



General Assembly

Distr.
GENERAL

A/45/742
20 November 1990

ORIGINAL: ENGLISH

Forty-fifth session
Agenda item 147

CONCILIATION RULES OF THE UNITED NATIONS

Report of the Sixth Committee

Rapporteur: Mr. Saeid MIRZAEI-YENGEJEH (Islamic Republic of Iran)

I. INTRODUCTION

1. The item entitled "Conciliation rules of the United Nations" was included as an additional item in the provisional agenda of the forty-fifth session at the request of Guatemala.
2. At its 3rd plenary meeting, on 21 September 1990, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. In connection with the item, the Sixth Committee had before it a letter dated 16 July 1990 from the Permanent Representative of Guatemala addressed to the Secretary-General (A/45/143 and Corr.1) to which an explanatory memorandum was attached in accordance with rule 20 of the rules of procedure of the General Assembly.
4. The Sixth Committee considered the item at its 17th to 19th and 43rd meetings on 17 to 19 October and 16 November 1990. The summary records of those meetings (A/C.6/45/SR.17-19 and 43) contain the views of the representatives who spoke during the consideration of the item.

II. CONSIDERATION OF PROPOSALS

5. At the 17th meeting, on 17 October, the representative of Guatemala made a statement with specific reference to document A/45/143 and Corr.1 submitted by his Government on the item. He introduced changes in annex II of the document (draft resolution) which, as amended, was placed before the Committee for consideration in document A/C.6/45/L.2 and read as follows:

CONCILIATION RULES OF THE UNITED NATIONS

Guatemala: draft resolution

United Nations rules for the conciliation of disputes
between States

The General Assembly,

Recognizing the value of conciliation as a method of amicably settling disputes arising in the context of relations between States,

Convinced that the establishment of international rules of conciliation incorporating the results of the most recent scientific studies and experience in the field of international conciliation, together with certain innovations which should be made in the traditional practice in this field, could contribute to the development of harmonious relations between States,

1. Recommends the application of the United Nations rules for the conciliation of disputes between States, the text of which is contained in annex I to the present resolution, in any case where a dispute arises between States which it has not been possible to settle by direct negotiations and which the parties wish to settle by purely amicable means;

2. Requests the Secretary-General to take appropriate measures to circulate to all Governments the text of the present resolution, together with those rules and the explanatory commentary on their application contained in annex II to the present resolution.

Annex I

UNITED NATIONS RULES FOR THE CONCILIATION OF DISPUTES
BETWEEN STATES

CHAPTER I

APPLICATION OF THE RULES

Article 1

1. These rules apply to the conciliation of disputes between States which it has not been possible to settle by means of negotiation or amicable methods of settlement other than conciliation, whether the disputes are of a legal nature or not. These rules do not apply, however, to disputes of a purely legal nature in which no questions of responsibility or reparation arise and in which there is no disagreement as regards the facts.

2. The States applying these rules may at any time agree to exclude or amend any of their provisions. The State initiating the conciliation may propose an amended version of the rules. The State to which these rules are proposed may do the same.

CHAPTER II

INITIATION OF THE CONCILIATION PROCEEDINGS

Article 2

1. The State which initiates conciliation proceedings in accordance with these rules shall send the other State a written invitation to conduct a process of conciliation in accordance with these rules, and identifying and describing the subject of the dispute. In the invitation, the State initiating the conciliation proceedings shall indicate the amendments it proposes to the rules, if any, and its choice as regards the number of conciliators. The invitation shall also indicate the language or languages which are to be used in the conciliation proceedings and also the linguistic or other services which the conciliator or conciliators may need.
2. For the preparation of the invitation, the State initiating the proceedings may request the assistance and advice of the Secretary-General of the United Nations.
3. The conciliation proceedings shall begin as soon as possible after the State to which the invitation has been sent has accepted it or, if it is not accepted, the States have agreed to apply an amended version of these rules.
4. If the States cannot reach agreement on the definition of the dispute, they may jointly request the assistance of the Secretary-General of the United Nations to resolve the difficulty.

CHAPTER III

CASES IN WHICH MORE THAN ONE STATE HAS THE SAME INTEREST WITH REGARD TO THE DISPUTE

Article 3

When more than two States are involved in the same dispute, the States which have the same viewpoints and the same interest shall be considered and shall act jointly as a single party.

