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60th Plenary meeting

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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).

Treaties[2] of 1969 should be provided for in the future convention for disputes to which no "special procedures" applied. Third-party assistance need not necessarily be directed towards a negotiated settlement of the dispute; in appropriate cases, it could be directed towards an agreed method of settling the dispute through fact-finding judicial interpretation.

5. If conciliation failed, there should be a compulsory dispute settlement procedure entailing a binding decision. It was at that stage that a differentiation in procedures according to the subject-matter of the dispute should be envisaged, as was the case in annexes II A (Fisheries), II B (Pollution) and II C (Scientific research) to document A/CONF.62/WP.9. Other special procedures would be required for other topics, such as disputes between an operator and the Authority, regarding the management of sea-bed resources in the international zone. Incidentally, where the issue was the validity of decisions taken by the Authority, there was bound to be a special procedure and prior negotiation or conciliation were obviously excluded.

6. For disputes to which no special procedures applied, a general procedure of compulsory judicial settlement should be provided for. The choice was between the International Court of Justice, a new permanent tribunal or arbitration. In that connexion, he recalled that in 1972 the International Court of Justice had adopted several important amendments to its rules of procedure. It was now possible for the parties to a dispute to have it settled by a chamber of the Court, the composition of which was determined in consultation with the parties. That new procedure gave greater flexibility to the Court and filled the gap between judicial settlement and arbitration.

7. It was the conviction of the delgations on whose behalf he was speaking, that undoubtedly no consensus on the choice of a particular body would be possible in the future convention. The choice should be left to each contracting party. A contracting party which did not make such a choice should be considered to have accepted the choice made by the contracting party with which it was involved in a dispute. Each contracting party should at least subject itself to one of the three general methods for the final settlement of disputes when no special procedures applied.

8. In any dispute the need for interim measures of protection might arise, particularly if it concerned law of the sea matters where interference with the movement of vessels and aircraft was involved. The competence to prescribe such measures should appertain to the tribunal which, in the final stage, was empowered to settle the dispute. That would present no problem if the International Court of Justice or the law of the sea tribunal was accepted by the parties. If a special procedure applied or the parties had accepted only the general procedure of arbitration, the need for interim measures of protection might arise before the tribunal was constituted. In such cases, another permanent judicial body should be competent to prescribe such measures pending the constitution of the tribunal, which in turn should be empowered to review the decision taken.

9. Under the general rules of international law no proceedings could be instituted before an international tribunal unless local remedies had been exhausted. That rule, which was a matter of dispute in the doctrine of international law, could be varied or done away with in a treaty. There were good practical reasons for that, if only to advance the speedy settlement of disputes. He recalled in that connexion that in many cases involving the application of the future convention, the rule of exhaustion of local remedies did not apply anyway and that there were many countries where national courts were not empowered to apply treaty rules and other rules of international law if their application was incompatible with the application of their national legislation. Nothing in the future convention should deny States parties to a dispute their right to decide by common agreement on any procedure for the settlement of their dispute other than those provided for in the convention. Nor was there any reason automatically to substitute the procedures in the convention for any previously agreed procedures between the States parties which entailed binding decisions.

10. The question whether entities other than sovereign States should be able to initiate one or more of the procedures provided for in the future convention was closely linked with the substantive rules which were yet to be negotiated. However, it could safely be assumed that there would be clauses in the convention giving rights to and imposing obligations on entities other than States, in particular the Authority and operators. Access of those entities to the dispute settlement procedures should in any case be allowed.

11. Lastly, the dispute settlement system of the convention should apply to all disputes relating to the interpretation or application of the convention. There was no justification for any of the exceptions mentioned in article 18 of the single negotiating text submitted by the President. That article was based to a large extent on confusion between the competence of a tribunal and the rules to be applied. It was obvious that a claimant had to allege that the defendant had exceeded his rights or had not fulfilled his obligations under the convention. If such an allegation were made, the applicable dispute settlement procedure should be followed and the question whether the allegation was well founded in law and in fact could hardly be "preliminary."

12. Particularly unjustified was the exception in article 18, paragraph 2 *(d)*, relating to "disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations." That provision was in clear contradiction to Article 36 of the Charter of the United Nations and it was open to the controversy about when the Security Council was actually exercising its functions. Furthermore, any of the permanent members of the Security Council, whether or not involved in the dispute, could through its veto power prevent the Security Council from determining proceedings under the future convention would not interfere with the exercise of its functions. If it was at all necessary to provide for the case in which the same dispute that was brought before the Security Council was at the same time the object of a dispute settlement procedure under the future convention, it should at least be required that the Security Council should decide that the procedure under the convention was in fact interfering with the exercise of the Council's functions, before the procedure provided for in the convention was discontinued. Indeed, the Security Council could take such a binding decision at any time, even in the absence of such a provision in the future convention, let alone any reservation of any State party to that convention, a reservation which in any event could affect only disputes in which that State was the defendant.

