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59th Plenary meeting

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economic zone accorded to other States under the convention were entitled to as much legal protection as the regulatory powers of coastal States, particularly as coastal States could act first and enforce their interpretation of the convention against foreign ships. Otherwise, the procedural provisions in the dispute settlement chapter of the convention would virtually render illusory the rights of other States which had been expressly granted in the substantive provisions of other parts of the convention. His delegation therefore suggested that article 18, paragraphs 1 and 2 (a), should be amalgamated and amended so as to bring them in

line with the substantive provisions in other chapters of the convention. Thus, the coastal State's exercise of its exclusive jurisdiction should be exempted from review by the competent tribunal only in so far as the convention expressly or implicitly accorded a discretionary power to the coastal State, provided that in exercising such discretion the coastal State did not interfere with other States' rights, neglect generally accepted international criteria and standards or abuse its discretion to the detriment of other States.

The meeting rose at 1.05 p.m.

59th meeting

Monday, 5 April 1976, at 3:25 p.m.

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

Addition to the list of non-governmental organizations

1. The PRESIDENT said that the Foundation for the Peoples of the South Pacific, Inc., a non-governmental organization in consultative status with the Economic and Social Council, had asked to be invited to participate in the Conference. If there were no objections, he would take it that the Conference decided to include that body in the list of interested non-governmental organizations and to issue an invitation to it in accordance with rule 66 of the rules of procedure.

It was so decided.

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

2. Mr. DE LACHARRIÈRE (France) said that if the international law elaborated by the Conference was to effectively regulate the actions of States, it was essential to provide machinery for the settlement of disputes which might arise in connexion with the application of the new law of the sea. Disputes relating to the delimitation of the areas of jurisdiction of States, which so far had been few in number, would increase as a result of the extension of territorial waters and the adoption of the concept of the economic zone, while delimitation between the continental shelf and the international area could give rise to other disputes. Where there had previously been a single jurisdiction there would be a plurality of powers, giving rise to new conflicts. The "deliberate ambiguity" of certain provisions was another source of disputes. In creating innumerable occasions for disputes, the Conference must at the same time adopt provisions governing the peaceful settlement of such disputes.

3. In the opinion of his delegation, the machinery for the settlement of disputes approved by the Conference would have to be as broad as possible in scope and suit the specific features of international law in general, and of the law of the sea in particular. That meant, first of all, that the illusory over-simplification of applying to relations between States

the machinery appropriate for domestic use should be avoided. The principle of the sovereign equality of States necessarily implied that any international jurisdiction was limited and exceptional, and that recourse to an international tribunal could only be an auxiliary procedure for the settlement of disputes. In addition to that initial conclusion there were certain consequences that derived from the specific features of the law of the sea, which was made up of a complex set of varied legal norms which in turn could give rise to a great variety of disputes. In order to settle them, it would seem wise to begin by classifying disputes by category and by determining the different variables which needed to be taken into account when choosing the methods for settling disputes. That pragmatic approach would make it possible to adopt a set of procedures suited to the nature and subject of each category of dispute. His delegation was not in favour of including among those procedures the possibility of a permanent tribunal having general jurisdiction. States were quite forthright about establishing a specific link between the legal rules they advocated and the peculiarities of their particular situation, especially their geographic situation. From that point of view, a tribunal constituted beforehand, however well chosen it might appear in the abstract, bore the strong risk, in the case of a concrete difference, of being badly constituted, perhaps open to challenge or at all events without moral prestige.

4. Instead, his delegation proposed the acceptance of the principle of settlement through impartial third parties designated in each case by the parties to a dispute and, in application of that principle, it proposed that provision should be made for special procedures, on the one hand, and for arbitration proper, on the other hand.

5. The special procedures would be applied in certain clearly defined areas relating to easily definable problems. In some spheres, recourse to qualified experts provided the best chance of ensuring objective consideration of cases from an essentially technical standpoint. In that way, the risk of decisions motivated by considerations extraneous to the subject-matter of the dispute would be avoided. Problems of a scientific and technical nature which might arise in connexion with the application of the convention in the field of fisheries, marine pollution and scientific research would thus be dealt with by *ad hoc* bodies, composed of independent experts selected by the States parties to the dispute from a list of experts, which could be prepared at the request

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).

of the States parties by the international organizations competent in each case, namely for fisheries the Food and Agriculture Organization of the United Nations (FAO), for pollution the United Nations Environment Programme and for scientific research the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Recourse to such special committees should be compulsory in the event of failure of negotiations, and their decisions should be binding on the parties to the dispute. They could also be given fact-finding and even conciliation functions if the States parties to a dispute should so decide.

6. Secondly, the machinery of special procedures could also be used for the settlement of disputes relating to the exploration and exploitation of the international sea-bed area. There account had to be taken of the characteristics of the legal régime established by the Conference and, in particular, of the establishment of the proposed International Authority. In that regard, his delegation could not agree to the establishment of a permanent judicial organ within the framework of the Authority because, since the Authority could itself be a party to a dispute, there was no likelihood that one of its organs, even its judicial organ, could settle such a dispute equitably. An impartial judge should be *supra partes*, especially when the issue was to determine the legality of an act by the Authority in terms of the convention.

7. However, the system of special committees could be applied in the case of disputes not arising out of the execution of contracts entered into by the Authority. That formula would make it possible to suit the settlement procedures to widely varying types of dispute between States, or between the Authority and a State, relating to the definition of an advance prospecting operation in the area, or an operation involving the evaluation of resources, or to any other problem of an essentially economic nature. In those spheres, before resorting to the special committees, provision could be made for prior consideration of the dispute by the Technical Commission or the Economic Planning Commission of the Authority with a view to achieving conciliation.

8. He stressed that, in any event, the various special procedures would not cover all disputes arising out of the application of the convention; they would apply essentially to disputes of a technical rather than a legal or political nature. Accordingly, in addition to the system of special procedures, his delegation believed that provision should be made for the possibility of arbitration to be applied in two clearly defined areas.

