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States' proposal and on the controversial articles it contained because they had caused some political discussion. It had, however, voted in favour of the non-controversial articles submitted by the United States.

The meeting rose at 6.30 p.m.

TWENTY-NINTH MEETING

Tuesday, 26 March 1963, at 10.45 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (continued)

Preamble

1. The CHAIRMAN drew attention to the proposals for a preamble to the convention submitted jointly by the delegations of Argentina, Ceylon, Ghana, India, Indonesia and the United Arab Republic (A/CONF.25/C.1/L.71) and by the delegations of the Congo (Leopoldville), Ethiopia, Guinea, Liberia, Libya, Mali, Morocco, Sierra Leone, Tunisia and Upper Volta (A/CONF.25/C.1/L.106).

2. Mr. KRISHNA RAO (India), introducing the six-power proposal (L.17), said that that text closely followed the preamble to the Vienna Convention on Diplomatic Relations. The statement in the fifth paragraph that the purpose of privileges and immunities accorded to consular officials was not to benefit individuals but to ensure the efficient performance of functions was designed not only to appeal to national legislative bodies, which would be called upon to ratify the convention, but also to reflect accurately the motives of delegations in their deliberations on those privileges and immunities. The paragraph expressed the so-called principle of functional necessity which was an essential attribute of consular privileges and immunities.

3. Mr. BOUZIRI (Tunisia), introducing the tenation proposal (L.106) said that it reproduced the preamble to the draft articles prepared by the drafting committee of the International Law Commission (A/CONF.25/6, paragraph 36). The sponsors had proposed that formula in order to stress the difference between the convention under discussion and the Convention on Diplomatic Relations. Accordingly, they had not deemed it necessary to include a paragraph corresponding to the fourth paragraph of the preamble to the 1961 Convention, which rightly stressed the importance of diplomatic privileges and immunities. In a convention on consular relations, which granted very few privileges and immunities to consular officials, and those only in the exercise of their consular functions, such a paragraph seemed unnecessary. Moreover, privileges and immunities were granted to diplomatic agents as representatives of the sending State, whereas it was nowhere stated in the draft articles that consular officials represented the sending State. The sponsors had there-

fore considered it enough to refer merely to consular relations, which covered the notion of privileges and immunities and other facilities granted to consular officials in the exercise of their functions.

4. It also seemed unnecessary to state in the preamble that the few privileges and immunities granted to consular officials in the convention should be confined to the performance of their functions. In any case, the granting of privileges and immunities was a necessary evil and differentiation between various classes of persons should certainly be eliminated in an ideal world; reference to privileges and immunities had had to be included in the text of the convention, but there was no reason to mention them in the preamble.

5. Mr. ABDELMAGID (United Arab Republic) said that his delegation had sponsored the six-power proposal because consular privileges and immunities were inherent in consular functions and had become a part of international law. The essential difference between diplomatic and consular privileges and immunities lay in the functional character of the latter. The sponsors had therefore deemed it necessary to include the fifth paragraph of their proposal and to differentiate it from the corresponding paragraph of the preamble to the 1961 Convention by referring to "functions by consulates on behalf of their respective States", as distinct from "functions of diplomatic missions as representing States".

6. Mr. RUDA (Argentina) said that the sponsors of the six-power proposal had submitted their text in the belief that a codification of international law should be introduced by an indication of the general bases for its interpretation. The only essential difference between the two proposals before the Committee was that one of them included a reference to the basis on which privileges and immunities were granted to consular officials and the other did not. His delegation thought it essential to indicate the framework within which those privileges and immunities were granted and to state that their purpose was not to benefit individuals but to ensure the efficient performance of functions.

7. Mr. RUEGGER (Switzerland) noted with satisfaction that both the proposals affirmed in their last paragraphs that the rules of customary international law should continue to govern matters not expressly regulated by the provisions of the convention. At the 1961 Vienna Conference on Diplomatic Intercourse and Immunities, his delegation had proposed an additional article to that effect and it welcomed the inclusion of that important passage in the preamble.

