facilitate the selection of a mediator.

## CHAPTER V. COMMISSIONS OF INQUIRY

### *Article 15.*

(1) In any dispute which it has not been possible to settle by direct negotiations and which has arisen from a difference of opinion on points of fact, the parties to the dispute may agree to have recourse to the method of inquiry and to the appointment of a commission of inquiry.

(2) The agreement establishing the commission of inquiry shall determine:

- (a) the issues to be examined;
- (b) the mode and time in which the commission is to be formed;
- (c) the powers of the commission;
- (d) the site of the commission;
- (e) the procedure to be followed;
- (f) the right of the commission to visit any place, to interrogate witnesses and experts, and to obtain documents;
- (g) the method of financing of the expenses of the commission.

(3) The commission of inquiry shall elucidate the facts by means of an impartial and conscientious investigation. Its report shall be limited to a statement of facts and shall have no binding effect.

**COMMENT:** In disputes which involve differences of opinion on points of fact, the parties to the dispute may agree to an investigation by a commission of inquiry or, in more recent years, by a fact-finding mission. According to Article 9 of the Hague Conventions of 1899 and 1907, the task of a commission of inquiry is "to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation." Article 35 of the Hague Convention of 1907 provides that the final report of the commission is to be limited to a statement of the facts, and "leaves to the parties entire freedom as to the effect to be given to the statement."

### *Article 16.*

(1) The States Parties to this Treaty agree that, if the dispute is likely to endanger the maintenance of international peace and security and the parties to a dispute have agreed to have recourse to the method of inquiry but have not been able to reach an agreement on the mode of appointment or the powers or the procedure of the commission of inquiry to be established for that purpose, any party to the dispute may bring any of these issues before the Security Council.

(2) In settling these issues the Security Council may follow the relevant provisions of Part III of the 1907 Hague Convention on the Pacific Settlement of International Disputes, or Resolution 2329 (XXII) of the General Assembly relating to fact-finding, or may utilize for that purpose regional arrangements or agencies or any other procedure it may deem appropriate.

(3) The States Parties to this Treaty agree that, if the Security Council appoints the commission of inquiry and determines its power and procedure, the parties to the dispute shall cooperate in good faith with the commission.

(4) Instead of exercising itself the functions conferred upon it by the previous paragraphs, the Security Council may invite the President of the International Court of Justice to exercise these functions. The parties may also approach the President of the Court directly.

(5) Upon the termination of its inquiry, the commission shall submit a copy of its report to the Security Council unless the parties to the dispute decide that the report be kept confidential.

**COMMENT:** This article, like Article 14 concerning the selection of a mediator, allows the parties to a dispute to approach directly the President of the International Court of Justice with regard to the mode of appointment or the powers or procedure of the commission of inquiry. A second innovative feature of this article increases the options available to the Security Council in settling the issue regarding commissions of inquiry submitted to it. In addition to the relevant provisions of Part III of the Hague Convention of 1907, the Security Council may follow the provisions of Resolution 2329 (XXII) of the General Assembly. This Resolution, adopted by the General Assembly in 1967, recommends the entrusting of the ascertainment of facts to competent international organizations and bodies established by agreement between the parties concerned, and requests the Secretary-General to prepare a register of experts to be used in disputes requiring fact-finding. GA Resolution 2329 (XXII), 18 December 1967; 22 GAOR, Supp. No. 16 (A/6716), at 84 (1967).

#### *Article 17.*

If a Permanent Conciliation Commission is established in accordance with Annex A to this Treaty, the Security Council may, with the consent of the parties to the dispute, refer the dispute to that Commission, which in such a case shall perform solely the functions of a commission of inquiry.

**COMMENT:** It should be noted that a reference to the Permanent Conciliation Commission to be established under Annex A can be made only "with the consent of the parties to the dispute," but such consent may be given in advance by filing a declaration accepting the optional jurisdiction of the Commission. Annex A, paragraph 3.

### **CHAPTER VI. CONCILIATION**

#### *Article 18.*

(1) In any dispute which it has not been possible to settle by direct negotiations, the parties to the dispute may agree to have recourse to the procedure of conciliation.

(2) The function of conciliation may be exercised by a State or a group of States, an international body, an individual or a conciliation commission.

(3) Conciliation shall be conducted in accordance with an existing agree-

ment between the parties or a special agreement shall be concluded for the purpose. Such an agreement shall determine:

- (a) the issues to be submitted to conciliation;
- (b) the mode of selection of the conciliator or the conciliation commission;
- (c) the powers of the conciliator or the conciliation commission;
- (d) the site at which the conciliation procedure is to take place;
- (e) the procedure to be followed;
- (f) the right of the conciliator or the conciliation commission to engage in fact finding and, for that purpose, to visit any place, to interrogate witnesses and experts, and to obtain documents;
- (g) the method of financing of the expenses of the conciliation procedure.

**COMMENT:** Article 284 of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 119 (1982), provides for conciliation as a means for the settlement of a dispute. The procedure of investigation (or inquiry) is often combined with that of conciliation. Many treaties, such as Article 15 of the Pact of Bogota, provide for the appointment of commissions of "investigation and conciliation."