13. Mr. ZEA (Colombia) said that his delegation believed that document A/CONF.62/WP.9 could serve as a basis for negotiation, even though it did not agree with several of the provisions therein. The text should be studied in a forum to which all delegations had access, so that the work on it could be completed.

14. It was essential that the settlement of disputes should be an integral part of the new convention on the law of the

[2] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

sea. In view of the unsatisfactory results of the Conference on the Law of the Sea held at Geneva in 1958, that question should not be the subject of an additional instrument, protocol or annex. The only means of settling the countless possible disputes was to establish flexible machinery which would also be dynamic and effective, accepted by all and enshrined in the future convention.

15. It was for that reason that his delegation believed that the settlement of disputes which might arise in connexion with the application of the convention should be compulsory. The obligation to settle disputes by legal means was one of the pillars of the international policy of Colombia, which had not hesitated to accept the compulsory jurisdiction of the International Court of Justice. Any dispute should be subject to settlement which was compulsory both in form and in substance. To that end, his delegation therefore agreed that all types of consultation, negotiation and other procedures could be used, provided that they necessarily led to a definitive settlement. In addition, it believed that the principle of a specialized jurisdiction should be studied. The Conference should carefully study the proposal for the establishment of a tribunal convened specifically to consider disputes which might arise under the new convention. Uniformity of judicial decisions would result; furthermore, not only the States parties to the convention, but also the Authority, the international bodies established to study questions concerning the sea, and natural or juridical persons could be parties to a dispute concerning the application of the convention and have access to the said tribunal. Thus, the settlement of disputes would probably be accelerated.

16. His delegation believed that the parties to a dispute should have the possibility of choosing the peaceful means provided for under international law and enshrined, particularly, in Article 33 of the Charter of the United Nations. It continued to believe that, in cases involving a judicial settlement, the International Court of Justice was the pre-eminent international tribunal. It would be desirable to establish a chamber within the Court to deal with disputes concerning the sea and, in order to extend its jurisdiction so that entities other than Member States might have access to it, its Statute and, consequently, the Charter of the United Nations should be amended—as Colombia had been proposing for some time.

17. All parties to the convention should have access, for the settlement of their disputes, to the judicial bodies provided for in the convention, but none of them should be able to avoid the jurisdiction of those bodies if it was impossible to choose another means of peaceful settlement in agreement with the other party to the dispute.

18. It was for that reason that his delegation had serious objections with respect to article 18 on exceptions. Certainly any matter which manifestly affected the sovereignty of a State could not be contested before international tribunals. The relevant provisions of the convention would have to be precise lest pretexts be advanced to avoid recourse to the international tribunals and the rights of third States, recognized under the convention, be infringed.

19. His delegation would make the observations which it deemed appropriate during the consideration of the negotiating text article by article and it reserved the right to propose alternatives or additions to that text.

20. Mr. MARTIŃ HERRERO (Spain) said that, in order to serve as an instrument for peace and the development of peoples, the future convention on the law of the sea should provide a just and effective method for the settlement of disputes.

21. With respect to the activities carried out in the international zone of the sea-bed, his delegation believed that the features of the problems and their new character required a separate means of dispute settlement and, consequently, a special tribunal organically linked to the Authority but functioning quite independently. That tribunal should have certain features: it should be able to ensure that the rules laid down by the competent bodies of the Authority conformed to the provisions of the convention. It should also have the power to consider cases referred to it by natural or juridical persons which had concluded a contract with the Authority for the execution of activities in the zone.

22. With respect to the other questions dealt with in parts II and III of the single negotiating text (see A/CONF.62/WP.8), he wished to point out the importance of appropriate regulations concerning diplomatic means of settling disputes and, above all, of recourse to regional agencies and arrangements. It would be necessary to provide for recourse to a system of compulsory judicial settlement if those procedures did not lead to a settlement. The methods for the settlement of disputes provided for in Article 33 of the Charter of the United Nations should therefore simply be adapted to the requirements of the new law of the sea.