8. Of the two texts before the Committee, his delegation preferred the six-nation proposal; it could not share the Tunisian representative's views concerning the difference between diplomatic and consular privileges and immunities. Moreover, article 5 (a) referred specifically to the consular function of protecting the interests of the sending State in the receiving State. The fifth paragraph of the six-power proposal should also be retained for psychological reasons: the convention would serve as a practical guide to career and honorary consuls

throughout the world, and it would be useful to remind them, as well as diplomatic agents, that the purpose of their privileges and immunities was not to benefit individuals, but to ensure the efficient performance of their functions.

9. Miss ROESAD (Indonesia) said she could not agree with the Tunisian representative that a reference in the preamble to consular privileges and immunities was unnecessary. Paragraph 34 (b) of chapter II of the report of the International Law Commission (A/CONF. 25/6) referred to a whole chapter of the draft articles entitled "Facilities, privileges and immunities of career consular officials and consular employees". Since the Second Committee of the Conference had spent all its time working on the articles in that chapter, it could hardly be deemed contrary to the spirit of the Conference to mention privileges and immunities specifically in the preamble.

10. Mr. DADZIE (Ghana) endorsed the arguments advanced by other sponsors of the six-power proposal. A really appropriate preamble to the convention on consular relations must include a reference to the basis on which consular officials enjoyed certain privileges and immunities.

11. Mr. DONATO (Lebanon) and Mr. AVILOV (Union of Soviet Socialist Republics) said they would support the six-power proposal.

12. Mr. ALVARADO GARAYCOA (Ecuador) said he would vote for the six-Power proposal because the reasons for granting consular privileges and immunities should be accurately explained in the preamble.

13. Mr. HEPPEL (United Kingdom) said he would support the inclusion of a paragraph on the functional necessity of granting consular privileges and immunities. Perhaps the difficulties that some delegations experienced in accepting the six-power proposal were due to the fact that it laid too much stress on privileges and immunities: immunities were mentioned three times and privileges twice in three successive paragraphs. The words might be omitted from the third and fourth paragraphs, and retained in the fifth paragraph, with the consequential substitution of the word "consular" for "such".

14. He was, of course, aware that the reference to immunities in the third paragraph was due to the fact that the 1961 Conference had been entitled "United Nations Conference on Diplomatic Intercourse and Immunities". On the other hand, since the convention under discussion would probably be entitled the "Vienna Convention on Consular Relations", it might be advisable to substitute the word "relations" for the phrase "intercourse, privileges and immunities" in the fourth paragraph.

17. Finally, he suggested that the words "since ancient times" in the first paragraph of both proposals might be placed before the words "consular relations", in order to bring the English text into line with the French and Spanish.

16. Mr. KRISHNA RAO (India) observed that the references to privileges and immunities in the third and fourth paragraphs had been included to take into account the history of both the Vienna Convention on Diplomatic Relations and the draft articles now before the Conference. If the six-power proposal were adopted, the United Kingdom representative's suggestions might be referred to the drafting committee.

17. Mr. PAPAS (Greece) said he would support the six-power proposal, but wished to suggest a few drafting changes. He thought the third paragraph, referring to the 1961 Conference, was unnecessary; so was the first paragraph, though he had no specific objection to it. With regard to the fourth paragraph, he thought that the words "and functions" should be added after "immunities" and that the phrase "irrespective of their differing constitutional and social systems" might be dispensed with, since that principle was self-evident in an instrument concluded by States Members of the United Nations.

18. Mr. MARESCA (Italy) said that a preamble should not be regarded merely as a general explanation of intentions, but also as an important element in understanding the general system of a convention, since it could throw light on each individual article. The omission of a reference to privileges and immunities in the preamble could have serious consequences. A study of the conventions on diplomatic and consular privileges and immunities that had been concluded since the Second World War showed that each of them contained an article confirming the functional necessity of granting privileges and immunities.