CHAPTER IV

NUMBER OF CONCILIATORS

Article 4

There may be a sole conciliator, three conciliators or five conciliators. In the two latter cases the conciliators shall form a commission.

CHAPTER V

APPOINTMENT OF CONCILIATORS

Article 5

For the appointment of conciliators the parties shall take into account the system of investigation and conciliation envisaged in General Assembly resolution 268 D (III) of 28 April 1949 and any other similar system established by a regional body in which both parties participate. If the dispute involves issues of fact only, they shall take into account the system envisaged in General Assembly resolution 2329 (XXII).

Article 6

If the parties have agreed that a sole conciliator shall be appointed, that conciliator shall be appointed by agreement between them. If such an agreement is not reached within two months, the conciliator shall be appointed by the government of a third State, chosen by agreement between the parties or, if no such agreement is reached within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge of the Court in order of seniority who is not a national of the parties. The conciliator shall not have the nationality of any of the parties, shall not reside or have resided habitually in their territory and shall not be or have been in the service of any of them.

Article 7

If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as chairman of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the government of a third State chosen by agreement

between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the Parties, the appointment shall be made by the Vice-President or the next judge of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside or have resided habitually in the territory of the parties nor be or have been in their service.

Article 8

1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be chosen from among its nationals. The other three conciliators, one of whom shall be chosen with a view to his acting as chairman, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside or have resided habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as chairman.

3. If at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as chairman, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as chairman.

4. If, at the end of the three-month period referred to in paragraph 2 of this article the parties have appointed three conciliators but have not been able to agree which of them shall act as chairman, the chairman shall be chosen in the manner described in that paragraph.

Article 9

In the event that a sole conciliator dies, resigns or for any other reason is prevented from continuing to discharge his duties, a successor shall be appointed as soon as possible in the same way as the original conciliator

was appointed. The vacancies which may occur in a conciliation commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

CHAPTER VI

RULES APPLICABLE TO CONCILIATION BY A SOLE CONCILIATOR

Article 10

The conciliator, acting in an independent and impartial manner, shall seek to ensure that the parties reach an amicable settlement of the dispute. To that end, he shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other factors, the rights and obligations of the parties and the facts and circumstances of the case. If no settlement is reached during consideration of the dispute, he shall draw up and communicate to the parties, in writing, such terms of settlement as he deems appropriate.

Article 11

1. After his appointment, the conciliator shall request each of the parties to submit to him a statement, in writing, describing the elements of the dispute and the points at issue, accompanied by any information or evidence which the party considers necessary or useful. Each party shall send the other a copy of this statement and the annexes thereto.
2. The conciliator may request any of the parties to submit to him an additional statement, in writing, concerning its original statement and concerning the facts and grounds in support thereof, accompanied by any information or evidence which the party considers necessary or useful. The submitting party shall send a copy of the additional statement and the annexes thereto to the other party.
3. At any stage of the conciliation proceedings, the conciliator may request any of the parties to submit any other documents or information which he considers necessary or useful; such documents or information shall be communicated to the other party.

Article 12

1. The conciliator shall conduct the proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, and the need for a speedy settlement of the dispute.
2. The conciliator may hear the parties jointly or separately and in any place.

3. At any stage of the proceedings, the conciliator may make proposals for a settlement of the dispute.
4. In putting forward proposals and terms of settlement, the conciliator shall refrain from presenting any final conclusions with regard to the facts at issue or from ruling formally on issues of law, unless the parties have jointly requested him to do so.
5. No minutes shall be drawn up of the meetings between the parties, or one of them, and the conciliator, nor of the evidence submitted.
6. A certified copy of any document submitted by a party as evidence shall be provided to the other party.
7. If a party submits an original document as evidence, it shall be entitled to have that document returned to it; a certified copy of the document shall remain in the possession of the conciliator.

Article 13

1. The work of the conciliator, including his meetings with one or both the parties, which shall be private, shall be secret. The conciliator and the parties shall refrain from divulging any documents or oral statements, or any communication concerning the progress of the proceedings, without the prior approval of both parties.
2. If any indiscretion occurs during the proceedings, the conciliator may determine its possible effect on the continuation of such proceedings.
3. Except in the case of evidence submitted during the conciliation proceedings which the parties may submit in any judicial or arbitral proceedings held after the conclusion of the conciliation proceedings, the obligation to respect the secrecy of the conciliation proceedings shall remain in effect for the parties and for the conciliator after the proceedings are concluded and shall extend to the terms of settlement and any proposal made by the conciliator, whether accepted by the parties or not. After the conclusion of the proceedings the parties may, by agreement, make all or some of the documents available to the public or authorize the publication of all or some of them.
4. Upon conclusion of the proceedings, the conciliator shall destroy every original or copy in his possession of any written material submitted in accordance with article 38.
5. Upon conclusion of the proceedings, the conciliator shall deposit a set of the documents with each of the parties.