#### *Article 19.*

(1) Unless the parties agree otherwise, the main task of the conciliator or the conciliation commission shall be to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms. The conciliator or the conciliation commission may also institute such investigations of the facts involved in the dispute as may be necessary.

(2) If the conciliator or the conciliation commission finds it necessary to have a legal question clarified in order to facilitate the settlement of the dispute, he or it may recommend to the parties the reference of that question to arbitration or judicial settlement and may suspend the conciliation process pending such a reference.

(3) The conciliator or the conciliation commission shall, after the conclusion of the examination of the dispute, inform the parties to the dispute of the tentative conclusions he or it has reached, suggest to them terms of settlement which seem suitable and propose to them a time limit within which they should inform the conciliator or the conciliation commission of their decision.

(4) After the expiry of that time limit or of a time limit agreed upon by the parties, the conciliator or the conciliation commission shall prepare a final report recording either the agreement reached by the parties or the suggestions made by the conciliator or the conciliation commission and the parties' comments on these suggestions. This final report shall be communicated without delay to the parties. It shall be published only with their consent.



(5) The suggestions and reports of the conciliator or the conciliation commission shall not be binding on the parties to the dispute, either with respect to the statements of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties to the dispute in order to facilitate a friendly and just settlement of the dispute.

**COMMENT:** Conciliation commissions, in addition to their primary task of bringing the parties to an agreement, are requested in Article 15 of the Revised General Act to "elucidate the questions in dispute" and "to collect with that object all necessary information by means of enquiry or otherwise." If this necessary information includes the clarification of a legal question, the present article authorizes the conciliator or conciliation commission to recommend to the parties reference of that question to arbitration or judicial settlement.

The work of a conciliation commission is usually divided into two stages. Article 15 of the Revised General Act provides that the commission should in the first stage present to the parties "the terms of settlement which seem suitable to it" and request them to reply within a specified period. In the second stage, if an agreement is reached by the parties on the basis of the commission's suggestions, the final report of the commission is limited to the text of the agreement; but if no agreement is reached, the commission's final report contains a summary of the work and endeavors of the commission. *See, e.g.,* the Pact of Bogota, Article 27. Between 1947 and 1962 eight conciliation commissions were established. Six of them were successful and their reports were accepted by the Governments concerned; on the other hand, in two cases (Switzerland-Romania and France-Morocco) the commissions were not able to complete their work because of the lack of cooperation of one of the parties. *See* International Law Association, Report of the Fifty-Third Conference 36-38 (1968). The reports of a conciliation commission are usually not binding on the parties; according to Article 28 of the Pact of Bogota, they have only the character of "recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy."

#### *Article 20.*

(1) The States Parties to this Treaty agree that, if the dispute is likely to endanger the maintenance of international peace and security and the parties to a dispute have agreed to have recourse to the procedure of conciliation but have not been able to reach an agreement on the mode of appointment of the conciliator or the conciliation commission, his or its power and the conciliation procedure to be followed, any party to the dispute may bring these issues before the Security Council.

(2) The States Parties to this Treaty agree also that in settling these issues the Security Council shall, to the greatest extent possible, follow the relevant provisions of Chapter I of the Revised General Act for the Pacific Settlement of International Disputes.

(3) The States Parties to this Treaty further agree that, if the Security Council appoints a conciliator or a conciliation commission and determines

the modalities of the conciliation procedure, the parties to the dispute shall co-operate in good faith with the conciliator or the conciliation commission.

(4) Upon the termination of the conciliation procedure, the conciliator or the conciliation commission shall submit to the Security Council a note stating either that the parties to the dispute have come to an agreement or that it has been impossible to effect a settlement. If the parties agree, the conciliator or the conciliation commission shall annex to that note a copy of the final report communicated by him or it to the parties.

**COMMENT:** The General Assembly established in 1949 a panel for inquiry and conciliation, containing a list of persons qualified for service on a conciliation commission. GA Resolution 268 (III)D, 28 April 1949; 3 GAOR, Part II, Resolutions (A/900), at 13. While that panel does not seem to have been used, the United Nations has established several conciliation commissions, some of which have been successful in settling disputes, in whole or in part. *See, e.g.*, L. M. Goodrich and A. P. Simmons, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 291-318 (1955).

#### *Article 21.*

(1) The States Parties to this Treaty agree to propose to the Security Council that it recommend to the General Assembly the establishment of a United Nations Permanent Conciliation Commission the statute of which should follow the guidelines established in Annex A to this Treaty.

(2) If a Permanent Conciliation Commission is thus established, the Security Council may, with the consent of the parties to the dispute, refer the dispute to that Commission.