19. It was also important to bear in mind that the general term "consular relations" included the status of the consular official. It was not quite accurate to say that a diplomatic agent was a representative of the sending State, whereas a consular official was not; both the diplomatic agent and the consular official were agents of the State, though one of the functions of the former was to represent the State in international relations while the functions of the latter were subject to a different jurisdiction. Nevertheless, within his own sphere a consul, too, represented the sending State and assumed all the consequent responsibilities. He hoped that if the six-power proposal were adopted, the drafting committee could take his remarks into account and indicate that a consular official was an agent of the State.

20. Mr. BREWER (Liberia), speaking as one of the sponsors of the ten-power proposal, said that the fifth paragraph of the six-nation proposal was unnecessary because of the basic difference between diplomatic and consular functions. If all the provisions of the Vienna Convention on Diplomatic Relations were to be copied, there seemed to be no need for a separate convention on consular relations. To cite only one example of the wide difference between the two kinds of functions, article 43 of the draft provided for limited immunity from jurisdiction only in the exercise of consular functions, whereas article 31 of the Convention on Diplomatic

Relations provided for general immunity in respect of all acts performed by the diplomatic agent. In view of the limited scope of consular privileges and immunities, it seemed inappropriate to mention them in the preamble.

21. Mr. de ERICE y O'SHEA (Spain) fully supported the idea of including a so-called "probity clause" in the preamble. Nevertheless, he preferred the rest of the wording of the ten-power proposal, which reproduced the text prepared by the drafting committee of the International Law Commission. He would vote for that text if it included the "probity clause", but if the texts could not be combined, he would support the six-power proposal.

22. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he would support the six-power proposal in the belief that the text of the preamble should be as similar as possible to that of the preamble to the Vienna Convention on Diplomatic Relations. It would be unwise to omit the paragraph relating to consular privileges and immunities, since consuls, like diplomatic agents, were state officials, and both enjoyed privileges and immunities, though to different degrees. Disparity between the two preambles might give rise to undesirable difficulties in interpretation.

23. Mr. BOUZIRI (Tunisia), replying to the Indonesian representative, said that although the draft articles included a chapter on facilities, privileges and immunities, there was no reason to mention privileges and immunities specifically in the preamble; another chapter of the draft related to honorary consular officials, but there had been no suggestion that they should be mentioned in the preamble.

24. The sponsors of the ten-power proposal still thought that a reference to consular relations was all that was necessary in the preamble, but in order to secure unanimity, they had decided not to press their proposal.

25. Mr. USTOR (Hungary) said he would vote for the six-power proposal. He could not agree with the United Kingdom representative's criticism of the stress laid on immunities in that text. The fifth paragraph closely resembled the fourth paragraph of the preamble to the Vienna Convention; it would be remembered that the first proposal of that kind at the 1961 Conference had been unsatisfactory to a number of delegations, because it had presupposed that diplomatic agents would abuse their privileges and immunities. When it had been submitted in a milder form, however, the Conference had adopted the paragraph, because it was self-evident that persons enjoying privileges and immunities must not use them for their own advantage and because it was advisable to show the public that diplomatic agents were not creating privileges and immunities for their own benefit.

26. As to the theory of the legal basis of diplomatic privileges and immunities, the three main bases mentioned during the 1961 Conference had been extra-territoriality, functional necessity and the representative character of diplomatic agents. The preamble, as finally adopted, made it clear that the legal bases of diplomatic privileges and immunities were their functional necessity

and the representative character of diplomatic agents. The outdated theory of extra-territoriality had thus been tacitly excluded.