Article 14

1. If the terms of settlement are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, the proceedings shall be terminated.

2. If the terms of settlement are not accepted by both parties but the latter wish efforts to reach agreement on different terms to continue, new proceedings shall be initiated, to which all the provisions of the present chapter shall apply, except that, if the conciliator has no objection, the parties may, with respect to the new proceedings, reduce by mutual agreement the time-limit mentioned in article 15.

Article 15

Without prejudice to the right of the parties, acting by mutual agreement, and of the conciliator, to extend this time-limit and the possible application of article 13, paragraph 2, or of article 45, the conciliator shall conclude his work within two months from the date on which the procedures mentioned in article 11, paragraph 1, were completed.

Article 16

The conciliator may, at any time, request the Secretary-General of the United Nations for advice and assistance with regard to the administrative and procedural aspects of his work.

CHAPTER VII

RULES APPLICABLE TO CONCILIATION BY COMMISSION

Fundamental principles

Article 17

The commission shall attempt to clarify the issues in dispute and to help the parties reach an agreement. It shall seek to obtain all information necessary or useful for the attainment of those objectives. If no settlement is reached during consideration of the dispute, the commission shall draw up and communicate to the parties, through a report of its chairman, such terms of settlement as it deems appropriate.

Article 18

The commission shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties and the facts and circumstances of the case.

Procedures of the commission

Article 19

While adhering to the procedural provisions contained in chapters VII and XVIII of these rules, the commission shall adopt its own procedures.

Article 20

1. Before the commission begins its work, the parties shall designate their representatives and shall communicate the names of such representatives to the chairman of the commission. The chairman shall determine, in agreement with the parties, the place and date of the commission's first meeting, to which the members of the commission and the representatives shall be convoked.

2. Before the first meeting of the commission, its members may meet informally to deal with administrative and procedural matters.

Article 21

The representatives of the parties may be assisted by counsel and experts appointed by the parties.

Article 22

1. At its first meeting, the commission shall appoint a secretary, who may be a United Nations official. It shall then hear initial statements from the parties. If it decides that the information provided by the parties so permits, the commission shall agree on the method to be used to consider the dispute and, in particular, whether the parties should be invited to submit written statements and in what order and within what time-limits such statements must be submitted, as well as the dates when, if this is required, representatives and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside or have resided habitually in their territory and shall not be or have been in the service of any of them.

3. Except as provided in article 28, paragraph 1, the commission shall not hear statements by the representative or counsel of a party without having given the other party the opportunity to be represented at the hearing in question.

Article 23

1. The parties shall facilitate the commission's work and, in particular, shall do everything possible to provide it with whatever documents and information may be relevant.
2. The commission shall accept any request by the parties that persons whose testimony they consider necessary or useful be heard, that experts be consulted or that local investigations be conducted. It may, however, in any case in which it considers it neither necessary nor useful to accept such a request, ask the party making the request to reconsider it.
3. The parties shall use the means available to them to enable the commission to enter their territory and, in accordance with their laws, to convoke and hear witnesses or experts and visit any part of their territory to conduct local investigations. Articles 19 to 29 of the Hague Convention ^{1/} for the Pacific Settlement of International Disputes of 18 October 1907 shall apply in such cases.

Article 24

If the commission establishes that the parties disagree on issues of fact, or considers it necessary or useful to clarify facts which the parties do not seem to have taken into account, it may, motu proprio, consult experts, conduct local investigations or question witnesses. In such cases, article 23, paragraph 3, shall apply. Before using the powers conferred by the present article with regard to facts which the parties do not seem to have taken into account, the commission shall consult the parties.

Article 25

The commission may propose to the parties that they jointly appoint expert advisers to assist them in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing the emoluments of the expert advisers.

Article 26

If the commission is unable to reach unanimous agreement, it may take its decisions by a majority of votes of its members without being required to indicate the number of votes. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

^{1/} Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899-1907, New York, Oxford University Press, 1915, pp. 41-81.