**COMMENT:** While many suggestions have been made for the improvement of the United Nations machinery for the settlement of disputes, only those not requiring an amendment to the Charter found some measure of support. *See, e.g.*, the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization, 32 GAOR, Supp. No. 33 (A/32/33), at 39-55, 139-85. Perhaps the most meritorious are proposals for the establishment of standing United Nations bodies for the settlement of disputes through good offices, mediation and conciliation. These bodies should be granted, with the consent of the parties to the dispute, given *ad hoc* for a particular dispute, or in advance through reciprocal declarations, the necessary powers for dealing with a variety of disputes. Depending on the circumstances of the case, they would deal with those disputes themselves or would refer them to more appropriate means of settlement. They would also present reports and recommendations to the Security Council and General Assembly, which may lead to further action by the United Nations.

### CHAPTER VII. ARBITRATION

#### *Article 22.*

(1) At any stage of a dispute, the parties to a dispute may agree to have recourse to the procedure of arbitration.

(2) In such a case the dispute may be submitted either to a single arbitrator or to an arbitral tribunal.

(3) The parties to the dispute shall draw up a special agreement determining the subject of the dispute, the mode of selection of the arbitrator or of the arbitral tribunal, and the details of procedure.

(4) An award of an arbitrator or an arbitral tribunal shall be binding on the parties to the dispute.

**COMMENT:** It is customary to distinguish between arbitration and judicial settlement, *i.e.*, between arbitral tribunals and international courts. Both of these methods lead to binding decisions with which the parties to the dispute are obligated to comply. The only real difference between these two categories of tribunals lies in the method of selection of the tribunal. While the parties have a free choice with respect to members of an arbitral tribunal, they have to accept a court as it is and can vary the membership of the court only to a slight extent.

As Article 36(3) of the U.N. Charter specifies that "legal disputes should as a general rule be referred by the parties to the International Court of Justice," it seems to imply that such disputes should not be referred to arbitration. On the other hand, the Hague Conventions of 1899 (in Article 16) and of 1907 (in Article 38(1)) recognized that in "questions of a legal nature, and especially in the interpretation and application of International Conventions," arbitration is "the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle."

#### *Article 23.*

(1) The States Parties to this Treaty agree that, if the dispute is likely to endanger the maintenance of international peace and security and the parties to a dispute have agreed to have recourse to the procedure of arbitration but have encountered difficulties with respect to a special agreement or the composition of the arbitral tribunal, any party to the dispute may bring any outstanding issues before the Security Council.

(2) The States Parties to this Treaty agree also that in settling these issues the Security Council shall, to the greatest extent possible, follow the relevant provisions of any previous agreement between the parties or, in their absence, the relevant provisions of Part IV of the 1907 Hague Convention on the Pacific Settlement of International Disputes.

(3) The States Parties to this Treaty further agree that, if the Security Council appoints an arbitrator or an arbitral tribunal or settles the other terms of the special agreement, the parties to the dispute shall cooperate in good faith with the arbitrator or the arbitral tribunal.

(4) Upon the termination of the arbitral procedure, the arbitrator or the arbitral tribunal shall submit to the Security Council either the text of the arbitral award rendered by him or it, or, as appropriate, a note embodying the terms of settlement reached by the parties to the dispute or explaining the reasons for the discontinuance of the proceedings.

**COMMENT:** The composition of the arbitral tribunal may take a variety of forms. In some cases, certain official bodies have acted as arbitrators. In other cases, the parties may select a distinguished jurist or diplomat, or a person familiar with the circumstances of the dispute, to act as a sole arbitrator. Thus, several tribunals established in the framework of the Permanent Court of Arbitration, in application of the Hague Conventions of 1899 and 1907, consisted of sole members. For instance, Max Huber, President of the Permanent Court of International Justice from 1925 to 1927, decided in 1928 the Island of Palmas Case between the Netherlands and the United States. 2 United Nations, Reports of International Arbitral Awards 829 (1949).

Two types of arbitral tribunals are more common: mixed claims commissions and arbitral tribunals with three or five members. Mixed commissions are usually composed of two national members (appointed respectively by the two parties to the dispute), who decide the claims in the first instance by common agreement, and a third member (an umpire) to whom cases are referred for final decision in case of disagreement between the two national members.

Ordinary arbitral tribunals of three or five members, though they also contain one or two members appointed by each party, decide disputes by majority votes. While the 1899 Hague Convention allowed each party to appoint two nationals as members of a tribunal of five, Article 45 of the 1907 Convention provided that each party may appoint two members "of whom only one can be its national." This change was designed to "give the arbitral tribunal the impartial character which accords with its fundamental principles." Report of Baron Guillaume (Belgium), in I J. B. SCOTT, THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES, THE CONFERENCE OF 1907, at 416 (1920).

#### *Article 24.*

(1) The States Parties to this Treaty agree to propose to the Security Council that it recommend to the General Assembly the establishment of a United Nations Permanent Arbitral Tribunal, the statute of which should follow the guidelines established in Annex B to this Treaty.

(2) If a Permanent Arbitral Tribunal is thus established, the Security Council may, with the consent of the parties to the dispute, refer the dispute to that Tribunal.

