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economic zone was merely a part of the high seas. Disputes between parties to the convention relating to matters under the jurisdiction of the coastal State should be settled through the peaceful means cited in Article 33 of the Charter of the United Nations. Naturally, procedures could be explored whereby, in clearly defined circumstances, certain matters might be referred to some type of international conciliation or arbitration machinery. However, the ensuing recommendations should not be binding unless the parties had agreed otherwise beforehand. With regard to disputes on matters relating to the area beyond the limits of national jurisdiction, the convention should, in many instances, provide for compulsory jurisdiction.

The meeting rose at 6 p.m.

62nd meeting

Wednesday, 7 April 1976, at 10.25 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes *(continued)* (A/CONF.62/WP.8[1]WP.9 and Add.1)

1. Mr. NIMER (Bahrain) said that the President's single negotiating text (A/CONF.62/WP.9) remedied many of the deficiencies in existing conventions on the settlement of disputes. The settlement of disputes in the past had been adversely affected by the unwillingness of one of the parties to co-operate for reasons involving national sovereignty.

2. Under articles 8, 9 and 10 of the text, the parties to a dispute would be required to recognize the jurisdiction of the law of the sea tribunal, an arbitral tribunal or the International Court of Justice. Article 9, paragraph 1, provided that the law of the sea tribunal would have compulsory residuary jurisdiction to decide upon the matters in dispute; thus an attempt was being made to achieve what the former Permanent Court of International Justice and the present International Court of Justice had failed to accomplish in the general field of international relations.

3. The compulsory jurisdiction of the proposed law of the sea tribunal should be limited to matters concerning the international sea-bed area as defined in General Assembly resolution 2749 (XXV). Disputes relative to areas outside the international area should be settled by the law of the sea tribunal in accordance with the procedures set forth in article 9, paragraph 2, of the President's text, as was the case with the arbitral tribunal and the International Court of Justice.

4. His delegation welcomed the provisions of article 13, paragraph 4, and felt that they should be extended to cover the liberation movements which had participated in the Conference as observers.

5. The idea of entrusting the settlement of disputes concerning fisheries, pollution and scientific research to technical bodies was unacceptable because it was provided for in the general procedure in the text, and because the members of such bodies might not have the necessary legal knowledge not only to apply, but occasionally to interpret, the convention.

6. Under article 18, paragraph 1, States would not be required to submit to the dispute settlement procedures any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction in the exclusive economic zone, save in two categories of dispute. That provision might have unduly adverse effects on land-locked and geographically disadvantaged countries and should be reviewed.

Mr. Medjad (Algeria), Vice-President, took the Chair.

7. Mr. GAYAN (Mauritius) said his delegation was aware that the chapter on the machinery for the peaceful settlement of disputes might well prove to be the key to a widely accepted convention. For the sake of completeness, and because of the many new activities that would be carried out in ocean space, the new convention on the law of the sea should prescribe a procedure for the settlement of the disputes arising out of it. Ideally, the Conference should draw up a convention that would minimize the possibility of conflicts and should provide for a system for resolving any conflicts that might arise before they had time to develop into serious disputes. Its primary concern, however, should be to draft clear substantive provisions with a view to avoiding conflicting interpretations.

8. His delegation was glad to note that the President's text (A/CONF.62/WP.9) gave concrete form to some of the peaceful means of dispute settlement enumerated in Article 33 of the Charter of the United Nations. The starting-point, in so far as the settlement of disputes between States by a third-party procedure was concerned, was the consent of the States parties to the dispute. That fundamental principle should be fully reflected in the future machinery for the peaceful settlement of disputes under the new convention on the law of the sea.

9. Disputes could be expected to arise in two areas: first, the exclusive economic zone or the continental shelf of a State; and, secondly, all areas beyond the limits of national jurisdiction.

10. Since the coastal State exercised sovereign rights over the first area, it was natural that the national tribunals of that State should be the only competent forums for the settlement of disputes arising in that area; that principle was intrinsic to the basic notion of State sovereignty. To opt for any other system would be to invite abuse by, for example, States entitled to participate in the exploitation of the living resources of the exclusive economic zone of a coastal State. Under a compulsory procedure system, such States might bring the coastal State before tribunals whenever the latter adopted measures within its exclusive economic zone. Were that to happen, needless tension and bad feeling would be created among neighbouring States. It might be argued that the neighbouring States should be presumed to act reasonably, but there would have to be the same assumption in the case of the coastal State. The premise on which the new convention should be based was that of co-operation be-

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

tween States on the assumption that all States would comply with the provisions of the new convention in good faith. In the view of his delegation, the reasons for not having a compulsory procedure for dispute settlement in areas of national jurisdiction were overwhelming.

11. His delegation was nevertheless in favour of a compulsory procedure for the settlement of disputes arising within the ambit of the International Sea-bed Authority and believed that there should be a special tribunal for the régime of the sea-bed. Such a tribunal would adjudicate all disputes of a commercial nature arising out of activities carried out, or to be carried out, in the international sea-bed area between the Authority and applicants, whether natural or juridical persons, or between the Authority and States or any combination of those parties. The tribunal should adopt a functional approach and its procedure should be simple and expeditious. It would be composed of independent judges, elected on the basis of equitable geographic distribution, but would not be competent to review the policy guidelines of the Assembly, the supreme organ of the Authority.

12. It was not necessary or desirable to establish a law of the sea tribunal to deal with matters other than those relating to the work of the First Committee. Such a measure, as proposed in the President's text, would be a luxury. The International Court of Justice could be used for the same purpose and could act with greater authority; indeed, it had already proved itself to be responsive to law of the sea problems in general. It should be borne in mind that arbitration was the method favoured by States for the solution of international disputes.

13. His delegation did not agree that there should be special procedures to settle specific problems. The special procedures proposed in the President's informal text could give rise to delays and uncertainty as to the proper forum in the case of mixed disputes; consequently the entire subject should be completely rethought.