9. First, it would apply in the case of disputes of a contractual nature in which the International Authority might be involved. The various contracts concluded by the Authority or Enterprise, on the one hand, and by States or natural or juridical persons, public and private, on the other hand, with the exception of employment contracts—to which the normal procedures of the United Nations system would be applicable—should include an arbitration clause whereby any dispute arising in connexion with the interpretation or execution of the contract would be submitted, at the request of one of the contracting parties, to an arbitration body, on the understanding that the composition of that body would be determined, in each particular case, in the light of the specific problem involved.

10. Secondly, his delegation was in favour of providing for arbitration by including in the convention a general clause for the compulsory settlement of disputes. However elaborate and specific an international convention of the kind that the Conference was required to draft might be, the possibility of differing interpretations as to the way in which the States parties should apply its provisions could not be ruled out in advance. His delegation therefore considered it essen-

tial to include a clause on the compulsory arbitration of disputes relating to the interpretation or application of the convention which involved two or more States parties or the International Authority and one of its member States. In any event, it would be a mistake to rule out the possibility of having recourse, before resorting to the arbitration machinery, to a conciliation procedure which could be entrusted to a third party.

11. The system outlined could be criticized on two counts. First, there was the need for a prompt decision in certain cases, especially in the case of seizure of vessels by a State, and the delays inherent in the establishment of an arbitral tribunal would not be conducive to such a decision. In such cases, his delegation was in favour of empowering a special body, which could be formed within the Inter-Governmental Maritime Consultative Organization (IMCO), to take the necessary emergency measures, which would in no way prejudice a subsequent settlement regarding the merits of the dispute.

12. The second criticism was that uniformity of jurisprudence was useful for the interpretation of an international convention, whereas the diversity of arbitral decisions would be a drawback. The contrast seemed somewhat exaggerated. On the one hand, the divergencies in arbitral jurisprudence were explained by the fact that arbitral decisions covered a long period, over which the law had evolved; moreover, they reflected differences pertaining to the legal framework within which the arbitrators had to act, and they related to problems that were hardly comparable in view of their extreme diversity. On the other hand, in spite of the supposed uniformity of jurisprudence in the case of an international tribunal, a considerable evolution in jurisprudence was to be noted. In conclusion, he wished to emphasize, on behalf of a Government currently involved in arbitration on a matter concerning the law of the sea, the advantages which arbitrators had over judges. First, Governments wanted their disputes to be, or at least agreed that they should be, settled by impartial third parties on condition that the latter did not lay down the law. It would be possible in the case of a permanent binding tribunal for a certain temptation to arise of government by judges, but one had still to hear of government by arbitrators. The second advantage derived from the fact that the basic problem with regard to the settlement of international disputes was to ensure that States agreed that the settlement should be entrusted to third parties. Such acceptance could not be imposed on a sovereign State. Instead, its consent was needed, and experience showed that such consent depended on trust. Ultimately, in his delegation's opinion, the basic advantage of arbitration, at the current stage of international relations, was that that trust was placed in arbitrators rather than in judges.

13. Mr. LOGAN (United Kingdom) said that his country, which had always supported the principle of the peaceful settlement of disputes, supported the inclusion in the convention on the law of the sea of procedures leading to binding decisions on the basis of law. Of course, negotiation and conciliation had an important role to play, but some disputes might prove so intractable that they could only be resolved through binding procedures.

14. His delegation believed that the appearance of document A/CONF.62/WP.9 served to emphasize the importance of the settlement of disputes in the over-all effort to establish a law of the sea which was not only just but also effective. What was particularly notable was the concept that States, on ratifying the new convention, would at the same time accept the principle that disputes about the meaning of the new convention should be settled by peaceful means. Experience showed that when a dispute had arisen, the deterioration of bilateral relations made it difficult for the States

concerned to agree on the appropriate type of procedure for resolving their differences and, in those circumstances, minor differences could become serious disputes. For that reason, he was in favour of the principle, implicit in the single text, that the procedure for the settlement of disputes should be indicated in advance. Such a system had a second advantage, in that States were less likely to become involved in disputes, because the knowledge that the adoption of extreme positions could be questioned before some impartial body might well act as a restraining influence. Furthermore, the new convention would contain delicate compromises, and an impartial body would help to ensure that all States kept those compromises. His delegation believed that the proposals in part IV of the informal single negotiating text would serve to harmonize State practice in implementing the Convention, and, it wholeheartedly endorsed the views expressed by the President of the Conference in paragraph 6 of his memorandum (A/CONF.62/WP.9/Add.1).

15. There were, however, some features of the single text which might be improved. In particular, he was not convinced of the need to create a new permanent tribunal of 15 judges. The number of cases that it would have to settle would probably not justify the high costs of its establishment. Those institutional problems could be avoided through arrangements facilitating arbitration. Furthermore, if a permanent tribunal was needed, the International Court of Justice already existed and had been established to settle disputes such as those concerning the interpretation of treaties and the law of the sea. He favoured the proposal for a flexible system whereby, on ratification, a State could choose between *ad hoc* arbitration, the International Court of Justice or a special tribunal. His delegation did not share the view expressed by the President, in paragraph 25 of his memorandum, to the effect that such an optional system would offend against the principles of justice. On the contrary, it would conform to the normal practice in international law. Furthermore, that system would in no way enable one party to manipulate any potentially controversial situation, since the party concerned would have opted for a particular procedure in advance of any particular dispute.

16. Secondly, except in relation to the deep sea-bed, his delegation did not consider it desirable to provide for persons other than parties to the convention to be parties to the procedures for the settlement of disputes provided for under the convention. It would therefore suggest the deletion of paragraphs 4 to 9 in article 13 of document A/CONF.62/WP.9.