23. His delegation understood that, with the informal working group on settlement of disputes, two main concepts had emerged in that regard: the general method of settling disputes and the functional methods. The first assumed that judicial settlement was a starting-point or a position of principle. The advocates of functional methods supported the establishment, for each particular category of dispute, of a special means of settlement which would not necessarily always be judicial settlement. His delegation believed that the general method was most suitable, on the understanding that the number of cases that would be exempt from compulsory judicial settlement should be reduced to the minimum. Thus, compulsory judicial settlement should be applied not only to disputes between States which might arise in the zones beyond the limits of national jurisdiction, but also to disputes which might arise inside the zones situated within the limits of national jurisdiction. If compulsory international jurisdiction were to apply only to disputes arising within zones not subject to national jurisdiction, international judicial settlement would lose much of its justification. There already existed a special means of settling disputes within the international zone of the sea-bed. Since only the high seas would not come under national jurisdiction, only disputes arising in that zone would be subject to compulsory international jurisdiction.

24. With respect to the choice of the body responsible for the judicial settlement of disputes, the informal working group on settlement of disputes had envisaged the possibility of using the International Court of Justice, the Law of the Sea Tribunal or arbitral tribunals. His delegation believed that the International Court of Justice had successfully performed the function entrusted to it by the Charter of the United Nations. It did not therefore see why the International Court of Justice should not be the pre-eminent body responsible for the judicial settlement of disputes. It would then be unnecessary to establish special judicial bodies such as the law of the sea tribunal. Furthermore, it should be borne in mind that the simultaneous functioning of permanent judicial bodies could give rise to non-uniformity of jurisprudence. That danger could be avoided if, besides the International Court of Justice, special—in other words, non-permanent—judicial bodies were created, such as the arbitral tribunals which were constituted to hear specific cases. The preponderant role of the International Court of Justice should not preclude recourse to arbitration if the parties to a dispute so decided. Indeed, arbitration was a means of settling disputes that had proved satisfactory and

had existed alongside actual judicial settlement because it could be adapted to specific categories of dispute.

25. His delegation therefore proposed that recourse to the judicial settlement of disputes, once diplomatic means had been exhausted, should be defined in the future convention in terms similar to those in article 66, paragraph *(a)*, of the Vienna Convention on the Law of Treaties. The corresponding text could be worded as follows: "Any one of the parties to a dispute concerning the application or the interpretation of this Convention may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration."

26. Mr. LAI Ya-li (China) said that the discussion on the settlement of disputes was particularly important because it involved the sovereignty of all States. Currently the small and medium-sized States were struggling to defend State sovereignty and marine resources against maritime hegemonism. Those States firmly demanded the abolition of the old law of the sea, which served the interests of colonialism, imperialism and maritime hegemonism, and the establishment of a new law of the sea in keeping with current trends and giving expression to their legitimate interests and particularly to the interests of the developing countries. The super-Powers for their part, were trying by every possible means to weaken and restrict the legitimate rights of other countries and were clinging obstinately to their position of maritime hegemonism. To protect their vested interests they were capable of resorting to dispute setttlement procedures designed to weaken the provisions in the new law of the sea which reflected the interests of the third world countries and to restrict the sovereignty and jurisdiction of those countries over the sea areas within their own jurisdiction and their rights and interests in the areas beyond the limits of national jurisdiction.

27. The Chinese Government had consistently held that States should settle their disputes through negotiation and consultation on an equal footing and on the basis of mutual respect for sovereignty and territorial integrity. Of course, States were free to choose other peaceful means to settle their disputes. However, if a sovereign State were asked to accept unconditionally the compulsory jurisdiction of an international judicial organ, that would amount to placing that organ above the sovereign State, which was contrary to the principle of State sovereignty. Moreover, problems within the scope of the State sovereignty and exclusive jurisdiction of a sovereign State should be handled in accordance with its laws and regulations. That was why his delegation considered that the provisions in document A/CONF.62/WP.9 concerning the compulsory jurisdiction of the law of the sea tribunal were inappropriate.

28. Since the question of the settlement of disputes involved the sovereignty of all States, the procedures to be followed must be chosen by States themselves. If most States agreed to draft specific provisions on dispute settlement procedures, those provisions should not be included in the convention itself but should form a separate protocol so that countries could decide for themselves whether to accept it or not.

29. Mr. VARVESI (Italy) said that his country had always considered that the settlement of disputes was an integral part of international law. In its view, use should first be made of diplomatic means of solution and conciliation. Where those means failed, however, compulsory recourse to arbitration or judicial settlement constituted an indispensable guarantee of the security of international legal relationships.