14. The machinery for the peaceful settlement of disputes should provide for a wide choice of modes of settlement and should be dealt with in an optional protocol. A compulsory third-party settlement procedure could not be imposed on sovereign States.

15. As most of the disputes that might arise would be of a regional or subregional character, the Conference should study the possibility of providing for regional arrangements to deal with the peaceful settlement of disputes.

16. Mr. NYAMDO (Mongolia) expressed appreciation to the President for the text he had proposed on the settlement of disputes, which would serve as a basis for further discussion of that question. He merely wished to emphasize that the question of procedures for the settlement of disputes concerning the interpretation and application of the convention was fully as important as other questions relative to the law of the sea. His delegation therefore agreed with other speakers that the question should be solved on a "package" basis.

17. The peaceful settlement of disputes was one of the generally recognized principles of contemporary international law by which Mongolia was guided in its foreign policy activities.

18. His delegation wished to emphasize the significance of the peaceful means for the settlement of disputes between States enumerated in Article 33 of the Charter of the United Nations. In his delegation's opinion the entire system for the settlement of disputes arising out of the interpretation and application of the convention should be based on the provisions of Article 33 of the Charter. His delegation therefore welcomed the present wording of article 1 of document A/CONF.62/WP.9. It also considered that another important principle to be observed when elaborating a system for dispute settlement was the principle of freedom of choice by the parties to a dispute, regarding the most appropriate means of settlement. That principle was especially important in the case of arbitral or judicial settlements. That principle was fully applicable to disputes that could arise in connexion with the interpretation and application of the convention. His delegation therefore considered that the consent of all parties to a dispute to the submission of that particular dispute to arbitral or judicial proceedings was essential.

19. With regard to access by natural or juridical persons to procedures for the settlement of disputes, his delegation considered that only sovereign States should be the subject of a dispute. Mongolia supported the suggestions made by those delegations that favoured the deletion of certain provisions dealing with natural and juridical persons. It was also in favour of deleting paragraph 2 *(a)* of article 18 of the text, because it failed to make proper provision for the legitimate rights and interests of States other than coastal States, and it accordingly proposed the deletion of article 14 from the text.

20. Mr. KABONGO (Zaire) said that the law of the sea was being reviewed in the new spirit which had inspired the United Nations ever since the first United Nations Conference on Trade and Development. Since that time, the United Nations had sought to promote the economic goals laid down in Article 55 *a* of its Charter, with a view to creating the conditions of stability and well-being which were necessary for peaceful and friendly relations among nations.

21. The Third United Nations Conference on the Law of the Sea, and particularly the economic planning commission provided for in the future convention, also had a role to play in the establishment of the new international economic order. Bearing in mind the interests of both consuming and land-based mineral producing countries, and in particular the developing countries among them, the economic planning commission would make recommendations to the Council of the International Sea-bed Authority in order to avoid or minimize adverse effects on developing countries whose economies substantially depended on the revenues derived from the export of minerals and other raw materials originating in their territories.

22. The spirit of the convention currently being elaborated was quite different from that of the 1958 Conventions on the Law of the Sea. That was because it was being drawn up within the framework of a broader, more diversified international community. That new factor called for new formulas. For example, the International Sea-bed Authority must be granted certain economic prerogatives within the international area. A balance of interests must be established if the organs of the Authority were to be able to function and cope with structural problems and the economic problems of the moment.

23. The new convention should take account not only of the interests of the coastal States but also of the interests of the international community and of the land-locked and geographically disadvantaged countries.

24. The future law of the sea tribunal should have general jurisdiction to deal with disputes relating to the interpretation or the application of the convention. It should cooperate with the organs of the United Nations, including the International Court of Justice.

25. His delegation welcomed the diplomatic, regional and arbitration procedures outlined in document A/CONF.62/WP.9 and felt that the special procedures were acceptable in so far as they related to technical matters.

26. The articles proposed in the President's text were linked to substantive articles concerning such subjects as the

delimitation of ocean space, procedures for the exploitation of ocean space, and navigation. His delegation would therefore comment on the text on the settlement of disputes at a later stage.

27. Mr. DRISS (Tunisia) said that, in view of the functions assigned under the Charter to the International Court of Justice in the matter of the settlement of disputes, the establishment of a single system for the settlement of disputes—the law of the sea tribunal—gave rise to some difficulties. However, a possible solution might be to establish a link between the law of the sea tribunal and the International Court of Justice, enabling the tribunal to request opinions of the Court without thereby delaying its own procedure. It should therefore be recommended, at the end of the current discussion, that the elaboration of a single text dealing with the settlement of disputes should be industriously pursued so that the text could become a part of the convention on the law of the sea. The establishment of a suitable system for the settlement of disputes was the only means of guaranteeing the effective implementation of the new convention. Consequently, some decision should be taken regarding the necessary framework for dealing with the question of the settlement of disputes and regarding the status to be accorded to part IV of the single negotiating text (A/CONF.62/WP.9). Certain options regarding the substance of the question should also be made clear.

28. The importance of the subject, which had been debated in small informal working groups in which many of the developing countries had been unable to participate, necessitated a decision on the establishment of a formal working group on the settlement of disputes, in accordance with rule 50 of the rules of procedure of the Conference. Document A/CONF.62/WP.9 could provide a basis for that working group's discussions. However, his delegation wished to make it clear that that latter proposal should not be construed as prejudging its final position regarding that document.

29. As far as the substance of the question of the settlement of disputes was concerned, account should be taken of all the basic principles designed to safeguard the legitimate interests of all members of the international community, particularly those which would: first, ensure the rule of law based on equity and justice, while safeguarding the sovereignty and equality of States; secondly, ensure that the new convention was interpreted uniformly; thirdly, enable the parties concerned to exercise options within the framework of the system finally adopted. Proceeding from those principles, his delegation would prefer a compulsory system for the settlement of disputes, since such a system would give true meaning to the legal régime to be established. However, the principle of equitable geographic distribution must be taken into account in the composition and structure of such a system. The system for the settlement of disputes should thus be a single system, so as to ensure the uniform application and interpretation of the convention. The proliferation of international jurisdictional bodies would only complicate problems, exacerbate disputes and be detrimental to the convention.