**COMMENT:** This proposal would lead only to the establishment of a permanent United Nations arbitral tribunal, if the Security Council recommends it and the General Assembly approves it. Its jurisdiction would depend exclusively on its acceptance by all the parties to the dispute either *ad hoc* for a particular dispute, or in advance by a special treaty or reciprocal declarations. See Annex B, paragraph 2.

### CHAPTER VIII. JUDICIAL SETTLEMENT

#### *Article 25.*

(1) At any stage of a dispute, the parties to the dispute may agree to refer any legal questions involved in the dispute to the International Court of Justice, either for a binding judgment or an advisory opinion.

(2) The parties to the dispute shall draw up a special agreement determining the legal questions to be presented to the International Court of Justice. The special agreement shall specify whether the parties want a binding judgment or an advisory opinion and whether the Court may decide the case *ex aequo et bono*.

**COMMENT:** The International Court of Justice can both decide cases submitted to it by States and render advisory opinions requested by authorized international organizations. Its jurisdiction to render binding decisions is based on: (i) declarations accepting the optional clause in Article 36 of the Statute of the Court; (ii) treaties on the peaceful settlement of international disputes, multilateral and bilateral; and (iii) compromissory clauses in multilateral and bilateral treaties on a variety of subjects, providing for the settlement by the Court of disputes relating to the interpretation or application of these treaties. By 1982, 12 cases were brought to the Court under the declarations. In addition, 38 cases were brought under other treaty provisions, 8 cases by special agreement (*compromis*), and 8 cases were brought without any jurisdictional basis (and were promptly dismissed by the Court). 36 I.C.J. Y.B. 47 (1981-82).

Paragraph 5 of Part II of the Manila Declaration urges States to be "fully aware of the International Court of Justice" and draws their attention to the "facilities offered by the International Court of Justice for the settlement of legal disputes especially since the revision of the Rules of the Court." These Rules allow the submission of cases to special chambers, the members of which are selected by the Court in accordance with the wishes of the parties.

#### Article 26.

(1) The States Parties to this Treaty agree to propose to the Security Council that it recommend to the General Assembly the adoption of a resolution establishing a procedure for speedy reference to the International Court of Justice of any request for an advisory opinion agreed upon by the parties to the dispute. This resolution should follow the guidelines established in Annex C to this Treaty.

(2) The procedure envisaged in this Article shall be without prejudice to the power of the General Assembly and the Security Council to request advisory opinions under Article 96 of the Charter of the United Nations.

**COMMENT:** Under Article 96 of the U.N. Charter, the requests for advisory opinions of the Court can be made by the General Assembly and the Security Council "on any legal questions," and by any other "organs of the United Nations and specialized agencies," which have been authorized by the General Assembly to request such opinions, "on legal questions arising within the scope of their activities."

Broadening the advisory jurisdiction of the International Court of Justice might be a promising avenue to increasing the jurisdiction of the Court. The road suggested by the procedure devised for the review of the judgments of the Administrative Tribunal of the United Nations in the Statute of the Administrative Tribunal of the United Nations, as amended in 1955, U.N. Doc. AT/11/Rev. 2 (U.N. Pub. 62.X.3), might, in particular, be followed. The General Assembly might replace the committee on that subject with a committee having a broader mandate, *i.e.*, to forward to the Court

a variety of requests for advisory opinion, not only those relating to the judgments of the Administrative tribunal, but also in other cases where requests for advisory opinion cannot at present be submitted directly to the Court. For recent proposals on the subject by the American Bar Association, see Sohn, *Broadening the Advisory Jurisdiction of the International Court of Justice*, 77 AM. J. INT'L L. 124 (1983).

#### Article 27.

(1) A State Party to this Treaty may at any time declare under this Article that in any dispute with any other State Party which had made a similar declaration, any party to the dispute may bring the dispute before the Security Council, if the dispute is likely to endanger the maintenance of international peace and security, if the parties to a dispute agree that certain legal questions are involved in the dispute but are not bound by any agreement accepting the jurisdiction of the Court with respect to these questions, and if they have encountered difficulties in concluding a special agreement on the subject.

(2) The Security Council shall in such case determine the questions to be referred by the parties to the International Court of Justice and authorize any party to the dispute to bring these questions before the Court by written application. Such a determination by the Council shall confer jurisdiction on the Court with respect to these questions. The parties to the dispute shall participate in good faith in the proceedings before the Court.

(3) Upon the termination of any proceedings brought before the International Court of Justice under this Article, the Court shall notify the Security Council of the decision rendered in the case or of any other disposition of the dispute.

**COMMENT:** This Article recognizes the prerogative of the Security Council under Article 36(3) of the U.N. Charter to refer legal disputes submitted to it by the parties to the International Court of Justice. It conditions such reference on prior acceptance by the parties to the dispute of the Council's power to determine the questions to be referred to the Court.

#### Article 28.

(1) The States Parties to this Treaty may, by a declaration made at the time of accession to this Treaty or at any time thereafter, recognize, as compulsory *ipso facto* and without the necessity of any special agreement, in relation to any other State Party accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning the interpretation and application of any international agreement binding upon them.

