JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

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Judicial and Arbitral Settlement of International Disputes Involving More Than Two States

(Eleventh Commission, Rapporteur : Mr Rudolf Bernhardt)

(The English text is authoritative. The French text is a translation.)

The Institute of International Law,

Reaffirming that judicial and arbitral settlement is one important means to settle disputes between States in accordance with the Charter of the United Nations ;

Noting that international judicial and arbitral dispute settlement is, in general, bilaterally conceived, and that the increasing multilateral character of international relations requires an adaptation of the traditional dispute settlement rules ;

Considering that possible consequences of peremptory norms of international law and of *erga omnes* obligations are not addressed in this Resolution ;

Adopts the following Resolution :

I. Principles

1. The consent of States is the basis of the jurisdiction of international courts and tribunals, and consequently a dispute between more than two States cannot be decided without the consent of all States concerned. Without such consent either no settlement or only partial settlement of the dispute is possible.

2. Provisions concerning jurisdiction and procedure in statutes and rules of international courts and tribunals often present specific and unique features. Therefore the interpretation of the relevant texts is the starting point in all cases including those involving more than two States. Nevertheless, some general principles and similar provisions concerning intervention and other forms of third-State participation can be identified.

3. The general principles and rules concerning third-State participation applicable to the International Court of Justice may also be applied, if appropriate in the particular circumstances, to proceedings before other international courts and tribunals.

II. Disputes involving more than two States as Parties

4. Where two or more States have identical or similar interests of a legal nature in a dispute they should consider taking joint or common action before the competent international court or tribunal.

5. Unilateral application to a court or tribunal by one or more States directed against more than one State as respondents requires, in principle, parallel and separate proceedings if no previous agreement between the States involved can be reached.

6. Subject to the relevant legal instruments, the court or tribunal may join pending cases or order common proceedings taking into account all the circumstances. The procedural consequences of a joinder of cases or of common proceedings without a formal joinder should be determined by the court or tribunal with due respect for the requirements of a fair procedure.

III. Intervention

7. Subject to the provisions of the instruments governing the functioning of the court or tribunal, two principal types of intervention are:

(a) intervention by a third State in cases where it considers that it has an interest of a legal nature which may be affected by the decision in the case; and

(b) intervention by third States Parties to a multilateral treaty the construction of which is in question.

8. Intervention by a third State does not mean that this State becomes a full party to the proceedings. Parties and interveners have different positions and functions which cannot be combined without special agreements.

9. The consequences of intervention in cases raising a question of the construction of a multilateral treaty (Article 63 of the Statute of the International Court of Justice and similar texts in other statutes) are explicitly set out in the relevant texts. If the third State is a party to the treaty, it has a right to intervene and to participate as an intervener. The parties to the case as well as the intervening State are bound by the construction given to the relevant treaty provisions by the court or tribunal.

10. Intervention under Article 62 of the Statute of the International Court of Justice and similar texts in other statutes requires the existence of an interest of a legal nature on the part of the intervening State. That means that rights or obligations of this State under public international law can be affected by the decision. Whether the State can claim such an interest and whether it may be affected by the decision of the court or tribunal has to be determined by the court or tribunal according to the specific features of each case. When the court or tribunal has found a legal interest to exist, the State applying for intervention should be admitted as intervener.

11. Intervention does not require the existence of a jurisdictional link between the parties to the dispute and the third State beyond the provisions of the Statute of the International Court of Justice and similar provisions in other relevant texts allowing intervention.

12. A State may apply to intervene on the merits as well as in proceedings confined to matters of jurisdiction and admissibility; in exceptional cases, it may also apply to intervene in other incidental proceedings.

13. When a State considers intervening, it may request the court or tribunal to provide it with copies of the pleadings. The court or tribunal shall decide after consulting the parties.

14. Should the relevant instrument provide for the appointment of a judge *ad hoc*, this does not apply to an intervening State.

15. The decision concerning the admissibility of the intervention is binding on the parties and the intervening State.

16. The intervening State has the right to take part in the written and oral proceedings. The extent of such participation depends on the relevant rules of the court or tribunal and on the need to conduct the proceedings in an effective and equitable manner.

17. The decision of the court or tribunal is binding on the intervening State to the extent of the admitted intervention. To the same extent, the decision is binding on the principal parties in their relations with the intervening State.

18. With the consent of all parties to the case, an intervening State may become a full party to the proceedings with the corresponding rights and obligations.

IV. Indispensable Parties

19. If the rights or obligations of a third State are the very subject-matter of a dispute submitted by other States to a court or tribunal and if a decision on that dispute is not possible without deciding on the rights or obligations of the third State, the court or tribunal cannot take such a decision unless that third State becomes a party to the proceedings. This third State is an “indispensable party” to the proceedings.

20. If the rights or obligations of the parties to the proceedings can be separated from those of a third State, the court or tribunal may decide on that part of the dispute relating to these rights or obligations.

21. All the States involved may agree that the "indispensable party" becomes a full party to the proceedings with the corresponding rights and obligations, in order to enable the court or tribunal to decide the entire dispute.

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(24th August 1999)