30. The law of the sea tribunal could consist of at least two chambers, one of which would deal with matters relating to the exploration and exploitation of the international area, while the other would concern itself with other problems that might arise in the course of implementing the convention. That would not prevent national courts from exercising exclusive jurisdiction in the areas coming under their exclusive jurisdiction. In principle, only States would have access to the tribunal; however, natural and juridical persons engaging under contract in exploration and exploitation activities in the international area would also have the right of access to the tribunal. Other natural and juridical persons should not have such access. The recognized liberation movements might, however, be granted access to the tribunal in cases where decisions were necessary to preserve their national heritage.

31. The conciliation procedure provided for in annex I C of document A/CONF.62/WP.9 seemed sound. The idea might be extended by enabling the law of the sea tribunal to recommend that the parties resort to conciliation if they have not resorted to that procedure. His delegation would not be averse to giving States the option of resorting to arbitration within the framework of the single system for the settlement of disputes.

Mr. Jusuf (Indonesia), Vice-President, took the Chair.

32. Mr. BALLAH (Trinidad and Tobago) said that the question at issue was not whether dispute settlement procedures were necessary within the framework of the new law of the sea convention, but whether they could be usefully discussed at the present juncture, given the need to relate such procedures to substantive rules that had still to be negotiated. On the other hand, broad agreement on dispute settlement procedures might facilitate agreement on some of the substantive issues.

33. Document A/CONF.62/WP.9 envisaged that States parties to the convention could, in accordance with articles 1 to 5, resort to the settlement of disputes regarding the application or interpretation of the convention, either by reference to such peaceful means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or by reference to regional agencies, regional arrangements or to other peaceful means of their own choice. His delegation maintained a flexible position with respect to the employment of any of those means or of other procedures established under existing international instruments to which Trinidad and Tobago was a party.

34. The document also gave priority to three functional five-member committees, which were empowered to prescribe binding provisional measures, or eventually binding decisions, in specific areas such as fisheries, marine pollution and scientific research. That provision needed careful study by the Conference, since it might touch directly on the jurisdiction of coastal States, and, if adopted as it stood, might create greater problems than it sought to resolve. Consideration might be given to the setting up of rosters of experts in the three fields of pollution, scientific research and fisheries, who would be nominated by their respective Governments. That body of experts could serve as a very useful fact-finding technical committee in the event of disputes arising between States on those matters. His delegation would be prepared to consider conferring on those functional committees the power to make technical recommendations, as suggested in the paper itself. Such technical fact-finding and recommendations by those functional committees would be of tremendous assistance to the parties to a dispute, since they could provide the basis upon which meaningful negotiations could be conducted.

35. The pacific settlement procedure for conciliation provided for in article 7 and annex I A was satisfactory to his delegation. It was a well-established dispute-settlement procedure which was fundamental to the process of dispute settlement. The Conference might wish, however, to consider whether parties resorting to conciliation should also be able to establish a balanced functional committee to prepare an objective technical fact-finding report to assist the parties concerned.

36. His delegation would like to see included in the text an article which would provide that where resort to negotiation, enquiry, mediation or conciliation had not resolved the dispute, the matter could then be referred to third-party adjudication. Contracting parties could resort either to a law

of the sea tribunal, an arbitral tribunal or to the International Court of Justice, in accordance with its Statute and the relevant provisions of the Charter. The system proposed provided some interesting alternatives which were worthy of consideration. Trinidad and Tobago had not yet taken a firm position, but, like many other States, it had its reservations about conferring compulsory jurisdiction on the International Court of Justice for the purpose of resolving international disputes. The Court had unfortunately not enjoyed the confidence of a considerable number of States and had, as a result, remained largely unemployed.

37. The informal single negotiating text also proposed, in article 9, paragraph 2 and annex I B, the establishment of an arbitral tribunal whose decisions would be binding. States parties could deposit written declarations accepting as compulsory the jurisdiction of the arbitral tribunal in relation to any other contracting party which had undertaken the same obligation. Arbitration had been a successful way of resolving several international disputes and was also known in domestic jurisdiction. His delegation had as yet no strong objections to that proposal, but considered further discussion necessary in order to work out the detailed mechanisms of that procedure.

38. Another approach to third-party adjudication was the proposed creation of a law of the sea tribunal structured in much the same way as the International Court of Justice. Three major innovations were proposed in the statute of the law of the sea tribunal: first, its jurisdiction would automatically be binding on all parties to the convention; secondly, its members were to be elected on an equitable geographic basis; and thirdly, greater emphasis was to be laid on the adjudication of disputes by a chamber of three judges rather than by the full court of 15 judges. His delegation's first reaction was that the creation of such a tribunal to deal only with law of the sea matters could mean the establishment of yet another costly international mechanism which might be under-utilized. His delegation was prepared, however, to give it serious consideration.

39. Referring to article 13, which identified those entities which would have access to the dispute settlement procedure set out in the convention, he said that in order to determine the extent of access to those procedures, it was necessary to determine whether the sea-bed tribunal envisaged in document A/CONF.62/WP.8/Part I, article 32, was to remain separate from other dispute settlement procedures. The development of the international sea-bed area would involve huge investments in both capital and technology and it would seem necessary to have the kind of permanent specialized tribunal which could build up its own jurisprudence and which could determine cases as expeditiously as possible. If that was acceptable, then access to such a tribunal could be made open to international organizations as well as to natural and juridical persons involved in scientific research, prospecting, evaluation, exploration and exploitation and other related activities.