30. The future convention would no doubt be very detailed and would include many new legal concepts. Many of its articles would embody compromise solutions resulting from negotiations which were frequently difficult. It was therefore important that the interpretation of the future convention should be entrusted to competent bodies.

31. A number of guiding principles should be followed. First, the dispute settlement machinery should form an integral part of the future convention and should not appear in an optional protocol. The rules concerning the settlement of disputes should be included in the same document as the substantive rules, so that States could not be bound by one set of rules only. Secondly, the dispute settlement machinery should be compulsory in the sense that States were obliged to submit to it and were bound by the decisions. Thirdly, the machinery in question should be as simple and practical as possible; it should make it impossible to avoid or delay the solution of disputes and should be suited to all possible types of dispute.

32. The application of those principles raised the awkward question of the use of the dispute settlement machinery and its structure. In principle, all exceptions to the application of the dispute settlement machinery, such as those envisaged in article 18 of document A/CONF.62/WP.9, were contrary to the very purpose of the system envisaged. That system should function for the application of all the rules of the future convention. It was inadmissable that any exception should be made to the principle of the sovereign equality of States, which would allow one party to impose on the others its interpretation of the rights and obligations it had freely accepted upon becoming party to the convention.

33. With regard to the dispute settlement procedures applicable in cases where diplomatic consultations and conciliation procedures failed, he noted that the document proposed a mixture of special and general procedures. The general procedures envisaged were arbitration and recourse to the International Court of Justice and the law of the sea tribunal. The powers of the Law of the Sea Tribunal, as envisaged in that text, differed from those of the International Court of Justice on only two points: the Tribunal would be open to individuals and companies, and it could function as a permanent body for supervision of the legitimacy of the rules and regulations of the Authority. It followed that the special power of the law of the sea tribunal only concerned questions regarding the exploration and exploitation of the sea-bed and the Authority.

34. In the light of the guiding principle that any dispute settlement machinery should be simple and practical, it was doubtful whether it was necessary to establish a law of the sea tribunal with general and special competence. That function could be carried out by the International Court of Justice or an arbitral tribunal. One reason why recourse to the International Court of Justice or an international tribunal seemed advisable was that there would no doubt be a considerable time lag between the signing of the convention and its entry into force. Even after its entry into force, the convention would probably not be binding on all States. It was therefore appropriate that the same bodies should settle both disputes which might arise between contracting parties concerning the interpretation of the convention and disputes which might arise between contracting parties and States which had not yet ratified the convention, or between States which had not yet ratified the convention, concerning rules of general international law as modified by the convention. Thus the competence of the law of the sea tribunal could be limited to a special procedure, concerning the exploration and exploitation of the sea-bed or questions relating to the Authority and to the rules and regulations it would establish. The tribunal would then no longer have the both general and special characteristics which seemed to be envisaged in document A/CONF.62/WP.9.

35. Although he recognized that the question of access to the law of the sea tribunal could not be settled before a solution had been found to certain substantive problems, he expressed the hope that natural and juridical persons would be permitted access to the tribunal. The Court of Justice of the European Communities and the International Centre for Settlement of Investment Disputes at Washington were very interesting examples of the usefulness of such a solution.

36. The law of the sea tribunal could be permanent, as proposed, but the Conference should not reject the idea of a panel of judges who could constitute a tribunal in the event of a dispute or the idea of a mixed system. In the latter case, the permanent tribunal would be competent only in cases where urgent measures had to be taken.

37. His delegation favoured special procedures adapted to particular problems. However, it was not in favour of the possibility of appeal from decisions taken as a result of special procedures. If the experts who participated in those special procedures were also legal experts, as envisaged in annex II A of the single negotiating text concerning fisheries, the possibility of appeal could be excluded. If recourse to that special procedure was limited to the establishment of the facts, legal questions could also be reserved for the general procedures.

38. Mr. RUIVO (Portugal) stressed the importance of ocean uses to Portugal, particularly in connexion with fisheries and navigation. It was essential to adopt rapidly a new ocean regime which would take into account the interests of countries and of the world community. However, the regime proposed in the convention under preparation was somewhat vague. Of course, considerable time was needed to reach agreement on the numerous and important issues under consideration and that agreement would depend in the end on the spirit of compromise displayed by the countries participating in the Conference. A revised text should therefore be ready by the end of the session. His delegation considered that formal negotiations should be initiated during the current year.