(2) If the agreement in question provides for another procedure for

settling disputes arising thereunder, the obligation under this Article shall apply only if no settlement has been reached by recourse to that procedure.

(3) In making such a declaration, a State may limit its obligation in one or more of the following ways:

- (a) It may restrict the obligation to disputes relating to the interpretation of international agreements excluding disputes with regard to their application.
- (b) It may restrict the obligation to disputes relating to international agreements which came into force after a specified date or which have been registered with the Secretariat of the United Nations.
- (c) It may exclude specific treaties from the obligation.
- (d) It may restrict the obligation to a specified period, which shall not be less than five years, and shall, on the expiration of each such period, be automatically renewed for the same period unless the notice of denunciation is given not less than six months before the expiration of the current period.

**COMMENT:** This article incorporates the jurisdictional scheme established under Article 36(2)(a) of the Statute of the Court, which states that parties may declare that they accept, *inter alia*, as compulsory *ipso facto* and without special agreement the jurisdiction of the Court with respect to legal disputes concerning the interpretation of a treaty. The proposed text is slightly broader than subparagraph (a) of that article as it contemplates the submission to the International Court of Justice any legal dispute concerning the interpretation and application of an international agreement. At the same time this text is narrower than Article 36(2) taken as a whole, as it does not include disputes relating to questions of customary international law. Paragraph 5(b)(i) of Part II of the Manila Declaration has made a parallel proposal that such clauses be inserted, whenever appropriate, in international agreements.

### *Article 29.*

(1) The States Parties to this Treaty may, by a declaration made at the time of the accession to this Treaty or at any time thereafter, recognize, as compulsory, *ipso facto* and without the necessity of any special agreement in relation to any other State Party accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes relating to one or more of the following subjects:

- (1) Boundaries of States on land or at sea.
- (2) International servitudes.
- (3) Succession of States.
- (4) Succession of governments.
- (5) Ports and inland waters.
- (6) International rivers and lakes.
- (7) Territorial waters.
- (8) Contiguous zones.
- (9) Continental shelf.

- (10) Exclusive economic zone.
- (11) International canals and straits.
- (12) Rights and duties of States on the high seas.
- (13) Fisheries.
- (14) Whaling and sealing.
- (15) Air navigation.
- (16) Polar regions.
- (17) Rights and duties of States in outer space.
- (18) Nationality and status of ships.
- (19) Piracy.
- (20) Slavery.
- (21) International traffic in women and children.
- (22) International traffic in narcotic drugs.
- (23) Nationality and statelessness.
- (24) Position of aliens.
- (25) Asylum.
- (26) Extradition.
- (27) Responsibility of States for injuries to aliens.
- (28) Commercial relations.
- (29) International communications.
- (30) Protection of minorities.
- (31) Protection of human rights.
- (32) Immunity of States and of their agencies and subdivisions.
- (33) Privileges and immunities of heads of States.
- (34) Privileges and immunities of foreign ministers and their deputies.
- (35) Diplomatic privileges and immunities.
- (36) Consular privileges and immunities.
- (37) Status, privileges and immunities of international organizations.
- (38) Status of armed forces on foreign territory.
- (39) Limits of criminal jurisdiction.
- (40) Enforcement of foreign judgments and commercial arbitral awards.
- (41) Validity of international agreements.
- (42) Interpretation and application of international agreements.
- (43) Termination of international agreements.
- (44) Validity and interpretation of international arbitral awards.
- (45) Pacific blockade.
- (46) Reprisals.
- (47) Indirect aggression and subversion.



- (48) Relations between belligerents.
- (49) Relations between belligerents and neutrals.
- (50) Violations of the laws of war.

(2) In the event of a disagreement as to whether the particular dispute between the States Parties comes within one or the other of the subjects listed above, the Court shall decide to which subject the dispute relates. The Court may decide, in particular, that only certain issues involved in the dispute fall within the concurrent declarations of the States Parties and retain in such case jurisdiction only over these issues.

(3) The States Parties to this Treaty agree that ordinarily a declaration under this Article shall relate to at least five of the subjects listed in paragraph 1. They also agree that at ten year intervals each State Party which has not accepted the jurisdiction of the Court under this Article with respect to all the subjects shall either make an additional declaration accepting at least five additional subjects or report to the Security Council its reasons for not making such a declaration.

(4) In making a declaration under this Article, a State may limit its obligation in one or more of the following ways:

- (a) It may restrict the obligation to disputes arising after a specified date or to disputes concerning situations or facts subsequent to a specified date.
- (b) It may exclude specific disputes from the obligation.
- (c) It may restrict the obligation to a specified period, which shall not be less than ten years, and shall on the expiration of each period be automatically renewed unless the notice of denunciation is given not less than six months before the expiration of the current period.

(5) If one of the parties to the dispute has limited its acceptance to only certain subjects or by a reservation under paragraph 4, other parties to the dispute may take advantage of such limitations or reservations in regard to that party.