40. The President should prepare a revised single negotiating text, which would take into consideration the statements made in the general debate. Such a revised text could then form the basis for discussion and negotiation, possibly by a small open-ended working group of the Conference constituted in accordance with the principle of equitable geographic representation.

41. Trinidad and Tobago had reached no final position on the subject of dispute settlement. His delegation would co-operate with the President in efforts to elaborate a dispute settlement machinery which would be generally acceptable to all States. Trinidad and Tobago remained committed to the principle of the peaceful settlement of all disputes.

42. Mr. LOVATO (Ecuador) said that all the States represented in the Conference were interested in and committed to the formulation of a new law of the sea whose machinery would include institutions which would ensure the effectiveness of a system for the peaceful settlement of disputes. A useful text would emerge only as a result of a mandate from the Conference, and a fully representative working group should be established to prepare such a text.

43. His delegation considered it essential to promote and suitably regulate voluntary procedures for the peaceful settlement of disputes and, in the event of compulsory jurisdiction, considered it necessary to safeguard the application of laws, regulations and procedures of the coastal State in those areas of the sea under its sovereignty and/or jurisdiction. It shared the view that parties to a dispute should be entitled to utilize the settlement procedure of their choosing. Article 33 of the Charter of the United Nations enumerated the various means to which the parties could resort in seeking a peaceful solution. In adopting a dispute settlement procedure the Conference should be guided by the spirit and letter of that Article. The machinery to be established by the convention would have to be considered supplementary to the voluntary procedures agreed upon by States.

44. Disputes arising from incidents occurring in areas under the sovereignty and/or jurisdiction of a State should be subject to national jurisdiction and compulsory or mandatory jurisdiction of an international tribunal should not apply in such cases. Furthermore, the compulsory jurisdiction of an international tribunal should not cover acts or measures which originate in a coastal State and occur within the sea area under its sovereignty and/or jurisdiction. Naturally, States should ensure proper submission of those disputes to their national tribunals.

45. Welcome statements had been made concerning traditionally accepted procedures for the protection of the nationals of a State in the event of unwarranted denial or delay of justice in the tribunals of another State.

46. His delegation was not opposed to the establishment of a law of the sea tribunal with compulsory jurisdiction applicable in sea areas outside national jurisdiction, but it felt that in the organization of such a tribunal there should be adequate representation of legal systems reflecting new trends in the law of the sea as well as the aspirations of the developing countries. The tribunal should be established in the light of the special features characterizing activities connected with the exploration and exploitation of the sea-bed and ocean floor, and any natural or juridical person having any contractual relationship with the authority should have access to the tribunal for the settlement of cases involving such activities.

47. His delegation was not in favour of establishing special procedures for disputes in areas such as fisheries, pollution and scientific research.

48. The norms governing the peaceful settlement of law of the sea disputes which were to be agreed upon would obviously depend on various other substantive norms, and it seemed inappropriate to anticipate an agreement on such norms without a thorough knowledge of all the other norms. Ecuador's position with respect to the peaceful settlement of disputes was therefore contingent upon prior adoption of acceptable substantive norms which fully guaranteed its rights.

Mr. Zegers (Chile), Vice-President, took the Chair.

49. Mr. NAJAR (Israel) said that it would have been easier to hold the debate on the question of dispute settlement after the text of the convention had been prepared. Although the general outline of a possible agreement had emerged from the work done at the sessions in Caracas and Geneva, the crystallization of such an agreement had not yet taken place.

The divergence of views was still wide, although not as wide as might be believed. For instance, there was still a preoccupying shadow on the subject of freedom of navigation and overflight in economic zones and in straits. The convention would not see the light of day until such doubts were dispelled and negotiations resulted in the universally desired positive solution. The problem of possible disputes and the settlement of disputes would, at that stage, no longer seem so complex and formidable as it did at present. What was needed then was to tackle the problem with a state of mind corresponding to an agreement happily reached rather than with a state of mind characteristic of a long and laborious negotiation still going on. Solutions would then appear much simpler than was currently generally believed.

50. His delegation did not believe that a great effort of innovation was required in dealing with the problems that could arise in connexion with the interpretation or application of the new convention. That convention was not the first international convention nor the first convention to deal with delicate technical problems. The world community had considerable experience in that respect.

51. The attachment of States to their sovereignty did not appear to have diminished, and their sensitivity even to apparent or relative restrictions on their freedom of political choice remained very acute. The future behaviour of States appeared unlikely to differ from behaviour in the past. Political, geographic and economic differences between States were real factors which could not be overlooked and which constituted the basis and justification for the limitations imposed on the jurisdiction of international judicial organs universal in space and indefinite in time. That was the case of the International Court of Justice and it was doubtful that States would renounce that prerogative in that domain. Simplistic solutions were therefore unlikely to stand the test of time.

52. While supporting, within the above mentioned limits, the inclusion in the convention of a compulsory clause for the peaceful settlement of disputes among States parties to the convention, his delegation felt it was useless and even harmful to establish a law of the sea tribunal as envisaged in document A/CONF.62/WP.9. From the point of view of international practice, the composition of the tribunal was questionable and its competence and powers unacceptable. States had a sufficient number of well tried methods for the settlement of disputes, such as those envisaged in the Charter of the United Nations and the Statute of the International Court of Justice.

53. As to the special procedures for the settlement of disputes in areas such as pollution and scientific research, committees of competent experts seemed particularly effective. The decisive importance of arbitration procedures was also to be stressed.

54. The only genuine innovation in the convention was the establishment of the International Sea-bed Authority. The doctrine of the rights of States over the sea-bed within the economic zones had been preceded by the 1958 Convention on the Continental Shelf.[2] Reserved fishing zones had long been in existence. Excellent treaties concerning pollution had already been signed and implemented, while others were being prepared. The exceptional and revolutionary nature of the International Sea-bed Authority perhaps justified the establishment of a special judicial organ, independent of the Authority and having jurisdiction suited to its operational requirements.