Article 27

1. The commission shall meet at United Nations Headquarters.
2. The commission may, at any time, request the Secretary-General of the United Nations for advice or assistance with regard to the administrative and procedural aspects of its work.

Conclusion of the commission's work

Article 28

1. On concluding its consideration of the dispute, the commission shall define the terms of settlement which are likely to be acceptable to the parties, unless the dispute involves issues of fact only. In this connection, the commission may hold an exchange of views with the representatives of the parties, who may be heard jointly or separately.
2. Once the proposed terms of settlement have been drawn up, they shall be communicated by the chairman of the commission in a report to the representatives of the parties, with a request that the representatives inform the commission, within a given period, whether the parties accept them. The chairman may include in his report the reasons which, in the commission's view, might prompt the parties to accept the proposed terms of settlement. The chairman shall refrain in his report from presenting any final conclusions with regard to facts or from ruling formally on issues of law, unless the parties have jointly asked the commission to do so.
3. If the dispute involves issues of fact only, the chairman shall hand over to the representatives of the parties, once it is complete, a report setting forth the commission's findings in that regard. The proceedings shall be concluded when his report is handed over.

Article 29

If the parties accept the terms of settlement proposed by the commission, a document shall be drawn up setting forth those terms. The document shall be signed by the chairman and the secretary. A copy signed by the secretary shall be provided to each party, and this shall conclude the proceedings.

Article 30

1. If the terms of settlement are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a document shall be drawn up as stipulated in article 29, but omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different

terms. The proceedings shall be concluded when each party has received a copy of the document signed by the secretary.

2. If the terms of settlement are not accepted by both parties but the latter wish efforts to reach agreement on different terms to continue, new proceedings shall be initiated, to which all the provisions of chapters VII and VIII of these rules used in the first proceedings shall apply, except that it shall not be necessary to appoint a new secretary and, if the commission has no objection, the parties may, with respect to the new proceedings, reduce by mutual agreement the time-limit mentioned in article 31.

Article 31

Without prejudice to the right of the parties, acting by mutual agreement, and of the commission, to extend the relevant time-limit and the possible application of article 32, paragraph 2, or article 45, the commission shall conclude its work within three months from the date on which, in accordance with article 22, paragraph 1, the initial statements of the parties were made, if it consists of three members, and within five months of that date if it consists of five members.

Secrecy of the commission's work and of the documents involved

Article 32

1. The commission's meetings shall be closed. Members of the commission and its expert advisers, together with representatives, counsel and experts, and the secretary and secretariat staff, shall refrain from divulging any documents or statements, or any communication concerning the progress of the proceedings, without the prior approval of both representatives.

2. If any indiscretion occurs during the proceedings, the commission may determine its possible effect on the continuation of such proceedings.

Article 33

Except as provided in articles 29 and 30, no decision, statement or communication concerning the substance of the dispute shall be reflected in the minutes of the commission's meetings at which one or both parties were represented.

Article 34

1. Certified copies of the minutes of the commission's meetings and of the annexes thereto shall be provided to the representatives through the secretary of the commission, except in the case of the minutes of meetings of the

commission to which neither of the parties were invited; the parties shall not receive copies of the minutes of those meetings.

2. Originals of the minutes of the commission's meetings to which neither of the parties were invited and copies of those minutes in the possession of the secretariat at the conclusion of the proceedings shall be destroyed at that time by the secretary.

3. Upon conclusion of the proceedings the secretary shall destroy all originals or copies of any written materials submitted in accordance with article 38 that are in his possession.

4. A certified copy of any document submitted by a party as evidence shall be provided to the other party.

5. If a party submits an original document as evidence, it shall be entitled to have that document returned to it; a certified copy of the document shall remain in the possession of the secretariat.

6. The parties shall receive certified copies of the records of evidence drawn from experts' reports, investigations and the questioning of witnesses.

Article 35

Except with regard to evidence drawn from experts' reports, investigations and the questioning of witnesses and documentary evidence which the parties may submit in any judicial or arbitral proceedings held after the conclusion of the conciliation proceedings, the obligation to respect the secrecy of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to the terms of settlement, whether accepted or not, and to any proposals made, whether accepted or not. Except for the documents referred to in article 32, paragraph 1, no document shall be communicated to the public before the conclusion of the proceedings. Upon conclusion of the proceedings, the parties may, by mutual agreement, make available to the public all or some of the documents or authorize the publication of all or some of them.