**COMMENT:** This proposal is an adaptation of the Anglo-American Plan for Obligatory Arbitration, as revised by a subcommittee and approved by the First Committee of the 1907 Hague Peace Conference. SCOTT, *THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES, THE CONFERENCE OF 1907*, Vol. I, 536-40, 542-47 and Vol. II, 119, 1008-12 (1920). A progressive system of implementation, similar to paragraph 3 of this Article, is contained in Part III of the European Social Charter, signed in Turin on October 18, 1961, 529 U.N.T.S. 89 (1965).

## CHAPTER IX. GENERAL ASSEMBLY

### *Article 30.*

(1) A State Party to this Treaty may at any time declare under this Article that if any other State Party which has made a similar declaration should

submit a dispute between them to the General Assembly in accordance with Article 35 of the Charter, the recommendations of the General Assembly shall in such a case have the same effect as the decisions of the Security Council under this Treaty.

(2) In making a declaration under this Article, a State may condition its acceptance of recommendations of the General Assembly on their adoption by a majority specified in the declaration.

**COMMENT:** This Article recognizes the competence of the General Assembly under Articles 10, 11, 14 and 35 of the U.N. Charter to recommend measures for the peaceful adjustment of any situation referred to it by the parties to a dispute. By virtue of Article 35(3) of the U.N. Charter, recommendations made by the General Assembly under that article are subject to the provisions of Articles 11 and 12 of the U.N. Charter, which safeguard the powers of the Security Council.

## CHAPTER X. OPTIONS

### *Article 31.*

(1) On acceding to this Treaty, any State may declare that it will not be bound by one or more of the following Chapters: V (Commissions of Inquiry), VI (Conciliation), VII (Arbitration), or VIII (Judicial Settlement).

(2) A State Party to this Treaty the accession of which has been only partial may, at any moment, by means of a simple declaration, extend the scope of its accession.

**COMMENT:** This Article is based on the Revised General Act for the Pacific Settlement of International Disputes of April 28, 1949, Articles 38 and 40, 71 U.N.T.S. 101; and on the European Convention for the Peaceful Settlement of International Disputes, of April 29, 1957, Articles 34 and 36, 320 U.N.T.S. 241. Similarly, Article 298(1) of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 125 (1982), allows a State to declare that with respect to certain specified categories of disputes it does not accept one or more of the dispute settlement procedures provided for in that Convention.

## CHAPTER XI. RELATION TO OTHER TREATIES

### *Article 32.*

(1) Disputes for the settlement of which a special procedure is laid down in other treaties in force between the parties to the dispute shall be settled in conformity with the provisions of these treaties.

(2) In particular, this Treaty shall not affect any agreements in force which provide for effective conciliation, arbitration or judicial settlement. If, however, the procedure under such an agreement does not result in a settlement, the provisions of this Treaty shall be applied to the extent they have been accepted by the parties to the dispute.

**COMMENT:** The United Nations Convention on the Law of the Sea provides similarly in Article 282 that when the parties to a dispute have agreed, in a general, regional or bilateral agreement, to submission of disputes between them to a procedure entailing a binding decision, that procedure shall apply in lieu of the procedures provided for in the Law of the Sea Convention, unless the parties to the dispute agree otherwise. Article 281 contains a parallel provision relating to dispute settlement means not leading to a binding decision; in such a case the procedure provided in the Law of the Sea Convention will apply if no settlement has been reached by recourse to such means. U.N. Doc. A/CONF.62/122, p. 118 (1982).

## CHAPTER XII. INTERPRETATION

### *Article 33.*

(1) The States Parties to this Treaty agree that any dispute relating to the interpretation or application of this Treaty, including any dispute relating to the scope of any accession or declaration which has not been settled by the organ to which the main dispute has been submitted, may be submitted to the International Court of Justice by any party to the dispute by means of a written application.

(2) Recourse to the International Court of Justice under this Article, after a procedure under a previous chapter of this Treaty has already been initiated, shall have the effect of suspending such proceedings until the termination of the proceedings before the Court under this Article.

**COMMENT:** Provisions similar to this one are contained in many bilateral and multilateral agreements on dispute settlement. *See, e.g.*, Revised General Act for the Pacific Settlement of International Disputes, Article 41, 71 U.N.T.S. 101; and European Convention for the Peaceful Settlement of International Disputes, Article 38, 320 U.N.T.S. 241.

## CHAPTER XIII. FINAL CLAUSES

### *Article 34.*

(1) This Treaty shall be open to accession by all States Members of the United Nations or of any of the specialised agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, by any State which has been recognized by at least fifteen Members of the United Nations, and by any other State invited by the General Assembly of the United Nations to become a party to this Treaty.

(2) The instruments of accession and the additional declarations provided for in this Treaty shall be deposited with the Secretary-General of the United Nations, who shall notify their receipt to all the States entitled to accede to this Treaty.

**COMMENT:** This article substantially follows the provision for signature set forth in Article 81 of the Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), 63 AM. J. INT'L L. 875 (1969). This article renders accession to

the Treaty even more flexible by providing that accession is also open to any State which has been recognized by at least fifteen States Members of the United Nations.