55. Various delegations had expressed the view that in that area alone the right of access to the special judicial organ could be given to entities other than States. His delegation would eventually give favourable consideration to such limited participation while consideration was deserved by more strict opinions—well founded in international law—and while obligating arbitration clauses might well prove more useful.

56. There still remained the question of relations between the Authority and States, but that question could not easily be settled before the provisions of the final agreement on the status, functions and powers of the Authority could be studied.

57. His delegation had previously stated that the extension of the width of the territorial sea at the time of the establishment of economic zones merely reflected an anachronistic concern, would place a useless financial burden on the coastal States without contributing to their safety or promoting their economic interests and would create avoidable problems in the field of international navigation. Similarly, his delegation feared that the creative enthusiasm of the Conference might lead to unnecessary innovation and the establishment of a useless, complex, regrettable and expensive judicial superstructure.

58. Mr. PRANDLER (Hungary) said that his delegation disagreed with those delegations which considered that a general debate on the subject of dispute settlement procedures was premature at that stage. Dispute settlement procedures should form an integral part of the over-all package deal which the Conference sought to achieve, and accordingly the elaboration of that part of the convention could not be postponed until the substantive law provisions of the other parts of the convention were settled. At the same time, his delegation agreed with all those who believed that the most important contribution to an effective dispute-settlement procedure would be a well-balanced and carefully worded convention, which should enjoy the support of all parties concerned and which should be adopted by consensus. As the representative of Sri Lanka had emphasized, mutual confidence and co-operation between parties to a dispute were more likely to smooth the way for dispute settlement than the existence of a list of names of conciliation commissioners.

59. The informal single negotiating text contained in document A/CONF.62/WP.9 provided a very useful basis for current and future deliberations. Although based on the generally recognized principle of international law that States should settle their international disputes by peaceful means, the draft was flexible enough to be in conformity with another equally important principle according to which the choice of the methods and means of peaceful settlement should be left to the parties concerned. No State party to a dispute could be forced by a unilateral action of the other party to accept a given procedure without its consent.

60. When effective dispute-settlement procedures were being devised, two major extremes and dangers should be avoided. One danger was to rely too heavily on a strict, unified and comprehensive compulsory settlement procedure. That approach could not claim universal acceptance. As at September 1975, the best known comprehensive compulsory settlement procedure—the acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of its Statute—was being adhered to by only 45 States, many of which recognized that jurisdiction with well-known reservations. There was no evidence to indicate a trend towards the acceptance of such compulsory jurisdiction. The second danger was the inclusion of special provisions which would give the coastal States full exemption concerning "disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention" (A/CONF.62/WP.9, article 18, para. 2*(a)*).

[2] United Nations, *Treaty Series*, vol. 499, p. 311.

61. Representing a land-locked country, his delegation could not accept such an extension of the jurisdiction of coastal States. The rights and duties of all States should be duly balanced and the convention should contain adequate safeguards against the abuse of those rights by any of the contracting parties. For that reason, his delegation could not support the view that in an area outside the territorial sea, "matters in dispute should be kept exclusively within the jurisdiction of the coastal State" (A/CONF.62/WP.9/Add.1, para. 33).

62. His delegation was confident that other significant issues raised in the informal single negotiating text would be fully discussed in the appropriate forum. It had an open mind as regards the exact form and procedure of such a forum, and would accept any feasible proposal.

63. Mr. RASHID (Bangladesh) said that Bangladesh attached great importance to the procedure of dispute settlement, since, as a developing country, it would be depending more and more on the extensive exploitation and exploration of sea resources, which could be carried out only when the interests of countries like Bangladesh were secure and an atmosphere of peace reigned over the ocean.

64. His delegation recognized the need for an effective dispute-settlement machinery to be incorporated into the convention. The stability of the new law of the sea would depend largely on the establishment and effective functioning of a dispute settlement procedure. Such a procedure could not be dissociated from the substantive provisions of the convention.

65. The informal single negotiating text contained in document A/CONF.62/WP.9 envisaged a comprehensive and sometimes over-complicated machinery. His delegation was committed to the principle of the compulsory peaceful settlement of disputes and believed that a mandatory procedure should be incorporated into the convention. Without such a procedure, the value of the convention in the settlement of conflicts resulting from varying interpretations of the law would be greatly diminished. It also believed that a law of the sea tribunal was needed. The creation of such a tribunal would not detract from the role of the International Court of Justice, which would continue to be the principal judicial organ of the United Nations. Submission of disputes only to the International Court did not appear to answer the primary requirements of speed, technical expertise and access to the Court. Just as the International Law Commission and the United Nations Commission on International Trade Law coexisted without detriment to their effectiveness, so could the International Court and the proposed tribunal coexist, and the tribunal should deal with all parts of the convention, not only part I.

66. His delegation remained unconvinced of the need for special procedures. Under the general procedures, technical committees might function in specialized fields. He did not support the mandatory provision for exchange of information and consultation in annex III, and suggested its deletion.

67. While supporting a mandatory procedure for the peaceful settlement of disputes, his delegation favoured flexibility. The parties should be able to select any of the peaceful means set forth in Article 33 of the Charter or any other peaceful means of their choice, but such flexibility should not exempt the State from its primary obligation to resort only to peaceful means. The inadequacy of the 1958 Optional Protocol concerning the compulsory settlement of disputes[3] should not be repeated: the parties should have the option to choose binding procedures without being allowed to opt out entirely.

68. With regard to access to the tribunal, his delegation was open-minded. Article 13 of the single negotiating text needed to be examined carefully, since it was likely to give rise to many new intricate situations. His delegation appreciated the concern expressed by delegations with regard to accepting broad jurisdiction in ocean disputes in relation to entities other than States.