39. The provisions of the future Convention concerning the settlement of disputes should as far as possible provide details on the procedures and related mechanisms and should be based on the principle of the use of peaceful means as set forth in the Charter of the United Nations. They should also enshrine the concept of compulsory jurisdiction. Exceptions to that principle would depend on the final formulation of the rights and duties of States in the convention. His delegation was prepared to consider favourably the various mechanisms for the settlement of disputes. Although it considered it desirable to encourage direct negotiations, it accepted in principle arbitration procedures and special procedures for disputes concerning fisheries, pollution and scientific research, as well as the general procedures envisaged, including the possible establishment of a law of the sea tribunal. However, it reserved its position on that question.

40. Flexibility and the right of all States involved in a dispute to choose the procedure they wished to follow were principles which could help to reconcile positions. His delegation would return to that question in due course. It had difficulty in accepting the idea that entities other than States parties to the convention should be able to resort to the dispute settlement procedures envisaged in the convention.

41. While consensus could be expected to be achieved on many items and general principles, there seemed to be a considerable difference of opinion on detailed aspects, particularly on the exceptions covered by article 18 of document A/CONF.62/WP.9. His delegation believed that the Conference would of necessity have to arrive at a general compromise. Document A/CONF.62/WP.9, like the three parts of document A/CONF.62/WP.8 could serve as a basis for discussion. His delegation was ready to adopt a less elaborate set of provisions with a view to achieving a more rapid agreement. It shared the President's view that effective dispute settlement "would also be the guarantee that the substance and intention within the legislative language of a treaty will be interpreted both consistently and equitably" (A/CONF.62/WP.9/Add.1, para. 6). In that context, his delegation supported the view expressed by the representative of Sri Lanka at the previous meeting concerning a suggestion made at the 14th plenary meeting in Caracas by the Secretary-General. The Secretary-General had stated that it would be advisable to consider the possibility of organizing a periodic assembly of the parties to the convention to review the problems and develop ways to meet any difficulties produced by new uses of the seas. Such a measure would no doubt promote co-operation among the contracting parties in the effective implementation of the convention. The assembly might meet every three years, on the understanding that it should not be involved in the revision of the convention. The assembly could provide a forum for the development of new ideas which in some cases could contribute to the settlement of issues which had not been afforded sufficiently detailed solutions in the convention.

42. In the opinion of his delegation, it would not be necessary to establish any new permanent machinery, but it would probably be desirable to request an *ad hoc* intergovernmental committee, adequately representative of different tendencies and reflecting an equitable geographical distribution, to assist with the planning and preparation of the assemblies. The *ad hoc* committee could be serviced by the Secretariat of the United Nations, with the active co-operation of the competent United Nations bodies, such as those mentioned in document A/CONF.62/WP.9. Such an approach would facilitate the rational use of staff, facilities and resources to avoid duplication among those agencies and would also facilitate concerted action in matters of common interest. He hoped that the Conference would give serious consideration to the suggestion made in Caracas by the Secretary-General since it would go a long way towards preventing and even resolving difficulties and pave the way for the establishment and consolidation of international institutional arrangements essential to the harmonious and uniform implementation of the convention.

Mr. Perišić (Yugoslavia), Vice-President, took the Chair.

43. Mr. JACOVIDES (Cyprus) said that his delegation was in favour of an effective, comprehensive, expeditious and viable dispute settlement system entailing a binding decision regarding all disputes arising out of the substantive provisions of the convention and believed that such a system should form an integral part of the convention.

44. That position was dictated both by his country's attachment to the general principle of equal justice under the law and by national self-interest, since Cyprus was a small and militarily weak State which needed the protection of the law, impartially and effectively administered, in order to safeguard its legitimate rights. There was a danger that the substantive articles which the Conference was attempting to formulate might be interpreted arbitrarily and applied unilaterally. It was to be feared that disputes would multiply or that the whole system would disintegrate amid complete anarchy. Should that happen, it was the smaller and weaker States which stood to lose the most. The existence of a legal régime arrived at with the participation and consent of all States could not fail to benefit all members of the international community, large and small. A third-party dispute settlement system, capable of providing solutions to disputes on the basis of objective and, to the extent possible, predictable lines was therefore essential.

45. His delegation considered that such a system, far from being incompatible with national sovereignty, could only further the effective exercise of the sovereignty of the weaker States by preventing the stronger States from imposing their will. Participation in any collective effort of that nature naturally demanded self-imposed restrictions on the part of States—as was the case when they became Members of the United Nations—but that was a very small price to pay considering that the alternatives were anarchy and the law of the jungle.