17. Thirdly, his delegation felt that some of the exceptions suggested in article 18 could lead to unfortunate results. Those exceptions were so wide that they could render ineffective the entire chapter on the settlement of disputes. In particular, the exceptions in paragraphs 1 and 2 (a), concerning exclusive and discretionary jurisdiction, could have far-reaching consequences. Such exceptions could even prolong and complicate the settlement of disputes. His delegation would suggest that the entire question be discussed further and that, instead of blanket exceptions, adequate safeguards could be devised.

18. Fourthly, some of the provisions in document A/CONF.62/WP.9 were exceedingly complicated and might, in the future, give rise to disputes about the meaning of the chapter of the convention that dealt with the settlement of disputes.

19. Fifthly, his delegation did not see sufficient justification for annex III on information and consultation. Present arrangements for collecting information were adequate. Furthermore, such a comprehensive system of notifications and protests could give rise to an enormous number of unnecessary and theoretical disputes. On the other hand,

there might be a need for compulsory notifications on particular points covered in other parts of the convention.

20. Lastly, his delegation was ready to participate actively in any discussions leading to a revision of the text proposed by the President, with a view to including in the convention arrangements which would tend to prevent disputes from arising in the future and which would ensure that any dispute which might arise was settled peacefully and in accordance with the convention.

21. Mr. MONNIER (Switzerland) said that it appeared that the new division of the oceans, towards which the Conference was moving, would probably need to be reflected in a considerable extension of the area of State jurisdiction and a corresponding reduction in the space freely accessible to all States, and that would no doubt give rise to disputes, particularly in the sphere of jurisdiction. Hence the importance of a system designed for their settlement which conformed with law.

22. That system must include two essential conditions; it must be flexible in order to take into account the diversity of questions which might arise, and it must be mandatory so that the proceedings initiated by one party would result in decisions binding on all the other parties. The system proposed in document A/CONF.62/WP.9 did not appear to meet those two conditions and did not constitute a useful basis for negotiations, since it tried to provide for a variety of possible legal questions by instituting a large number of jurisdictional and technical bodies without, at the same time, distinguishing them precisely. It would be better and more practical to provide for recourse to familiar and well-tested procedures.

23. Two distinct kinds of dispute should be distinguished: those relating to the interpretation and application of the convention and those relating to the prospecting and exploitation of the sea-bed and the exploitation of its resources. Disputes in the latter category would not often derive from the convention but rather from a contract for prospecting, exploration or exploitation, and in that case natural or juridical persons could also be parties to them. Disputes relating to the first category, if not resolved through diplomatic negotiations, should be submitted to a conciliation procedure. In a case where the parties to the dispute have agreed not to resort to conciliation or where the case has not been resolved, the dispute should be brought before the International Court of Justice. The International Court of Justice would be a suitable forum for the following reasons: in the first place, the future convention, despite its peculiar characteristics, would be an international treaty for which it was important to ensure uniform interpretation; secondly, the International Court of Justice had produced an important body of jurisprudence in the field of maritime matters and in its recent performance had proved itself sensitive to the trends and tendencies of contemporary international law; lastly, the Statute and revised Rules of the Court contained provisions which enabled it to pronounce authoritatively on questions which were highly technical or had technical aspects, as was clear from the provisions of Articles 26 and 50 of its Statute.

24. It therefore did not seem necessary to establish a new tribunal or committees of experts with powers which seemed to go beyond those of an advisory body.

25. Under the provisions of the Statute of the International Court of Justice, only States might submit disputes to it relating to the interpretation and application of the convention. International organizations should be encouraged to exercise fully the right to ask for advisory opinions and other rights conferred upon them in Article 34, paragraph 2, of the Statute.

26. Although his delegation would prefer, for the sake of security, that the parties be granted the unilateral right to submit to the Court a dispute in the general category under discussion, it would be inclined to recognize the need for the agreement of all parties to a dispute as a precondition for the initiation of the procedure. In the absence of such agreement, one of the parties could submit the dispute to an arbitration tribunal which could be established along the lines of the model provided in annex I B of document A/CONF.62/WP.9; the decision of such a tribunal would be definitive and its advantages were well known.

27. For disputes relating to the prospecting, exploration and exploitation of sea-bed resources, a special tribunal should be established as already provided for in part I of the single negotiating text in document A/CONF.62/WP.8. The provisions with respect to the jurisdiction, powers and functions of that tribunal (articles 32-34 and 57-63) would have to be modified so as to narrow that jurisdiction in principle to three types of disputes, namely, those in some way related to the prospecting and exploration of the zone and the exploitation of its resources; those relating to the interpretation and application of the rules, regulations and procedures established by the Authority; and those relating to the legality of means adopted by an organ of the Authority. Access to that tribunal should be granted to States, the Authority and those natural and juridical persons which were juridically linked to the Authority.

28. His delegation was not convinced that disputes relating to fishing, pollution and scientific research needed to be subject to special procedures. Those related to fishing should be submitted to the bodies specified in regional agreements which were in force or which might be concluded. Those which affected regions in which such agreements did not exist, as well as those relating to pollution and scientific research, could be submitted to the chambers of the International Court of Justice especially established to deal with that kind of dispute or to the aforementioned special tribunal. As far as scientific research was concerned, there still remained the possibility that disputes as to whether a research project in the economic zone concerned was of a fundamental nature or was related to the zone's resources might be submitted to accelerated procedures conducted by experts.

29. Finally, the provisions relating to the dispute settlement machinery must appear in the text of the convention itself and not in an annexed protocol the signing of which would be optional. Moreover, they should not contain restrictions on or exceptions to the jurisdiction of the organs established under the general dispute settlement system, such as those specified in article 18 of document A/CONF.62/WP.9. Nor should exceptions designed to exclude the total or partial application of those provisions be allowed.

30. His delegation reserved the right to submit specific proposals on that question at an appropriate time.

Mr. Witek (Poland), Vice-President, took the Chair.