69. One of the most difficult issues was related to possible general limitations on the jurisdiction of the dispute settlement machinery. His delegation appreciated the importance which some delegations attached to the exercise by States of exclusive jurisdiction over resources within national jurisdiction; it believed, however, that the exceptions might not be so many as to jeopardize the settlement procedure, and that article 18 of the single negotiating text needed to be examined in the light of paragraph 32 of the President's memorandum (A/CONF.62/WP.9/Add.1).

Mr. Mwangaguhunga (Uganda), Vice-President, took the Chair.

70. Mr. JUSUF (Indonesia) said that his delegation's position on the question of the settlement of disputes depended largely on the nature of the compromises to be achieved in the final text on the convention, since questions of sovereignty and security were his country's primary concern. If its basic interests were taken into account in the final text, it would be able to consider stronger dispute-settlement provisions. At the current stage, however, his delegation was unable to express a more definite view.

71. His country had not yet accepted the compulsory jurisdiction of the International Court of Justice or any other compulsory arbitral procedures except in certain specific cases of arbitration to which it had expressly agreed. In general, his country resorted to consultation for the settlement of disputes. It felt that the procedures set forth in Article 33 of the Charter were generally acceptable. Its basic approach was aimed at preventing disputes from arising, and it had done its best to settle questions relating to territorial and marine boundaries in a neighbourly manner and to the satisfaction of all parties.

72. The Association of South-East Asian Nations had established machinery for the peaceful settlement of disputes, and disputes concerning the law of the sea could also be resolved through that machinery. While it preferred regional machinery for such purposes, his delegation did not rule out the use of other means. Provided its economic interests were not affected, and subject to a consensus in the Group of 77, his country could agree to the compulsory jurisdiction of the proposed tribunal with regard to the international area in cases relating to contractual arrangements or operations. His delegation also shared the view that the settlement of disputes could be regulated in an optional protocol.

73. With regard to part IV of the single negotiating text (A/CONF.62/WP.9), his delegation was unable to state its position in greater detail, mainly because of the uncertain outcome of negotiations, and because that text was still being studied by his delegation.

74. Mr. FALCÓN BRICEÑO (Venezuela) noted that, in beginning the debate on the settlement of disputes, delegations did not have before them documentation reflecting even the main trends concerning that question. The paper submitted by the informal working group on the settlement of disputes reflected the views of the three co-Chairmen of the group in the light of the discussions which were held by the group during the Caracas and Geneva sessions. While it was a valuable adjunct to consideration of the item, its authors had never claimed that it reflected the whole range of positions of States participating in the Conference, still less a body of rules approved by the working group.

[3] *Ibid.*, vol. 450, No. 6466, p. 169.

75. The Conference had decided at the previous session to entrust the Chairmen of the three Committees with the preparation of single texts relating to each of the items within their competence, but it had not taken the same decision with regard to the settlement of disputes, a question that had not yet been discussed. Document A/CONF.62/WP.9 was therefore only one element that could assist the group that should be established for the purpose of preparing a text to serve as the basis for future negotiations on that item. That document, and the paper prepared by the informal working group, were merely working instruments that could be approved by delegations to the extent that they deemed appropriate. His delegation, for its part, was prepared to contribute to the study of peaceful means for the settlement of disputes relating to the interpretation and implementation of the future convention.

76. His country's Constitution stipulated that any international agreement concluded by Venezuela must contain a clause whereby the parties undertook to settle, through peaceful means recognized by international law or previously agreed upon by them, disputes that might arise relating to the interpretation or application of the agreement. Furthermore, it had accepted the principles concerning the peaceful settlement of disputes laid down in the Charter of the United Nations and in that of the Organization of American States.

77. Furthermore, Venezuela had signed and ratified without reservations various global and regional conventions providing for peaceful means of settling disputes, including the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas[4] and the 1954 International Convention for the Prevention of Pollution of the Sea by Oil.[5]

78. The best means of settling disputes involving sovereignty, security and national defence was negotiation among the parties concerned. His delegation could therefore not accept any procedure, involving the participation of third parties, which might lead at any stage of the dispute to a decision binding on the States parties in the case of disputes involving such matters. His delegation accordingly supported the provisions of article 18, paragraph 2, of document A/CONF.62/WP.9.

79. It believed that there was no need to establish a special tribunal for the settlement of disputes relating to the interpretation or application of the convention, since such functions could be exercised by the International Court of Justice. It would not, however, oppose the establishment of such a body, if the majority desired it. On the other hand, it would be appropriate to establish a tribunal that would deal with disputes arising from the exploration and exploitation of the resources of the international area.

80. His delegation had reservations regarding certain solutions proposed in the documents to which he had referred earlier, particularly with respect to preventive measures and advisory opinions. Those questions, and certain others, needed to be studied in depth.

81. Mr. BAJA (Philippines) said that his country had always been committed to the provisions of Article 2, paragraph 3, of the Charter of the United Nations, which enjoined all Member States to settle their international disputes in such a manner that international peace and security and justice were not endangered. His delegation therefore supported efforts to provide for a peaceful settlement of disputes in a future convention.

82. Prior agreement to accept third-party procedures for the settlement of disputes would provide a valuable means of lowering the temperature of a dispute. Such an agreement would also establish a more or less permanent structure of international relations and would serve as a safety-valve against internal repercussions if the outcome of a particular settlement procedure did not meet expectations. The advantages of such a system could not be more pronounced than in the future convention, which was expected to be composed of delicate compromises of provisions which, as the representative of France had aptly observed, were being conceived with deliberate ambiguity.

83. It was remarkable to note the reluctance, even the failure, of Governments to use available means for the peaceful settlement of disputes. In most cases, a solution of the dispute was probably better for the State concerned than the prolongation of the dispute.

84. Two important factors might militate against the settlement of disputes through third-party procedures. The first was, rightly or wrongly, the lack of confidence in the adequacy, effectiveness and impartiality of available procedures. The second involved State sovereignty. Governments understandably preferred to keep control of any eventual settlement. The fundamental problem was to persuade them of the advantages of having recourse to various institutions and procedures for the settlement of disputes. Such obstacles must be removed before dispute settlement procedures and machinery were established.