Article 36

Upon conclusion of the proceedings, the chairman of the commission shall deliver the documents in the possession of the secretariat of the commission to the Secretary-General of the United Nations, who shall preserve their secrecy within the limits indicated above.

CHAPTER VIII

RULES APPLICABLE TO ALL CONCILIATION PROCEEDINGS CONDUCTED
IN ACCORDANCE WITH THESE RULES

Article 37

No admission or proposal made or view expressed during the conciliation proceedings by one of the parties, the commission, a member of the commission or the sole conciliator, as the case may be, shall be considered to prejudice or in any way affect the rights or claims of any of the parties should the proceedings fail. Likewise, a party's acceptance of a proposal or terms of settlement in no way implies acceptance by that party of the arguments of law or of fact on which the proposal or terms of settlement may be based.

Article 38

1. Any of the parties to conciliation proceedings governed by these rules may provide the sole conciliator or the commission, as the case may be, with comments on situations or facts relating to the dispute and on arguments submitted by the other party, on the understanding that the origin of the comments shall not be revealed to the latter.
2. Materials in writing submitted in accordance with this article shall not have any evidentiary effect if it affirms or refutes facts.

Article 39

The parties undertake that no conciliator or expert adviser who takes part in proceedings conducted in conformity with these rules shall act as a judge ad hoc, arbitrator, representative, counsel or expert of a party in any arbitral or judicial proceedings in respect of the dispute that was the subject of the conciliation proceedings. The parties also undertake not to present a conciliator or expert adviser as a witness or expert in any such proceedings.

Article 40

Each party may at any time, at its own initiative or at the initiative of the sole conciliator or the commission, as the case may be, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the sole conciliator or to the commission, as the case may be.

Article 41

At any stage of the conciliation proceedings, the sole conciliator or the commission, as the case may be, may recommend any provisional measure which should be taken to preserve the corresponding rights of a party.

Article 42

At any stage of the proceedings, the sole conciliator or the commission, as the case may be, may draw the attention of the parties to any measures which might facilitate an amicable settlement.

Article 43

Neither of the parties shall initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of the dispute which is the subject of the conciliation proceedings. Each party may, however, initiate arbitral or judicial proceedings where such proceedings are necessary for preserving its rights.

Article 44

The parties shall refrain from any measures which might have an adverse effect on the terms of settlement proposed by the sole conciliator or the commission, as the case may be, until those terms have been explicitly rejected by both or one of the parties. The parties shall also, in general, refrain from any measure which might aggravate or exacerbate the dispute.

Article 45

If the sole conciliator or the commission, as the case may be, finds one or both of the parties to be systematically and persistently refraining from extending the co-operation necessary for the satisfactory progress of the conciliation proceedings, impeding those proceedings or violating provisions of these rules, the conciliator or the commission may terminate the proceedings without proposing terms of settlement or, in the case of a dispute involving issues of fact only, without formulating findings in that regard. If the sole conciliator or the commission, as the case may be, makes use of this power, the conciliator or the commission shall communicate to the parties in writing, in a thorough and precise manner, the reasons why this step has been taken.

Article 46

The sole conciliator or, if the conciliation proceedings are conducted by commission, each member of the commission shall receive emoluments in an amount and on terms agreed by the parties who may, if they so wish, request the opinion of the Secretary-General of the United Nations on this matter. The emoluments and the terms of their payment must be fixed before the conciliators are appointed and be communicated to them before they take up office. The same rules apply to the emoluments of the secretary of the commission and any staff he recruits.

Article 47

The costs of the conciliation proceedings, including those occasioned by any investigations agreed upon by a commission motu proprio and the emoluments of expert advisers appointed in accordance with article 25, shall be borne by the parties in equal shares.

Article 48

The terms of settlement proposed by a sole conciliator or by a commission, as the case may be, shall in no way be binding on the parties with regard to their substance. They shall be simply recommendations submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties nevertheless undertake to study them carefully and objectively. If one of the parties rejects terms of settlement which the other party accepts, it shall inform the latter, in writing, of the reasons why it could not accept them.