27. The legal bases of consular privileges and immunities were much less well documented; the one certain basis was that of functional necessity, which should therefore be clearly specified in the preamble. The second part of the fifth paragraph of the six-power proposal raised the controversial question whether consular officials were representatives of a State and whether that representative character could be regarded as a basis for consular privileges and immunities. His delegation considered that, although a consul was not a representative of the Head of State, he represented the administration of the sending State and therefore acted on behalf of it; that attribute of consular officials was clearly brought out in the six-power proposal.

28. Mr. BARTOŠ (Yugoslavia) said that, according to an eminent publicist, a preamble to a convention had three aspects: first, the aesthetic or formal aspect; secondly, the political aspect, or statement of the motives of the signatories of the convention; thirdly, the legal aspect, or the criterion for the interpretation of the operative part of the instrument. The fifth paragraph of the six-power proposal represented the legal aspect, since it referred to a subject to which nearly half of the operative part of the convention was devoted. The paragraph might have been unnecessary if a similar provision had not been included in the Vienna Convention on Diplomatic Relations, but to omit it now would be dangerous for the future interpretation of the convention on consular relations.

29. Mr. CRISTESCU (Romania) said that he would support the six-power proposal. The object of consular activities should be to promote co-operation between States on the basis of mutual respect for national sovereignty and the freedom and independence of peoples, and to develop friendly relations among nations. His delegation was glad to see those ideas embodied in the two proposed amendments. It considered, however, that the proposal contained in document A/CONF.25/C.1/L.71 was the more far-reaching and would support it.

30. Mr. GUNWARDENE (Ceylon) thanked the sponsors of the ten-power proposal for the spirit of co-operation they had shown in agreeing not to press for their text.

31. Mr. EL-SABAH EL-SALEM (Kuwait) thought that the text of the Vienna Convention on Diplomatic Relations should be followed closely wherever possible, particularly in view of the general tendency to merge the functions of diplomatic agents and consular officials. Some of the articles already adopted, such as article 41 (Personal inviolability of consular officials), clearly indicated that trend and it was advisable to reflect it in the preamble.

32. Mr. RABASA (Mexico) said he could support the six-power proposal and the drafting amendments suggested by the United Kingdom representative. He believed that the distinction between diplomatic and

consular functions should be stressed, as had been done in the fifth paragraph of the proposal.

33. Mr. de MENTHON (France) suggested that, although the ten-power proposal had been withdrawn, the drafting committee should take it into account when considering the preamble.

34. The CHAIRMAN said that the suggestions made during the debate would be referred to the drafting committee.

Subject to re-wording by the drafting committee, the six-power proposal (A/CONF.25/C.1/L.71) was adopted unanimously.

Disputes clause

35. The CHAIRMAN said that proposals for an article on the settlement of disputes had been submitted by the United States of America (A/CONF.25/C.1/L.70) and Switzerland (A/CONF.25/C.1/L.161). The Belgian delegation had submitted a proposal (A/CONF.25/C.1/L.162) for an optional protocol on the lines of the protocol attached to the 1961 Convention on Diplomatic Relations.

36. Mr. CAMERON (United States of America) drew attention to the fact that his delegation had withdrawn the new article at the end of its proposed final articles (L.7), in order to submit it as a separate proposal concerning the settlement of disputes (L.70). The proposal specified that any dispute arising from the interpretation or application of the convention on consular relations should be submitted, at the request of either of the parties, to the International Court of Justice unless an alternative method of settlement was agreed upon.

37. His delegation felt strongly that the codification of international law and the formulation of measures to ensure compliance with its provisions should go hand in hand. The response of other delegations to the United States proposal would make it possible to evaluate their support for international law and its enforcement by the principal judicial organ of the United Nations. He appealed for support for that proposal, which dealt with one of the most important points connected with the convention on consular relations.

38. Mr. RUEGGER (Switzerland), introducing his delegation's proposal (L.161), emphasized the fact that it should not be considered as being in opposition to the United States draft clause, but should be regarded as a subsidiary text. His delegation whole-heartedly supported the United States proposal, and if no such provision for compulsory judicial settlement had been proposed, his own delegation would have had to submit one in pursuance of precise instructions received from its government.