*Article 35.*

(1) This Treaty shall enter into force on the thirtieth day following the deposit of the tenth instrument of accession.

(2) For each State acceding to this Treaty after the deposit of the tenth instrument of accession, the Treaty shall enter into force on the thirtieth day after the deposit by such State of its instrument of accession.

*Article 36.*

The original of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be signed by the President of the United Nations Conference on the Peaceful Settlement of International Disputes and by its Secretary-General and shall be deposited in the archives of the United Nations Secretariat. A copy of it shall be sent by the Secretary-General of the United Nations to all the States entitled to accede to this Treaty.

*Article 37.*

The Treaty shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

**COMMENT:** Articles 35–37 follow the usual language of the final clauses in United Nations codificatory conventions.

## ANNEX A

### *Guidelines for the Statute of the United Nations Permanent Conciliation Commission*

- (1) The Statute should include the following provisions:
  - (a) The Permanent Conciliation Commission shall be composed of seventeen members elected by the Security Council and the General Assembly by a procedure analogous to that provided for in Articles 8–11 of the Statute of the International Court of Justice.
  - (b) The members of the Commission shall be elected from among the members of the Panel for Inquiry and Conciliation, established by Resolution 268(II) of the General Assembly of the United Nations, or from among persons especially nominated for this purpose by the States Parties to this Treaty.
  - (c) The members of the Commission shall serve for a period of nine years and until the election of their successors. They may be re-elected for not more than two terms.

- (d) When a dispute is submitted to the Commission, the Commission shall form an *ad hoc* chamber, composed of five of its members, for dealing with that dispute, unless the parties to the dispute agree that the dispute be considered by the full Commission. If nationals of States parties to the dispute are members of the Commission, they shall be included in the membership of the chamber. The other members of the chamber shall be appointed after consultations with the parties.
  - (e) In case of a dispute involving a State or States the nationals of which are not members of the Commission, each of the States concerned shall be entitled to have one of its nationals, or another person chosen by it, added to the chamber dealing with that dispute.
  - (f) The procedure of the Commission and of its chambers shall conform with this Treaty, especially with its Article 19, and to the extent possible with the relevant provisions of Chapter I of the Revised General Act for the Pacific Settlement of International Disputes.
- (2) The Permanent Conciliation Commission shall be entitled to deal with any dispute submitted to it under any international agreement, whether general or special, which provides expressly for the submission of disputes to that Commission.
- (3) Any member of the United Nations may file with the Secretary-General a declaration that, in relation to any other State Party which has made a similar declaration, it agrees that whenever an international agreement to which both are parties provides for reference of a dispute to a conciliation commission, a dispute between them shall be referred after the establishment of the Permanent Conciliation Commission to the Commission rather than the conciliation commission provided for in that agreement, unless both parties to a dispute agree otherwise.
- (4) Any Member of the United Nations may also file with the Secretary-General a declaration that it agrees, on condition of reciprocity, that the Security Council may, in any case in which the parties to a dispute have agreed in principle to have recourse to the procedure of conciliation, request the parties to submit the dispute to the Permanent Conciliation Commission. The Commission shall be considered as competent to deal with that dispute as soon as one of the parties brings the dispute before the Commission, and all the parties to the dispute shall then cooperate in good faith with the Commission.

**COMMENT:** Under these guidelines, the composition of the Permanent Conciliation Commission is to be determined by an election procedure analogous to that established in Articles 8–11 of the Statute of the International Court of Justice for the election of members of the Court.

Similar guidelines concerning the establishment and functioning of a conciliation commission are contained in both the Annex to the Vienna Convention on the Law of Treaties, 63 A.J.I.L. 875, 902 (1969), and Annex V of the United Nations Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 169 (1982). Specifically, the right of a State to be represented on the Conciliation Commission by one of its nationals under paragraph 1(d) of this Annex is recognized in paragraph 2(a) of the Annex to the Vienna Convention and in Article 3(b) of Annex V of the U.N. Convention on the Law of the Sea. Paragraph 1(d) is based on Article 36 of Annex VI of the U.N. Convention on the Law of the Sea. The requirement under paragraph 1(f) of the present Treaty that the procedure of the Commission conform with Article 19 of this Treaty is substantially reaffirmed in paragraphs 3-6 of the Annex to the Vienna Convention and in Articles 5-7 of Annex V of the U.N. Convention on the Law of the Sea.

## ANNEX B

### *Guidelines for the Statute of the United Nations Permanent Arbitral Tribunal*

- (1) The Statute should include the following provisions:
  - (a) The Permanent Arbitral Tribunal shall be composed of seventeen members elected by the Security Council and the General Assembly by a procedure analogous to that provided for in Articles 8-11 of the Statute of the International Court of Justice.
  - (b) The members of the Tribunal shall be elected from among the members of the Permanent Court of Arbitration established by the Hague Conventions for the Pacific Settlement of International Disputes or from among persons especially nominated for this purpose by the States Parties to this Treaty.
  - (c) The members of the Tribunal shall serve for a period of nine years provided, however, that of the members elected at the first election, the terms of six members shall expire at the end of three years and the terms of six more members shall expire at the end of six years. A member of the Tribunal elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term. A member who, for one reason or another, has served on the Tribunal not more than six years may be re-elected.
  - (d) In case of a dispute involving a State or States the nationals of which are not members of the Tribunal, each of the States concerned shall be entitled to have one of its nationals, or another person chosen by it, added to the Tribunal when it is dealing with a dispute involving that State.
- (2) The Permanent Arbitral Tribunal shall be entitled to deal with any dispute submitted to it under any international agreement, whether general

or special, which provides expressly for the submission of disputes to that Tribunal.