46. Referring to the single negotiating text presented by the President (A/CONF.62/WP.9), he said that the author had made a serious effort to deal in a constructive and comprehensive manner with the complex subject under discussion, and that his delegation was prepared to regard the document as a basis for negotiation. Depending on the outcome of the debate, the document could be considered in detail in a representative body, possibly a working group of the whole presided over by the President of the Conference. The document would thus acquire a status equivalent to that of the other parts of the single negotiating text. The text presented by the President was based on the right premises and contained the essential elements required for an acceptable solution to the question of third-party dispute settlement. However, while his delegation was in principle favourably disposed towards the text, it reserved the right to examine its provisions in detail and to analyse them more closely, as it had done with the other negotiating texts before the Conference. The document in question should be examined systematically, article by article, at meetings at which all the participants in the Conference would be represented, after all the various interested groups had had a chance to formulate and express their positions. He took the opportunity to pay a tribute to the members of the informal working group on dispute settlement. His delegation had participated in the work of that group, which had done a great deal to pave the way for the current discussion.

47. His delegation preferred a general rather than a functional approach to the settlement of disputes arising under the convention. The law of the sea tribunal, as envisaged in the text by the President, should be established and should be given the central role in the system. The Tribunal, so constituted and elected as to enjoy wide confidence, was the appropriate body to adjudicate, in the final analysis, in matters concerning the new law of the sea. Uniform interpretation and application of the convention would thereby be ensured. At the same time, his delegation saw no difficulty in allowing the possibility of recourse to other bodies (the International Court of Justice or *ad hoc* arbitral tribunals), provided that both parties to a given dispute had exercised the same option. In order to ensure wider acceptability of the dispute settlement machinery, his Government was also prepared to consider the possibility of supplementing the general procedure by special procedures applicable in specific areas, such as disputes concerning fisheries, pollution and scientific research.

48. Assuming the dominant position of the law of the sea tribunal in the over-all scheme, it might be appropriate for the tribunal to operate through two chambers, one dealing exclusively with sea-bed matters, so as to satisfy what was envisaged in the First Committee's single negotiating text (see A/CONF.62/WP.8), the other exercising general jurisdiction arising out of the convention as a whole. Such an approach might go a long way towards facilitating the solution of the thorny question of whether only States could appear before a tribunal or whether international organizations and natural or juridical persons could also do so. Moreover, it would then become unnecessary to set up two new permanent bodies for the settlement of disputes relating to the law of the sea.

49. His delegation was not in favour of allowing any exceptions or reservations to the compulsory dispute settlement procedure. If, after further debate and detailed examination of the matter, it was found that some exceptions had to be permitted in order to secure wider acceptability, such exceptions should be kept to the minimum. More specifically, his delegation was opposed to any exception regarding matters of delimitation of the maritime zones—whether the territorial sea, the contiguous zone, the exclusive economic zone or the continental shelf—between opposite States. Such matters clearly lent themselves to third-party settlement, as they were likely to cause disputes which might escalate into political, economic or even military confrontation. Under such circumstances, small and weak States would be left at the mercy of arbitrary interpretations and unilateral measures by States strong enough to impose their will. That would be especially true if the criteria for such delimitation were not based on definite legal rules, such as the "median line", but on such vague notions as "equitable principles" or "special circumstances", which lent themselves to subjective interpretation. If the latter type of criteria were accepted, the need for third-party adjudication would become even more imperative.

50. He pointed out that during the general debate at the second session in Caracas he had stressed the need to give serious consideration to the opportunities for change offered by the Conference without risking the creation of a chaotic situation. The proper balance could be struck by adopting the new approach required by technological advances and the political and economic changes of the times while at the same time not throwing overboard those positive rules of the international law of the sea which had stood the test of time, bearing in mind the principles of the Charter of the United Nations, which was the mainstay of modern international law. His delegation was gratified to note that now, nearly two years later, the Conference had made considerable progress towards adopting substantive rules in accordance with those basic tenets. It was his delegation's sincere hope that the same could also be said of the other corner-stone of the current undertaking, namely, an effective legal system for the settlement of disputes. If that could be achieved, both the rule of law among nations and the international community as a whole would stand to gain.

Mr. Mukuna Kabongo (Zaire), Vice-President, took the Chair.

51. Mr. SAMPONG SUCHARITKUL (Thailand) pointed out that, since the late nineteenth century, Thailand had signed a number of treaties on arbitration and the peaceful settlement of disputes, and that, after the Second World War, Thailand had become a Member of the United Nations and a party to the Statute of the International Court of Justice. It had, therefore, always maintained an open-minded and flexible attitude during the negotiations on the settlements of disputes which might arise under the future convention.