39. He requested that the United States proposal should be discussed and voted on before the Swiss proposal. Since the International Law Commission's draft contained no disputes clause and since the United States proposal on the subject had been submitted before the Swiss proposal, it was normal that it should be voted on first.

40. His delegation attached the greatest importance to a vote in which every delegation would have an opportunity of declaring its position on compulsory jurisdiction and arbitration. Such a vote would make it possible to note what progress had been made towards the ideal of compulsory arbitration since the first United Nations Conference on the Law of the Sea in 1958. On that occasion such a vote had taken place on a Colombian proposal,¹ which had received the fullest support of the Swiss delegation.

41. A disputes clause which provided for genuine compulsory arbitration and jurisdiction was an essential corollary to any codification of international law. The process of transforming customary international law into written law called for a body which could pronounce upon request.

42. His delegation had another reason for supporting compulsory arbitration and jurisdiction. Immediately after the First World War, the Swiss Federal Chambers had unanimously adopted a report by the Government of the Confederation laying down the broad outlines of a policy on international arbitration and judicial settlement, which was both bold and flexible, whereby the Government was authorized to enter into negotiations with other States for the purpose of concluding treaties of conciliation, arbitration and judicial settlement which would go as far as possible towards compulsory arbitration and jurisdiction.

43. As a result of that policy, Switzerland was linked with a large number of States through a system of arbitration treaties supplemented by the protocol under article 36 of the Statute of the International Court of Justice and by the General Act of Arbitration concluded under the auspices of the League of Nations and taken over by the United Nations. In recent years that policy had been actively pursued and had enabled Switzerland to negotiate similar treaties with several of the newly independent States. That showed what importance the Swiss Government attached to the incorporation in multilateral agreements of arbitration clauses of a truly compulsory nature.

44. The actual wording of the clause was not important to his delegation. There were many excellent models, such as that prepared by the Institute of International Law at its Granada session. The one point which his delegation considered essential was that the clause should not have any loopholes. To be truly compulsory, the application of the clause should not depend on agreement between the parties — i.e., on a compromise reached in each specific case. Any such provision would be a mere semblance of an arbitration clause. His delegation thought it essential that the disputes clause should provide that any dispute arising from the interpretation or application of the convention on consular relations should be submitted to the International Court of Justice at the request of either of the parties.

45. At the first United Nations Conference on the Law of the Sea his delegation had proposed a separate

¹ See *United Nations Conference on the Law of the Sea, Official Records*, vol. II (United Nations publication, sales No. 58.V.4, vol. II), annexes, document A/CONF.13/L.24, annex II.

optional protocol on the compulsory settlement of disputes.² A proposal on the same lines had been made with success at the 1961 Vienna Conference by the representative of Iraq. The Belgian delegation was making a similar proposal at the present conference; but his delegation regarded the optional protocol as a last line of defence, a last way of retaining the link between the idea of arbitration and a convention codifying international law. Consequently his delegation was prepared to vote for the protocol, but only if the clause proposed by the United States and its own proposal were both rejected.

46. At the present stage, his delegation submitted its proposal as a subsidiary text, in case the United States proposal were not accepted. The Swiss proposal offered an intermediate solution between the United States clause and the optional protocol proposed by Belgium. Like the latter, it was based on reality, a reality that could not be disregarded: the fact that a number of important States in several continents were not yet ready to accept the idea of compulsory arbitration and jurisdiction.

47. In order to prevent the disputes clause from standing in the way of the universality of the convention on consular relations, the Swiss proposal provided, in paragraph 2, that any contracting party might at the time of signing or ratifying the convention, or of acceding thereto, declare that it did not consider itself bound by paragraph 1; the other contracting parties would then not be bound by paragraph 1 with respect to any contracting party which had formulated such a reservation.