31. Mr. MONTIEL ARGÜELLO (Nicaragua), referring to the special procedures relating to fishing, pollution and scientific research, said that it would be important to reconsider whether the establishment of special committees for each of those matters was justified and if those were the only matters which justified the establishment of special committees. Similarly, the relationship between those special procedures and the general provisions would have to be determined. In that connexion, he noted that article 6 of document A/CONF.62/WP.9 provided that the general procedure would apply only after the special procedure had been concluded and provided that no settlement had been

reached, while each of the special procedures provided that the decisions of the Committee should be adopted by a majority vote and be binding on all parties to the dispute. That seemed to exclude the applicability of article 6.

32. With respect to the special committees, it should be emphasized that their members would be appointed respectively by the Director-General of FAO, the Secretary-General of IMCO and the Director-General of UNESCO; that might give rise to difficulties in obtaining the acceptance of special procedures by States which were not members of those organizations.

33. Other questions which should be raised with regard to the jurisdiction of the proposed tribunals were the following. Could the system of exceptions limiting the binding jurisdiction of the law of the sea tribunal established in article 18, paragraph 2, be accepted? Could the declarations of acceptance of the mandatory jurisdiction of the International Court of Justice already regulated in other international instruments be regulated in the convention? What would happen in the case of an overlapping of various jurisdictions? Another question of far greater importance was the relationship between the law of the sea tribunal and the International Court of Justice. Would that tribunal diminish the authority of the Court? How would the possibility of conflicting jurisprudences be eliminated? With respect to the jurisdiction of the law of the sea tribunal, it should be noted that the dispute settlement procedures were open to international intergovernmental organizations and natural and juridical persons. Although it was commendable, it did not seem likely that in the current state of international law a provision of that kind would be well received. It might be more prudent to grant natural and juridical persons the status of associates in legal actions brought by their respective States.

34. His delegation felt that the exception to the dispute settlement procedures appearing in article 18, paragraph 1, deserved greater consideration and should be carefully worded so as to safeguard jurisdiction of States without affecting the interests of the international community.

35. Mr. PINTO (Sri Lanka), referring to the single negotiating text on the settlement of disputes contained in document A/CONF.62/WP.9, noted, in the first place, that an attempt had been made to prescribe methods of settlement for the widest possible range of disputes that might arise under the convention and, as far as possible, to blend the essential aspects of the various methods of settlement which had been advocated. In the second place, he felt that the basic principles of that scheme were three: the obligation to settle disputes through peaceful means (article 1), the right and duty to choose and apply an appropriate means of settlement (for example, article 2), and the duty to exchange views both as a preliminary to agreeing upon a method of settlement as well as following failure of an attempt at settlement (article 4). Thirdly, he agreed that the convention should stipulate (for example, article 8), that the jurisdiction provided for was residual and compulsory and the decisions final. Lastly, he observed that the document provided a hierarchy of procedures, commencing with conciliation and proceeding through arbitration to judicial settlement by the International Court of Justice or by the proposed law of the sea tribunal in both original and appellate jurisdiction. It was assumed that there was no strict serial or chronological progression of procedures and that the parties might select any one method directly and exclusively on the basis of mutual agreement. The law of the sea tribunal was, however, conceived as a court of appeal of last resort in the event that other remedies had failed to bring relief.

36. With regard to the "panel" or "list of names" approach to establishing membership of the conciliation com-

missions and arbitral tribunals, his delegation had no objection in principle but wondered whether the approach had contributed to increasing the efficiency and acceptability of the dispute settlement machinery. In general, parties would not have difficulties in selecting their nominee to a commission or tribunal, even without a list. The success of such procedures would depend not on any such list but rather on the existence of mutual confidence and co-operation between the parties. As to the composition of the law of the sea tribunal, he wondered if it was necessary to make explicit the geographically representative character of the tribunal, as did article 3, paragraph 2, of annex I C.

37. The proposed procedures offered the possibility for parties to choose to contract out of jurisdictional obligations or to accept only those which they considered acceptable. Article 18, paragraphs 1 and 2, for example, seemed to offer a balanced range of possible exclusions which could go far towards increasing the acceptability of the system. However, the terms of clause (ii) of paragraph 1 could be open to excessively broad interpretation and it should, therefore, be made clear that the clause did not affect sovereign rights such as those possessed by a coastal State in its exclusive economic zone. Article 13, paragraph 7, permitted the acceptance of compulsory jurisdiction only in relation to selected categories of parties, which meant, for example, that a State might agree to judicial settlement only in relation to other States and not with respect to natural or juridical persons.

38. The most difficult problem raised by document A/CONF.62/WP.9 was the problem of the applicability of the system to all types of dispute. His delegation found unsatisfactory the treatment of disputes which might arise between States, on the one hand, and natural or juridical persons, on the other, relating to part I of the convention and the new international régime of the sea-bed. While the draft showed an awareness of the multiplicity of problems which arose in connexion with such disputes, its attempts to solve them by, for example, admitting States and non-State parties to jurisdiction on "an equal footing" (article 13, para. 4) or by simply permitting parties to accept jurisdiction with respect to contracts between States and persons (article 13, para. 8) did not contribute to a just and efficient settlement of disputes or allay the sensitivities some States might have in regard to becoming a party to international legal proceedings with a non-State party. In some provisions of the draft, it appeared that there had been a failure to bear in mind that the term "party to a dispute" in the proposed text comprised not only States but also private persons, which gave rise to confusion and ambiguities. In that connexion, it would perhaps be necessary to review articles 8 and 13 among others.

39. In principle, his delegation favoured the introduction of a scheme of compulsory jurisdiction for the law of the sea. If it was decided that the investment of the financial resources and personnel necessary to establish machinery such as the proposed law of the sea tribunal was justified, his delegation would not object. However, it felt that it was vital to set up a separate system for settling disputes under part I of the convention. Such disputes would require special treatment, as parties to them could be a State, an intergovernmental organization, a private person or a State enterprise; further reasons were the commercial or highly technical nature of the problems involved, the unique and self-contained nature of the new international régime of the sea-bed and the frequency and urgency of the decisions that the Authority would be called upon to take. The special tribunal for the settlement of sea-bed disputes would be the judicial organ of the International Sea-bed Authority and would have compulsory jurisdiction, while the possibility would be left open

for a system of binding arbitration with respect to certain categories of dispute.