85. His delegation wished to express some preliminary views on the settlement of disputes. First, a dispute settlement system should form an integral part of the future convention. Secondly, to be effective, it should include compulsory jurisdiction leading to a binding decision by the jurisdictional organ concerned. Thirdly, the scope of the dispute settlement machinery should be as broad as politically possible; it should, however, assume a role that did no more than supplement traditional and direct bilateral negotiations, as in the case of the Association of South-East Asian Nations. Fourthly, acceptance of compulsory jurisdiction would require sufficient assurances that a State's vital interests were adequately safeguarded, since acceptance of compulsory third-party procedures derogated, however subtly, from State sovereignty. Article 18 of document A/CONF.62/WP.9 was one safeguard. On the other hand, there was a need for precision with regard to exceptions and reservations: they should not be so broad or so numerous as to negate the concept of compulsory jurisdiction. Fifthly, it might be too early to consider the so-called functional approach or special procedures. Since those concepts covered areas and subjects concerned more with national jurisdiction, wide acceptance was much more difficult to attain. Special procedures might also open the door to a proliferation of dispute settlement mechanisms and competing jurisdictions. There was no strong reason, however, why such procedures should not find a place in a general or comprehensive dispute-settlement system. Sixthly, access to the system should generally be limited to States. If individuals and organizations were granted access on the same footing as States, it might constitute an obstacle to wider acceptance of the system. That should not, however, be a hard and fast rule: it should be possible, especially in matters involving the international area, for parties other than States to avail themselves of the dispute system. Seventhly, the progressive development of the law of the sea should entail a corresponding development of the dispute system. If the procedures were not adequate, or adequately applied, there was a danger that the progressive development of the law would only lead to the same number of disputes. His delegation viewed with favour the proposal to establish a special sea-bed tribunal as one of the institutions for the settlement of disputes involving matters relating to the international area. However, the establishment of new dis-

[4] *Ibid.*, vol. 559, p. 285.

[5] *Ibid.*, vol. 327, p. 3.

pute-settlement machinery should be undertaken only when existing mechanisms were inadequate and when the new jurisdictional procedure for machinery could command wide acceptance. The International Court of Justice still had considerable capacity for the peaceful settlement of disputes.

86. A dispute settlement system would command universal acceptance only when the substantive provisions were clear and settled. Acceptance of a particular dispute system would depend on the outcome of discussions in the three Committees. His delegation believed, however, that the valuable work started on the subject of the settlement of disputes should continue, and it would co-operate in existing arrangements on the subject as well as in other systematic, broadly representative and practical work in that regard.

Mr. Amerasinghe (Sri Lanka) resumed the Chair.

87. Mr. LUPINACCI (Uruguay) said that his delegation supported the adoption of provisions for the establishment of a system for the peaceful settlement of disputes relating to the interpretation or application of the future convention. Support for such a system was in line with the unswerving attitude which Uruguay had adopted in many international and regional forums. That policy had been given practical expression in the conclusion of bilateral treaties of arbitration and the signature in 1921 of the optional clause of the Statute of the Permanent Court of International Justice. He wished especially to recall that the 1948 Pact of Bogotá, in the preparation of which a Uruguayan jurist had participated, had provided the most complete international instrument known on that subject, placing inter-American regional law in the forefront of the legal preservation of peace. The treaty, signed in 1973 by Uruguay and Argentina, relating to their common boundaries had also established a system for the peaceful settlement of disputes, prescribing conciliatory stages and, in the case of lack of agreement, providing for recourse to the International Court of Justice. Thus, Uruguay's position was consistent with its traditional policy on the subject.

88. First, it was necessary to establish the principle of compulsory peaceful settlement of all disputes that might arise between parties to the future convention. Secondly, the principle of the freedom of the parties in the choice and application of the settlement procedures should prevail. The free and effective agreement of the parties in selecting the procedure would undoubtedly facilitate a successful outcome of the dispute. In the absence of such an outcome, however, or if there was no agreement on the selection of the peaceful means, the system should provide procedures to which any of the parties could have recourse in order to seek a peaceful solution.

89. A dispute should be submitted to a conciliatory, not a jurisdictional, body, before recourse was had to an arbitrator or a judge. The functioning of the system must make it possible for any controversy to be settled. The system must therefore be both complete and dynamic in its procedures, with set stages and with full guarantees to the parties in the exercise of their rights. At the same time, it was necessary to preclude the possibility of the overlapping of procedures, by ensuring that the timing of the various stages was adhered to. Only when a procedure failed should the next procedure be instituted.

90. Such procedures must be prescribed in a precise form, guaranteeing equality of the parties and providing them with sufficient flexibility but with clear time-limits. Such a system should culminate in the submission of a settlement that had not been resolved by diplomatic or conciliatory procedures for a judicial decision. The system must have a jurisdictional basis, so that any dispute could eventually be settled in accordance with the law, or also *ex aequo et bono* if the parties so agreed, by the compulsory decision of a tribunal.

91. It would be pointless to establish a technically comprehensive system if it was subsequently to be rendered ineffective by reservations with regard to the application of jurisdictional procedures or specific types of disputes involving serious threats to the peace. Some reservations must be allowed, if only to make it politically feasible for the largest possible number of States to ratify the provisions in question, but care must be taken to avoid constructing an apparently stable edifice that was in fact basically unsound. Neither was it tolerable for certain States to profess support for a system of peaceful settlement of disputes when, in reality, they were merely prepared to submit to non-compulsory procedures the settlement of minor disputes with other States.

92. His delegation was not retreating from a position of full respect for the sovereignty of States, but was in fact supporting the establishment of an international legal order enabling equal sovereign States to live together in justice and peace. Within that framework, it would be possible to exclude the submission, at least to certain procedures, of disputes that might arise in the exercise by a coastal State of its discretional powers under the convention.