Annex II

EXPLANATORY COMMENTARY ON THE APPLICATION OF THE UNITED NATIONS
RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

1. The rules in annex I are a model set of norms which States between whom a dispute has arisen can adopt either through a bilateral agreement simply referring to the rules, if they wish to apply them without amendment, or otherwise through a bilateral agreement adopting an amended version of the rules. The rules are sufficiently broad to serve as a basis for conciliation proceedings without it being necessary to incorporate additional norms in them.
2. It is possible that States wishing to set up an ad hoc conciliation mechanism to assist them in settling a dispute between them may be parties to a bilateral or multilateral convention which requires them to resort to conciliation to settle disputes arising between them.

3. If the convention is bilateral, there is of course nothing to prevent the States from using the rules instead of the convention, without amending the rules, if the convention provides for *ad hoc* conciliation, in other words, if there is no pre-established conciliation body. If such a body does exist, they could, if they prefer to apply the rules rather than the convention establishing such a body, apply the rules with the necessary amendments so that the pre-established commission can handle the dispute.

4. If the pre-existing convention is multilateral, the States may act as indicated in the preceding paragraph, but taking into account, if the rules, with the agreed amendments, are not fully compatible with the conciliation provisions in the convention, that article 41 of the Vienna Convention on the Law of Treaties ^{2/} requires them to inform States parties to the convention in question of the amendments that they have made in the light of their decision to apply the rules. This requirement may be fulfilled through the depositary of the convention.

5. If the dispute prompting recourse to the rules comes within the terms of a clause of a bilateral or multilateral convention requiring the parties to resort to arbitration or to the International Court of Justice, or if the latter has competence to hear the dispute by virtue of declarations made under Article 36, paragraph 2, of its Statute, States may normally agree that the dispute will none the less first be referred to conciliation on the basis of the rules, and that recourse to arbitration or to the Court will be required only if such conciliation proceedings fail.

6. The provisions of article 43 of the rules are relevant to the comments in the preceding paragraph.

7. It should be noted that the conciliation commissions, which enjoy far-reaching powers of investigation under articles 23 and 24, may serve as investigatory commissions in any case where the dispute involves issues of fact only. In such a case, the sole purpose of the proceedings will be to investigate the facts (see art. 28, para. 3).

8. The procedure involving conciliation by a sole conciliator is far more flexible and informal than the procedure involving the commissions. The rules do not envisage the application of the former type of conciliation to disputes on issues of fact only. Moreover, inasmuch as neither paragraph 3 of article 23 nor article 24 applies to the sole conciliator, that procedure is often not as well suited to the settlement of disputes on issues of fact as the procedure involving commissions. It should also be noted that because of its flexible and informal nature, the procedure involving a sole conciliator is somewhat similar to mediation.

^{2/} United Nations, Treaty Series, vol. 1155, No. 18232.

9. Unlike what happens in the case of five-member commissions, members appointed individually by the parties are in the majority on three-member commissions. If the dispute has caused serious uneasiness between the parties, that factor could put the chairman of the commission in an awkward position. Accordingly, establishing a three-member commission would appear to be advisable only when, despite the dispute, relations between the parties are still relatively amicable.

10. If - as happens, for example, when injury is sustained by a national of one party in the territory of the other - the dispute comes within the purview of the courts of one of the parties, it would be better not to initiate conciliation proceedings until that party's highest judicial authority has issued a final ruling on the matter.

6. At the 43rd meeting, on 16 November 1990, the representative of Guatemala introduced a draft decision (A/C.6/45/L.9) proposed by his delegation.

7. At the same meeting, the Committee adopted draft decision A/C.6/45/L.9 without a vote (see para. 8).

III. RECOMMENDATION OF THE SIXTH COMMITTEE

8. The Sixth Committee recommends to the General Assembly, the adoption of the following draft decision:

United Nations rules for the conciliation of disputes between States

The General Assembly, taking into account the document relating to the draft conciliation rules of the United Nations ^{3/} submitted to the General Assembly at its forty-fifth session, decides:

(a) To request the Secretary-General to circulate that document, together with the amendments submitted during the current session, to all Member States, organs and competent specialized agencies of the United Nations, regional intergovernmental organizations and international legal bodies interested in the draft conciliation rules and to invite them to send to him their observations, comments and suggestions thereon;

(b) Also to request the Secretary-General to submit a report containing the replies received to the General Assembly at its forty-sixth session;

(c) That the question of the rules for the conciliation of disputes between States should be examined as part of the programme of the United Nations Decade of International Law and in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, as appropriate.