40. The introductory article to each of the special procedures in annex II appeared to make them compulsory. The implications of that system would have to be examined carefully. Disputes relating to actions occurring in the exclusive economic zone should not be subject to those procedures and the annex should be read as subject to article 18 and the permitted exclusions. However, it should be noted that annex II offered an interesting method of involving in the dispute settlement process intergovernmental organizations with responsibilities in maritime matters. While such involvement was for the good, it might perhaps require changes in the organizations' statutes.

41. In closing, he referred to the suggestion made by the Secretary-General in his address to the Conference in Caracas at the 14th plenary meeting on 20 June 1974, concerning a periodic review of the working of the provisions of the Convention on the Law of the Sea. His delegation favoured having an assembly or general conference of member States undertake the first periodic review after the first three years, for example, and subsequently as decided at that assembly or conference. Such a periodic review could serve to prevent disputes and to mobilize public opinion in order to solve problems of a political character that might have arisen. The convening of the first conference should be an item on the agenda of the United Nations General Assembly in the second year following the entry into force of the convention. The agenda of the conference itself could be drawn up by the Secretary-General on the basis of responses to a circular letter addressed to members seeking their views well in advance of the conference.

Mr. Cheok (Singapore), Vice-President, took the Chair.

42. Mr. JAGOTA (India) said that consideration of the settlement of disputes was somewhat premature at the present stage. The substantive provisions of the convention should be settled first and only then should procedural questions be discussed. Peaceful and co-operative relations between States and the proper function of international organizations depended upon the clarity of substantive law and the good faith of States and international organizations in the exercise of their powers and the performance of their functions. Procedures for settling disputes should be reserved for cases when the disputes could not be resolved by negotiations between the States concerned and should be based on the express agreement of the parties. The only exception would be disputes of a technical, contractual or commercial character, which could be referred to a third party, a judge or arbitrator, even without the prior consent of the parties.

43. The new law of the sea consisted of two parts: the first related to the international sea-bed area and its resources and the second to the other questions concerning the law of the sea. In regard to the international sea-bed area and its resources, his delegation supported the establishment of a law of the sea tribunal as a principal organ of the International Sea-bed Authority, as provided in article 24 in the first part of the single negotiating text in document A/CONF.62/WP.8. The proposed composition of the tribunal would surely prove acceptable to all participants in the Conference. The tenure of nine years for members of the tribunal was perhaps too long and might be reduced. As to its jurisdiction, the tribunal should, in his delegation's view, deal with disputes connected with commercial aspects of the work of the Authority and the Enterprise submitted to it pursuant to a contract or arrangement entered into by the applicant with the Authority or between applicants. That

was referred to in article 32, paragraph 1 (b), in the first part of document A/CONF.62/WP.8. The tribunal should also give advisory opinions at the request of any organ of the Authority, as provided in article 62 of that text, in the same manner as the International Court of Justice did at the request of the United Nations or any specialized agency. In other matters, including the interpretation and application of the convention or the policy decisions of the International Sea-bed Authority regarding the opening of the area, regulation of production, distribution of products or proceeds or any other aspect of its resource policy, the decision of the Authority should be supreme. The Authority and its organs should be competent to interpret and apply the provisions of the convention in the same manner as was done by the principal organs of the United Nations. Thus, the Tribunal should not have the jurisdiction envisaged in article 32, paragraph 1 (a), or article 58 of the first part of document A/CONF.62/WP.8 whereby the Tribunal might examine the legality of measures taken by the Council or other organs of the Authority and declare their decisions void. The same views applied, *mutatis mutandis*, to the jurisdiction of the other tribunals or the International Court of Justice, as the case might be, as proposed in document A/CONF.62/WP.9. As the guardian of "the common heritage of mankind", the Authority must have the requisite competence and flexibility to develop its policies and function effectively without being endangered by injunctions or interim measures of the tribunal or by having its decisions declared void by the tribunal. His delegation felt that those views were perfectly in conformity with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly in resolution 2749 (XXV) of 17 December 1970, including paragraph 15 thereof concerning the settlement of disputes. Finally, the Authority should be prepared to review that position after a period of five or 10 years. If it seemed necessary or appropriate to confer compulsory jurisdiction on the tribunal, it could do so at that time.

44. On the questions of the law of the sea, his delegation was of the view that the coastal State should have complete jurisdiction in the exclusive economic zone and other areas where it exercised sovereign rights, such as the continental shelf, both for the exploitation of resources and other economic uses, and for the establishment of installations or the conduct of scientific research. Consequently, his delegation did not support the special procedures set forth in annex II A, B and C of document A/CONF.62/WP.9, concerning fisheries, pollution and scientific research connected with activities carried out in the zone. Nevertheless, his delegation could accept the substance of the provisions contained in article 18, paragraph 1, namely, that the coastal State should ensure freedom of navigation and overflight and other legitimate uses and recognized rights of third parties within the economic zone, except in the "special areas" within the economic zone. In that regard, just as in the matter of the detention of ships covered by article 15, his delegation had an open mind. It agreed, however, that the law of the sea tribunal should have the competence to deal with disputes relating to fisheries, marine pollution and scientific research on the high seas outside the economic zone. The special procedures might also apply to such activities on the high seas.

45. Lastly, he recalled that the 1958 Conventions on the Law of the Sea had adopted the device of an optional protocol on the settlement of disputes. He suggested that the same device might perhaps be considered by the present Conference.