48. The Swiss proposal had two main advantages over an optional protocol. The first was that the text had been taken from an existing convention, although it was not yet in force: it reproduced the very terms of article 20 and article 21, paragraph 1, of the Brussels Convention of 25 May 1962 on the liability of operators of nuclear ships. He stressed the fact that his delegation attached no special importance to the language of paragraph 1, and would be quite willing to replace it by wording such as that of the United States proposal. The second advantage was that the text would appear in the convention itself, not in a separate instrument. That would represent a genuine step forward in the progress of international arbitration because the signature of an optional protocol could be avoided or postponed, whereas it was necessary to take a decision in order to make a reservation.

49. In conclusion, he appealed to delegations to prepare the way for a really compulsory system of judicial settlement by voting for the United States proposal.

50. Mr. VAN HEERSWIJNGHELDS (Belgium) said that his delegation could support the United States proposal in principle; it was purely in a spirit of conciliation and compromise that it was proposing an optional protocol (L.162) similar to that attached to the Vienna Convention on Diplomatic Relations. The main reason for making that proposal was that many States had not yet recognized the compulsory jurisdiction of the Inter-

national Court of Justice in pursuance of article 36, paragraph 2, of the Statute of the Court.

51. Mr. de MENTHON (France) unreservedly supported the United States proposal. On 14 November 1947 the General Assembly had adopted resolution 171 (VII) recommending as a general rule that States should submit their legal disputes to the International Court of Justice. According to Article 92 of the Charter, that court was the principal judicial organ of the United Nations. It was one of the normal functions of the International Court to settle legal disputes arising out of the interpretation of treaties, so it was natural that any dispute arising out of the interpretation or application of the convention on consular relations should be submitted to it.

52. The present conference had shown by several of its votes the desire of the participating States to contribute to the progressive development of international law. His delegation believed that the introduction into the convention of a clause on the judicial settlement of disputes would contribute to such development. It would also contribute to the building up of judicial practice and legal precedents, which would be helpful in the codification of international law on consular relations.

53. His delegation considered that the United States proposal would serve the interests of States and of the whole international community.

54. Mr. WESTRUP (Sweden) said that Sweden shared with other small nations the aspiration to see international arbitration and judicial settlement by the International Court of Justice consolidated and developed. It was therefore with great satisfaction that his delegation saw a major power like the United States of America sponsoring a proposal for compulsory judicial settlement. He supported that proposal without reservation.

55. He had little to add to the cogent arguments advanced in support of the United States proposal by the Swiss and French delegations. It would be unrealistic not to recognize that certain governments were unwilling to surrender some measure of national sovereignty in the settlement of disputes affecting their vital interests; but it was to be hoped that the majority of States would be prepared to accept a clause on compulsory judicial settlement for the purposes of consular relations.

56. Whatever form the convention on consular relations might take, its provisions would deal only with purely technical and practical matters. All controversial matters had been eliminated; he could cite a very recent case of a proposed article which had been dropped merely because it had been described by a number of delegations as having some political implications. In the circumstances, there appeared to be no risk in adopting a clause on the lines proposed by the United States delegation.

57. In view of the nature of its provisions, the future convention on consular relations thus provided a unique opportunity for the international community to take a step towards a universal system of impartial settlement of disputes — a system which was desired by all mankind.

58. He had little enthusiasm for the Belgian proposal, which was a last resort to be used only if a better solution

² *United Nations Conference on the Law of the Sea*, vol. II, annex I.

could not be adopted. Like the Swiss representative himself, he preferred the United States proposal to the Swiss proposal and requested that a roll-call vote be taken on it.

59. Mr. RUDA (Argentina) pointed out that his country had consistently favoured arbitration. Argentina had submitted many important disputes to arbitration, including boundary disputes with its neighbours — Brazil, Paraguay, Bolivia and Chile.