(3) A State Party to this Treaty may at any time declare under this paragraph that, in relation to any other State Party which has made a similar declaration, it is willing to transfer to the Permanent Arbitral Tribunal any jurisdiction conferred upon an arbitral tribunal by the terms of any international agreement to which both States are parties, unless in a particular dispute the parties agree otherwise. The powers of the Arbitral Tribunal in such a case shall be those conferred by the parties on the arbitral tribunal envisaged in the international agreement in question.

(4) A State Party to this Treaty may at any time declare under this paragraph that, in any dispute with any other State Party which has made a similar declaration, the Security Council may, if the dispute is likely to endanger the maintenance of international peace and security and if the parties to the dispute have agreed in principle to have recourse to the procedure of arbitration, request the parties to submit the dispute to the Permanent Arbitral Tribunal. The Tribunal shall be competent to deal with that dispute as soon as one of the parties brings the dispute before the Tribunal, and all the parties to the dispute shall then cooperate in good faith with the Tribunal.

(5) A State Party to this Treaty may at any time declare under this paragraph that, in any dispute with any other State Party which has made a similar declaration, the Security Council, when dealing with the dispute in accordance with Chapter VI of the Charter of the United Nations, may refer the dispute, in whole or in part, to the Permanent Arbitral Tribunal for advice. After conducting appropriate hearings and making such investigations as it may deem necessary, the Tribunal shall present to the Security Council such recommendations as the Tribunal may deem reasonable, just and fair for the solution of the questions referred to it. If the Security Council approves the recommendations of the Permanent Arbitral Tribunal and decides further that the dispute is likely to become a threat to the peace unless these recommendations are carried out, the Security Council may call upon the parties to the dispute to comply with the recommendations so approved. If any party to the dispute fails to comply with these recommendations, the other party may have recourse to the Security Council, which may, if it deems it necessary, make recommendations or decide upon measures to be taken to give effect to the Tribunal's recommendations.

**COMMENT:** Guidelines similar to those contained in this Annex appear in Annex VII of the U.N. Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at 184 (1982). The right of a State under paragraph 1(d) of Annex B of the present Treaty to ensure the presence of one of its nationals on the Arbitral Tribunal is also contained in Article 3(b) of Annex VII of the U.N. Convention on the Law of the Sea. The authority of the Arbitral Tribunal under paragraph 5 of Annex B of this treaty to conduct "appropriate hearings and [make] such investigations as it may

deem necessary" is similar to that contained in Article 6 of Annex VII of that Convention. The requirement under paragraph 5 of Annex B of the present Treaty that the parties comply with the recommendations approved by the Arbitral Tribunal also appears in even stronger language in Article 11 of Annex VII of the U.N. Convention on the Law of the Sea, which states that the arbitral award "shall be complied with by the parties to the dispute."

## ANNEX C

### *Guidelines for a Draft Resolution Relating to Advisory Opinions*

(1) The Draft Resolution for the establishment of a procedure for speedy reference to the International Court of Justice of any request for an advisory opinion agreed upon by the parties to the dispute should include the following provisions:

- (a) A special committee of the General Assembly shall be established to be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly.
- (b) This special committee shall be authorised under paragraph 2 of Article 96 of the Charter of the United Nations to request advisory opinions of the Court.
- (c) The committee shall meet at the United Nations headquarters and shall establish its rules of procedure.
- (d) When two or more States parties present to the committee a request for an advisory opinion, the committee shall ascertain whether any State Party has an objection to such a request. If there is no objection, the committee shall refer the request to the Court. If there is, however, an objection from a State claiming that its interests may be affected by such a request, the committee, before referring the original request to the Court, shall request the Court's advice concerning the preliminary question whether the interests of the objecting State would be significantly affected by submission to the Court of the original request.

**COMMENT:** These guidelines follow the initiative proposed by the American Bar Association (ABA) in *American Bar Association, Summary of Action of the House of Delegates, 1982 Midyear Meeting* 12 (Chicago, 1982). The ABA proposal is described in Sohn, *Broadening the Advisory Jurisdiction of the International Court of Justice*, 77 AM. J. INT'L L. 124 (1983). The House of Representatives has adopted a resolution presented by the Committee on Foreign Affairs (H.R. Con. Res. 86, as revised) urging the President to consider the idea of expanding the advisory jurisdiction of the International Court of Justice in accordance with the proposed ABA initiative, 128 CONG. REC. H10198 (daily ed. Dec. 17, 1982).