46. Mrs. KELLY de GUIBOURG (Argentina) drew attention to the fundamental principle that States had the

general obligation to agree that any dispute between them relating to the interpretation or application of the convention should be settled through the peaceful means indicated in Article 33 of the Charter of the United Nations. Her delegation also supported the general principle of respect for the autonomy and wishes of the States parties to the convention with regard to the choice of the most appropriate peaceful means for the settlement of a dispute. In that regard, it was of the view that any system or machinery established by the convention should be ancillary to other means of settlement which States might choose by mutual agreement.

47. The essential point on which the entire debate with regard to the settlement of disputes should focus was the scope the convention should give to compulsory jurisdiction, i.e. the obligation of a State to recognize that a subject of law was entitled to petition for settlement by an international judicial body and to regard the decision of that body as final and binding. In approaching that problem, a balanced formula should be sought to reconcile the diverse interests involved. For example, distant-water fishing States might advocate the establishment of a special procedure with regard to fisheries which would include acceptance of the compulsory jurisdiction of some body; in her delegation's view, that would put coastal States at a disadvantage, particularly those developing States which did not have powerful fishing fleets and which would be obliged to institute proceedings, pursuant to their rights under the convention, in order to secure compliance with relevant regulations.

48. The general principle with regard to disputes concerning the zones under national jurisdiction should be that compulsory jurisdiction was excluded as an element in the settlement machinery. It was not her delegation's intention to make the coastal State the absolute arbiter of disputes concerning the ocean zone under its jurisdiction, since that State should always comply with the general obligation of settling disputes by peaceful means. What it could not accept was the compulsory jurisdiction of an international tribunal in respect of actions or measures taken by the coastal State in relation to the zones under its sovereignty or jurisdiction.

49. However, her delegation recognized the existence of certain rights, whose importance for the international community might make it advisable to adopt some sort of special safeguards; thus, with regard to freedom of navigation and overflight beyond the 12-mile limit of the territorial sea, her delegation could accept machinery which provided as a final resort for compulsory judicial settlement.

50. Her delegation could also accept such a solution as a general principle applicable to the areas beyond national jurisdiction; that would be warranted in view of the nature of the international sea-bed area, the type of activities to be carried out there, the establishment of an International Sea-bed Authority and the various subjects of law entitled to conduct activities in the area. As for disputes which might arise with regard to the area, her delegation was prepared to agree that, in certain cases, private natural or juridical persons might resort to the dispute settlement machinery, including the judicial body.

51. In any event, her delegation would like to make it clear that its position precluded any possibility of private natural or juridical persons instituting proceedings against a State before an international judicial body.

52. However, her delegation could not share the view of several States which had advocated the establishment of special machinery or procedures for certain disputes, such as those relating to fisheries, scientific research and preservation of the marine environment. In particular, her delegation did not agree with the argument that the establishment of such special machinery or procedures would be justified by

the desirability of creating a primarily technical judicial body to deal with disputes not necessarily of a juridical nature. In general, disputes arose as a result of a particular action, but they usually involved the interpretation of a legal rule as well; moreover, the application of a rule always entailed some degree of interpretation. In many cases disputes included questions of fact of various kinds: thus, for example, in a case involving a pollution problem and questions relating to the conservation of living resources or the exercise of freedom of navigation it would be difficult to determine which judicial body should consider the dispute. Accordingly, her delegation could not endorse the establishment of special machinery or procedures which would also imply acceptance of the compulsory jurisdiction of a judicial body of a technical or specialized character whose decisions would be final and binding; on the other hand, her delegation could agree to the establishment of scientific and technical panels in various specialized subjects which could advise States, the international authority and even the judicial body responsible for settlement of the dispute.

53. Lastly, her delegation could accept the establishment of a law of the sea tribunal having the basic function of dealing with disputes which might arise in regard to the international sea-bed area, while safeguarding the jurisdiction of the International Court of Justice in respect of the settlement of questions of compulsory jurisdiction relating to the other maritime spaces. Her delegation did not, however, advocate the establishment of several judicial bodies, since that would lead to problems of determining competence and, probably, the emergence of conflicting decisions on the same subjects.

Mr. Akhund (Pakistan), Vice-President, took the chair.

54. Mr. FERGO (Denmark) said that many of the provisions of the convention could give rise to differing interpretations, and only compulsory dispute settlement could ensure that such differences did not lead to serious conflicts. He considered it essential that dispute settlement procedures should be incorporated in the relevant chapters of the convention and should remain an integral part of its provisions.

55. Turning to the specific proposals in document A/CONF.62/WP.9, he found the whole system of settlement procedures very complex. It would be desirable to have a system which would provide expeditious and informal settlement procedures that would not oblige Governments to incur heavy expenditure. His delegation was in full agreement with the approach adopted in the document with regard to recourse to arbitration to solve questions relating to fisheries, pollution and scientific research; that would ensure a practical solution to disputes, with a sufficient guarantee of impartiality.

56. As for matters relating to the exploration of the deep sea-bed, the ocean floor and its subsoil beyond the limits of national jurisdiction, his delegation could support the creation of a permanent tribunal. The international rules envisaged for that régime would have to cover a very complex set of relations between the Authority, member States and natural or juridical persons; thus, conflicts in the area could best be decided within the framework of a specialized body.

57. He recalled that part I of the single negotiating text in document A/CONF.62/WP.8 contained some useful proposals for the creation of a tribunal dealing with disputes relating to the exploration and exploitation of resources of the ocean floor and the subsoil thereof. It might be advisable at the present stage to embark upon a less ambitious programme, envisaging a combination of a panel of experts and a small number of permanent arbitrators who could handle problems of a technical nature relating to the administration of the régime for the international area of the oceans.

58. The proposal to give the new law of the sea tribunal a central role would raise serious difficulties with regard to the future functions of the International Court of Justice; article 9 of the text contained in document A/CONF.62/WP.9 tried to solve that problem by leaving the choice of the competent tribunal to the parties. However, even if the parties could reach agreement on the court to which they should submit their dispute, there would be a proliferation of general settlement procedures which would jeopardize the basic aim of uniformity of judicial settlement; in such circumstances, his delegation considered it necessary to simplify the system foreseen in that article. In general, his delegation would prefer the competence to settle disputes of a general character to be left to the International Court of Justice or to a special chamber created by the Court, and did not consider it advisable to create a system which could weaken the jurisprudence of the International Court of Justice with regard to such questions as the delimitation of sea boundaries between States, interference with the freedoms of navigation or overflight, or other fundamental principles of the law of the sea.