60. However, it was the position of his government that the submission of a dispute to arbitration was subject to the agreement of the parties in each specific case. Hence his delegation could not support any formulation which might lead to the judicial settlement of a dispute without such agreement.

61. Argentina had recognized the compulsory jurisdiction of the International Court of Justice only in respect of a few humanitarian conventions. It had done so in those exceptional cases precisely because of the humanitarian character of the conventions concerned.

62. In the circumstances, his delegation urged that the precedent of the first United Nations Conference on the Law of the Sea and of the 1961 Vienna Conference on Diplomatic Intercourse and Immunities should be followed by adopting a separate optional protocol on the settlement of dispute. If the proposal for an optional protocol were not adopted, his delegation would propose a sub-amendment to the United States amendment replacing the words "shall be submitted at the request of either of the parties to the International Court of Justice" by the words "shall be submitted by mutual consent of the parties to conciliation, to arbitration or to the International Court of Justice".

63. The Swiss proposal was substantially in line with the position of the Argentine delegation. Paragraph 2, however, was in fact a reservations clause, and his delegation considered reservations undesirable in the case of a convention codifying international law. By dealing with the settlement of disputes in a separate protocol, it would be possible to ensure the universality of the convention on consular relations.

The meeting rose at 1.15 p.m.

THIRTIETH MEETING

Tuesday, 26 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (continued)

Disputes clause (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the proposals for a clause relating to the settlement of disputes submitted by the United States (A/CONF.25/C.1/L.70) and Switzerland (A/

CONF.25/C.1/L.161) and of the Belgian proposal for an optional protocol (A/CONF.25/C.1/L.162).

2. Mr. MARESCA (Italy) said that every legal rule should be accompanied by a guarantee to ensure its application even if one of the parties refused to comply with it. Consular law was no exception to that requirement. The Italian delegation thought that the natural place for a clause providing for settlement of the disputes which might arise over the application or interpretation of the convention was in the body of the convention itself. The settlement of any dispute of that nature should be entrusted to the International Court of Justice, which was competent to decide all disputes coming under international law. The Italian delegation therefore unreservedly approved the solution proposed by the United States (L.70) and hoped that it would become an integral part of positive law. It wished nevertheless to suggest a slight modification of the text, consisting of the insertion of the words "which cannot be settled through diplomatic channels" after the words "this convention". If the United States proposal did not receive the necessary majority, the Italian delegation would support the alternative solution submitted by Switzerland (L.161), which seemed calculated to allay all fears and provided a generally acceptable way out. If that solution also were rejected, there would be no alternative but to adopt the Belgian proposal (L.162) that the settlement of disputes be dealt with in an optional protocol in accordance with the precedent set by the Convention on Diplomatic Relations.

3. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that the United States delegation had explained the need to include a disputes clause in the convention by the fact that the United States and other countries accepted the compulsory jurisdiction of the International Court of Justice. The draft articles prepared by the International Law Commission contained no provision concerning the settlement of disputes, however, and it might be questioned how far the United States proposal was justified. A study of positive law showed that the choice of methods for settling disputes depended on the will of each State. Article 33 of the Charter listed various means of peaceful settlement of disputes; in other words, it granted each State the right to choose the means it considered most appropriate. Article 36 of the Statute of the International Court of Justice also provided that recognition of the compulsory jurisdiction of the Court depended on the decision of each State. Hence the fact that certain States recognized the compulsory jurisdiction of the International Court of Justice did not mean that all States were obliged to recognize it. In fact, out of more than one hundred States Members of the United Nations, only forty-six had recognized the jurisdiction of the Court as compulsory, and in the great majority of those cases recognition was accompanied by numerous reservations. The United States itself had made numerous reservations; in particular, it did not recognize the compulsory jurisdiction of the International Court in any dispute whose substance came within the domestic jurisdiction of the United States as so defined by the United States itself.