52. So far, the world had witnessed a progressive development not only of substantive international law but also of adjective law, namely, the international machinery designed to dispense international justice. There was already a wide variety of procedures available for the pacific settlement of disputes, apart from those enumerated in Article 33 of the Charter of the United Nations. National and regional procedures and, at the international level, the Permanent Court of Arbitration and the International Court of Justice deserved special mention. Nevertheless, new procedures and new machinery were being studied so as to encourge speedier adjudication in more specialized fields, such as the law of the sea, pollution, scientific research and so forth. The new procedures envisaged in the present draft convention, both

the general system and the special procedures, could not be intended to exclude the traditional tribunals from exercising their jurisdiction. The new procedures were designed to provide additional facilities and did not in any way conflict with existing régimes of judicial and arbitral settlement. It was essential to endeavour to provide as many and as effective means as possible for the settlement of disputes. To that end, it would be helpful to observe a number of fundamental principles or guidelines. First, flexibility was essential in order to achieve a balanced solution, which was vital to the successful conclusion of a Conference of such magnitude. Secondly, the choice of methods or procedures for the settlement of disputes should be made by the parties themselves, especially when proceedings were to be instituted against States. The consent of States was still the basis of international adjudication, although there were several ways of indicating such consent. Thirdly, no attempt should be made to lay down a strict hierarchy among the various methods and procedures available, the selection of which should also be at the option of the parties. Fourthly, the special procedures should be streamlined so as to avoid an excessive number of concurrent specialized jurisdictions and to ensure a practical division of labour without totally eliminating the possibility of some overlapping. Fifthly, in view of the independence of each system or procedure, appellate jurisdiction was difficult to justify; however, the possibility of reviewing certain cases within the same or allied systems should not be precluded. Sixthly, concurrence of jurisdiction, rather than conflict, would, in fact, operate to improve the quality of adjudication. As parties were likely to use the procedures most attractive to them, each system would strive to inspire the confidence of States. Seventhly, acceptance by States of the different procedures for the settlement of disputes could be further encouraged and facilitated if States could be assured that the law to be applied by the tribunals would not only be just and equitable but would also take into account the interests of countries which had taken little or no part in the development of traditional international law. Eighthly, the draft convention should aim at the widest possible acceptance and participation by States. It should not in any way seek to impose on unwilling States any new procedure or a choice of available jurisdictions or procedures. Although the consent of States was a sound basis for jurisdiction, there appeared to be no need to secure the approval of parties to the dispute in order to appoint members of a given tribunal. Ninthly, in order to facilitate wider acceptance and participation, States should be accorded the possibility of making exceptions or reservations with regard to the nature of the disputes, as well as with regard to parties to the disputes. Such exceptions or reservations should not, however, render illusory or arbitrary the general obligation to settle disputes. Tenthly, since the settlement of a dispute was a matter between the States concerned alone, the choice of procedures or jurisdiction should be made by the States themselves. Eleventhly, the Conference should strive for moderation and be guided by practical considerations in its efforts to find alternative solutions to the delicate problem of dispute settlement. Lastly, he believed that work could be expedited by the adoption of a single negotiating text, which could serve as a basis for future negotiations.

53. His delegation reserved the right to make further observations regarding specific parts of the draft convention at an appropriate time.

54. Mr. FUJISAKI (Japan) said that, in his delegation's view, the establishment of machinery for the settlement of disputes relating to the interpretation and application of the new convention on the law of the sea was no less important than the elaboration of the substantive articles of the convention. Agreement on a compulsory dispute settlement procedure must be an essential element in an over-all solution of major issues in the current negotiations. That was all the more necessary since the new legal instrument would have to strike a delicate balance between the rights, obligations and interests of States within the framework of a wider jurisdiction of coastal States than had previously been recognized. His delegation therefore had certain apprehensions that disputes might arise more frequently than had been the case in the past.

55. His delegation wished to emphasize that the general obligation of States to settle their disputes by peaceful means and their right to choose their own methods should be recognized and respected as having equal validity and strength in the field of the law of the sea as in all other fields of international law. Thus, his delegation could support articles 1 to 5 of document A/CONF.62/WP.9 which incorporated that principle. Moreover, when an agreement existed between parties to a dispute whereby they had assumed an obligation to settle any given dispute by recourse to a particular method, that agreement should have precedence over the procedures agreed upon in the new Convention. Article 3 and the explanations given in paragraphs 12 and 13 of the memorandum by the President (A/CONF.62/WP.9Add.1) were of special relevance in that regard.