59. He also considered that the scope of the exceptions provided for in article 18 concerning the mandatory dispute settlement procedure was too far-reaching and could make it difficult for his country to accept the convention.

60. Referring to the text of article 18, paragraphs 1 and 2 (a), which provided for exclusions from the mandatory dispute settlement procedure in matters falling within the exclusive jurisdiction of a coastal State and of disputes arising out of the exercise of discretionary rights by a coastal State, he said that, if that terminology was intended to exempt questions relating to the exercise of coastal State powers in the economic zone from the mandatory third party dispute settlement procedures, then the exceptions would be so far-reaching as to undermine the whole idea of a mandatory dispute settlement procedure. Furthermore, if those exceptions were compared with the wording of article 45 and subsequent articles in part II of the single negotiating text in document A/CONF.62/WP.8, it was not clear whether decisions relating to questions such as determining the total allowable catch, other conservation measures, and scientific research or marine pollution would be left to the coastal State.

61. In his delegation's view, the urgent task facing the Conference was to establish a framework for the more detailed consideration of the question. It was therefore advisable that deliberations on the question of the settlement of disputes should take place in plenary meetings, in order to ensure the participation of all groups and all States in the elaboration of the appropriate rules.

62. Mr. ZEGRES (Chile) said that his delegation agreed that the convention should establish a system for the settlement of disputes consisting of both a general procedure and special or functional procedures for specific questions. The general procedure and the functional procedures should be linked in such a way as to ensure the unity of the system and the uniform interpretation and application of the provisions of the convention.

63. However, mandatory arbitral or judicial settlement procedures of one type or another should be applied solely to disputes concerning zones of the sea other than those subject to national jurisdiction, which fell exclusively within the competence of the courts of the State concerned. His delegation was nevertheless prepared to consider the inclusion, in the convention, of mandatory settlement with regard to specific categories of disputes relating to navigation and overflight in the exclusive economic zone. The principle of the exclusive jurisdiction of the national courts with regard to disputes relating to the maritime zones under national

jurisdiction did not imply illegal or irresponsible conduct on the part of that State, but simply meant that, in such cases, a State could not unilaterally summon another State before an international tribunal and that the parties to a dispute must endeavour to settle it by some peaceful means of their own choosing, in accordance with their obligations under the Charter of the United Nations.

64. It had been said in the Working Group that disputes over fisheries and other similar problems demonstrated the need to create a general mandatory settlement system. Actually, such disputes were not attributable to the lack of an international tribunal with mandatory jurisdiction, but to the absence of substantive and universally accepted rules. When the Conference adopted a convention and States became parties to it there would be less possibility of disputes arising over questions dealt with by the convention. It should also be borne in mind that various States were parties to regional and general mandatory settlement agreements. Furthermore, the most important element in that area was the genuine will to avoid disputes or, if they arose, to settle them in an appropriate manner, and not to accept jurisdictional obligations the aims of which were often frustrated by the inclusion of extensive reservations which impaired their scope, or by the invocation of preliminary exceptions.

65. Despite all those considerations, his delegation was prepared to consider institutionalized conciliation procedures for disputes relating to the economic zone, and the establishment of provisions enabling States wishing to do so to adopt broader jurisdictional obligations among themselves.

66. The creation of a law of the sea tribunal was a constructive idea deserving of detailed consideration. That tribunal should exist side by side with other authorities, but in cases of mandatory jurisdiction, and in the absence of any agreement between the parties on the choice of another judicial authority, the law of the sea tribunal would be the body competent to settle the dispute in question.

67. His delegation shared the view that disputes concerning the sea-bed beyond the limits of national jurisdiction raised specific problems and believed that the settlement of disputes of that type should be considered basically by the First Committee, that the settlement system adopted should be linked to the general system agreed on, and that it would be necessary to consider the possibility of allowing entities other than the contracting States, including natural or juridical persons, access to the system. However, his delegation had some reservations with regard to the access of such persons to the law of the sea tribunal or to arbitral authorities, since that would enable such persons to uphold interpretations conflicting with those of the State of which they were nationals.

68. Finally, his delegation did not consider the establishment of a fourth committee to be feasible. The nature of the question made it advisable to keep the matter within the framework of the Plenary. The question should continue to be considered, therefore, in a broadly representative official working group made up of representatives of all delegations.

69. Mr. GOERNER (German Democratic Republic) said that his delegation agreed that procedures should be established for the peaceful settlement of disputes and considered that, in accordance with the provisions of Articles 2 and 33 of the Charter of the United Nations, the States parties to a dispute must have the right, depending on the character and nature of the dispute in question, to choose for themselves the means and procedures which they considered suitable for the peaceful settlement of the dispute. His delegation agreed, therefore, with the general obligation to seek a peace-

ful settlement of disputes provided for in articles 1 to 4 of document A/CONF.62/WP.9.

70. Of great practical importance was the question of the relationship between the special procedures for the settlement of disputes and the general procedure. It would be useful if, in some chapters of the convention dealing with technical and scientific problems, provision was made for the settlement of the relevant disputes through special procedures, if the States concerned were unable to settle them through diplomatic channels. Such special procedures could be provided for disputes relating to fisheries, pollution, scientific marine research, the exploration and the exploitation of the sea-bed beyond the limits of the continental shelf and navigation beyond the territorial sea.

71. His delegation held the view that the competence of the committees responsible for implementing the special procedures provided for in annex II should be restricted to the settlement of disputes relating to the application of the convention.