93. With regard to jurisdictional procedures, his delegation considered that the proliferation of tribunals or judicial organs would create various difficulties, although it was necessary to recognize the existence of basically different situations, particularly in the case of the international area as compared with the other maritime or sea-bed areas, whether or not subject to national jurisdiction.

94. The establishment of the proposed law of the sea tribunal, along the lines of the International Court of Justice, required proper justification. The principal innovation lay in the possibility of access to the tribunal being extended to entities other than States, namely, territories participating in the Conference as observers, intergovernmental organizations and natural and juridical persons, on an equal footing with States parties to the convention.

95. His delegation radically disagreed with any formula that might mean giving *locus standi* to international organizations or natural or juridical persons before the law of the sea tribunal or any other tribunal in matters relating to rights, powers or activities exercised by States in any part of the sea or to incidents or situations occurring within the territorial sea, the economic zone or the continental shelf.

96. The only exception should concern the activities of the International Sea-bed Authority. The different circumstances of the international area justified a situation where such entities or persons, after fulfilling certain requirements, could be parties to cases submitted to a jurisdictional procedure with regard to activities in the international area, when such cases were expressly provided for in the convention or in other international instruments accepted by the parties to the dispute.

97. While the establishment of a tribunal in connexion with the international area should be given every consideration, his delegation was opposed to granting access to the tribunal to those entities or persons on an equal footing with States in matters relating to the rights, powers or activities of States or to incidents or situations occurring, or having an effect, in areas under national jurisdiction. Such entities or persons should have recourse to competent national tribunals and, when internal remedies were exhausted, the general principles concerning diplomatic protection and international responsibility of States should be applied.

98. While his delegation was favourably disposed in principle towards the establishment of a law of the sea tribunal for the settlement of disputes relating to the international area,

other questions relating to the interpretation and application of the convention should be submitted to the International Court of Justice, whose Statute was sufficiently flexible to enable it to perform such a function.

99. On that basis, his delegation would co-operate in a spirit of compromise in the preparation of a text on the settlement of disputes, which it considered part and parcel of the new law of the sea.

The meeting rose at 1.05 p.m.

63rd meeting

Thursday, 8 April 1976, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that an additional non-governmental organization in consultative status with the Economic and Social Council, namely the Commission to Study the Organization of Peace, had expressed interest in attending the Conference as an observer. The request would be approved under rule 66 of the rules of procedure if there was no objection.

It was so decided.

Mr. Saidvaziri (Iran), Vice-President, took the Chair.

Settlement of disputes (*continued*) (A/CONF.62/WP.8,[1] WP.9 and Add.1)

2. Mr. AKRUM (Surinam) said that his delegation was in agreement with the addendum to the informal single negotiating text on the settlement of disputes (A/CONF.62/WP.9/Add.1). The dispute settlement system contained therein was comprehensive because it covered disputes which might arise from any use of the ocean and disputes between States and juridical persons. It also affected international as well as national ocean space and the functions and structure of all the major intergovernmental organizations dealing with the use of ocean space and its resources. It was therefore a model for the kind of ocean management structure that eventually had to emerge if the vast resources of the oceans were to be utilized for the benefit of all countries.

3. With regard to specific aspects of that document, his delegation shared the preference of the Group of 77 for general procedures as opposed to functional or special ones, while realizing that the system must be flexible enough to accommodate the many special issues that might arise. Disputes should be settled at the level and in the area they affected, and new ways of combining functional and general principles were needed. The provision that the general procedure would automatically prevail when parties to a dispute disagreed as to the tribunal to be chosen seemed satisfactory.

4. His delegation also shared the preference of the Group of 77 for a new law of the sea tribunal as opposed to the International Court of Justice, since it would ensure a larger role for the developing countries. The election of the judges should be based on the equality of sovereign States as expressed in the one-State, one-vote system, without discrimination of any kind, and the number of judges should be equitably divided among the various regions. The law of the sea tribunal should have preference in case of disagreement between the parties concerned as to the appropriate forum.

5. The special meeting of States to elect the judges was extremely important because it could also periodically review the general situation arising from the convention, and, specifically, the situation with regard to its observance, thus providing the kind of continuity which was essential for such a complex and novel treaty. His delegation therefore supported the proposal made by the delegation of Sri Lanka at the 59th meeting.

6. Finally, his delegation favoured establishing a special organ of the Conference to deal with the elaboration and negotiation of part IV of the single negotiating text and felt that such an organ should have a legal status and responsibility equal to that of the other main Committees of the Conference. Such a body would not only offer the most efficient way of concluding the work on part IV but would also ensure unity of purpose and comprehensiveness of basic perspectives.

7. Mr. ABUL-KHEIR (Egypt) said that an effective system for the settlement of disputes had to be included in the convention. A special committee should be established to work out details regarding the selection of methods in accordance with Article 33 of the Charter of the United Nations. His delegation favoured negotiation, conciliation and arbitration. Those devices should be available to everyone, and there should be complete freedom of choice of methods by the parties concerned.

8. Where it was necessary to resort to international jurisdiction, uniformity should replace the proliferation of various jurisdictions.

9. Three kinds of questions would arise under the convention: questions regarding the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; traditional questions covered by international law; and questions relating to the national jurisdiction of coastal States.

10. With respect to the first question, the protection of a common patrimony required special rules and special jurisdiction independent of the Authority, and his delegation was therefore in favour of a special tribunal. Organizations with observer status as well as national liberation movements should have access to such a tribunal. With regard to the second question, his delegation was opposed to the proliferation of jurisdictions. The International Court of Justice would be competent if the parties agreed, but a special chamber should be established within the Court to deal with such disputes and judges should be determined on an *ad hoc* basis. Special procedures could be employed for specific technical matters such as fisheries, pollution and scientific research.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).