72. It was indispensable to include in the negotiating text the so-called Montreux formula considered by the informal working group during the session held in Geneva. According to that formula, each State, when ratifying or acceding to the convention, had a right to declare that it accepted the special procedures provided for in annex II for the settlement of the disputes mentioned in article 1 of document A/CONF.62/WP.9.

73. Article 8 was less flexible than that prepared by the informal working group in Geneva and, unlike that text, established a priority for procedures in which the law of the sea tribunal occupied a privileged position. In his delegation's view, there was no reason to establish a new organ for the settlement of disputes with comprehensive competence. For that purpose, there already existed the International Court of Justice, which settled disputes relating to the application or interpretation of norms of international law, if the parties to such disputes agreed to submit them to the Court. Consequently, the proposal to establish a Law of the Sea Tribunal should be deleted from the negotiating text.

74. Furthermore, his delegation considered that the procedures for the settlement of disputes provided for in the convention on the law of the sea should be applied only to disputes between sovereign States which were parties to the convention. He could not accept article 13 of the negotiating text which provided that natural or juridical persons could be parties to procedures for the settlement of disputes on an equal footing with the contracting parties. His delegation proposed, therefore, the reference to parties which were not States should be deleted from article 13, paragraph 4. The same applied to paragraphs 7 (b) and (d).

75. The idea contained in article 18, paragraph 1, according to which it was one of the sovereign rights of States parties to the convention not to subject certain categories of dispute to the procedures provided for in the Convention, was acceptable. However, it was necessary to establish a better balance in that article between the interests of the coastal States and those of other States parties to the convention. Coastal States should not be able to exercise their jurisdiction in a way which impaired the rights accruing from the convention to other States. That problem could arise, for example, from the wording of article 18, paragraph 2 (a). Consequently, his delegation considered that that subparagraph should be deleted.

76. He also had some objections to article 18, paragraph 2 (d), whereby a State could decide by unilateral declaration, at the time of ratifying the convention, whether or not the Security Council was competent in certain questions. Such a

stipulation could lead to a dangerous undermining of the security mechanism of the United Nations. It was for the Security Council alone to decide whether or not a dispute threatened international peace and security, and, on that basis, to take the measures which it deemed appropriate.

Consequently, article 18, paragraph 2, should be amended so that the disputes referred to would be excluded *ipso jure* from the procedures provided for in the convention.

The meeting rose at 6 p.m.

60th meeting

Tuesday, 6 April 1976, at 10.15 a.m.

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

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

It was decided to permit the International Ocean Institute, a non-governmental organization which had been invited to the Conference and was represented by an observer, to take part in the current debate.

1. Mr. RIPHAGEN (Netherlands), speaking also on behalf of the delegations of Belgium and Luxembourg, said that dispute settlement was not a separate branch of international law, but was related to the substantive rules in different fields of international law. With regard to the law of the sea, difficulties would arise not only as a result of traditional and new uses of the sea, but also because new concepts had emerged, such as the concepts of mankind and of environment, both transcending traditional notions of nations and territory. Those concepts required a measure of international management, including international procedures for the settlement of disputes. The development of such procedures was in the interests of all States. The abstract rules which were to be elaborated, particularly in relation to the marine environment, required methods for the settlement of disputes which conflicting interests were likely to generate. Whatever differences of opinion still existed as to the contents of the rules on dispute settlement, a balance must be struck between the interests of coastal States, those of the other users of the sea and those of the international community as a whole. That would be impossible without a set of rules the primary object of which was a functional division of rights to be exercised within the same ocean space or spaces by the various entities involved. In that respect the seas would continue to be treated in a way totally different from the way land was treated in international law.

2. While the contents of the rights of the various entities in the various maritime zones were necessarily different, their status was always the same. Thus, if the concept of an economic zone was accepted, within that zone some rights would be reserved for the coastal State while others would continue to be enjoyed by all States. But from the legal point of view all those rights would be "sovereign," whatever their practical importance for the States concerned. Such a division of rights had difficulties the solution of which required not only international rules, such as those in the single negotiating text, but also international machineries. Furthermore, the functional division would be different in

different maritime zones and those zones would have to be delimited and divided both among States and among States and the international community, in particular the Authority. There again, the delimitation would be quite different from the delimitation of land, since there were no natural boundaries in the seas and the seas would never be the normal habitat of man. Nevertheless, for legal purposes, it was necessary to draw boundaries in the seas. The numerous provisions on the subject in the single negotiating text were and probably would remain rather vague, since it was virtually impossible to cover all existing geographical situations by abstract rules. There again, international machinery for reaching decisions in concrete situations was essential.

3. The new law of the sea convention provided for a completely new type of international organization, namely, the Authority. It was obvious that the Authority must be subject to international rules limiting its powers and regulating the legal relationships it entered into with other entities and, generally, its activities affecting the interests of other entities, whether States or natural or juridical persons. The traditional rules and procedures relating to the interpretation and application of the constitutions of existing international organizations and their contracts did not suffice. The Authority must be subject to some form of judicial control. Accordingly, compulsory dispute settlement was an essential element of any new legal order for the seas. The choice between the various possible methods of dispute settlement must also correspond to the specific character of the applicable rules and to the subject-matter of the particular dispute. Different procedures should therefore be envisaged, while seeking to avoid creating problems of positive or negative conflicts of competence between those procedures. Furthermore, the common principle underlying those procedures should be that ultimately a binding and final decision must be reached.

4. The system of dispute settlement would necessarily be complicated, since a simple, uniform solution would hardly do justice to the great variety of situations. Furthermore, care must be taken to admit a negotiated settlement at all times. In that connexion, the three delegations on whose behalf he was speaking favoured the idea underlying annex III, entitled "Information and consultation," of the single negotiating text submitted by the President of the Conference (A/CONF.62/WP.9). Should direct consultations and negotiations fail after a certain period of time, impartial third-party assistance should be accepted. Accordingly, a compulsory conciliation procedure along the lines of that provided for in the Vienna Convention on the Law of

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).