56. His delegation also wished to emphasize the necessity of making the general obligation to settle disputes an integral part of the future convention. In his delegation's view, the solution adopted at the First United Nations Conference on the Law of the Sea in 1958, in the form of an Optional Protocol of Signature, was insufficient and unacceptable.

57. The question of excepting certain matters from the obligation to settle a dispute, which was dealt with in article 18 of document A/CONF.62/WP.9, was related to the question of the acceptance of compulsory settlement of disputes. Without going into details, he wished to state that his delegation could not agree to such exceptions because they undermined the principle of the compulsory settlement of disputes. On that point his delegation fully shared the views expressed at the previous meeting by the delegation of the Federal Republic of Germany.

58. From the practical standpoint, his delegation favoured the functional approach, which envisaged special procedures for the settlement of various categories of disputes. The scope of the law of the sea was very broad; it would therefore seem appropriate to establish several organs, each with a specific field of responsibility (questions of the sea-bed, fisheries, pollution and the like). In order to ensure the speedy settlement of disputes, those organs should be empowered to take final and binding decisions and should be constituted on a permanent basis. By expressing support for the functional approach, his delegation did not mean to exclude a general system for the settlement of disputes. There might well be instances in which the International Court of Justice, as the principal judicial organ of the United Nations, could play an important role. His delegation was unable to support the establishment of the proposed law of the sea tribunal because there was every likelihood that the problems which would arise under the law of the sea régime could be solved by the existing judicial system. Moreover, the establishment of a new tribunal would give rise to duplication and to conflicts of competence between it and the International Court of Justice.

59. In conclusion, he expressed the hope that the question would be dealt with more comprehensively and perhaps more formally than in the past, in view of the importance that many delegations attached to it.

60. Mr. WOLF (Austria) said that, from the very beginning

of the Conference, his delegation had consistently underlined the importance which it attached to establishing machinery for the peaceful settlement of disputes. The rule set forth in Article 33 of the Charter of the United Nations served as the basis for and was a necessary prerequisite of the international system. Since States had conflicting interests, it was essential to have machinery for the settlement of disputes, culminating in a body with judicial powers, so as to ensure the effective application of international law and the protection of the interests of States according to the existing legal régime.

61. So far as the law of the sea was concerned, only dispute settlement machinery would guarantee that the results of the long negotiations in progress would be converted into international law and spelt out by an international judicial body. Such a body would be particularly helpful in the case of States for which recourse to the settlement procedure represented the only means of asserting their rights. His delegation believed that the future convention must embody a dispute settlement system based on compulsory jurisdiction. That was the only means of ensuring uniform interpretation of the provisions and avoiding fragmentation of jurisdiction.

62. As to the form of that machinery, his delegation was in general in favour of a single judicial institution. Owing to the divergent structure of the different parts of the future convention, as they appeared in the single negotiating text, it was undoubtedly necessary to make the machinery flexible. Flexibility, resulting in a limited functional approach, was necessary in respect of access to the Court and the problem of the applicable law. First of all, it would be necessary to provide for a special system in respect of disputes which might arise in connexion with part I of the single negotiating text (see A/CONF.62/WP.8), but other special features, too, would have to be taken into account; at the same time, there was a need to simplify and speed up procedures in order to stimulate recourse to the system. At the beginning of the session, the President had presented in document A/CONF.62/WP.9, part IV of the single negotiating text, which reflected the President's own ideas on the dispute settlement machinery. His delegation appreciated the obvious endeavour to comply in that text with all the demands put forward by States, even if the complexities of the future law of the sea were not taken fully into account. It feared that the "Montreux formula" would give rise to various difficulties and problems, thereby impeding the functioning of the legal system eventually adopted. Moreover, it was hardly acceptable that States should be prevented from having recourse to the judicial machinery in respect of matters which were regulated by international law or even by the convention itself. The example that sprang to mind was the economic zone, the provisions on which ranked first among the exceptions to compulsory jurisdiction. As the economic zone was a new legal institution and had to be defined explicitly in the convention, interpretations concerning it could hardly be left to the discretion of coastal States but should rather be spelt out by an international judicial body. To enble that body to discharge its functions, it would be necessary to incorporate the chapter on the settlement of disputes in the convention itself rather than in an optional protocol, for experience demonstrated that only a few States would become parties to the optional protocol, while the majority would refrain from ratifying it.

63. Lastly, it would also be necessary to decide whether the International Court of Justice itself should be entrusted with the task of adjudicating law of the sea disputes or whether an independent law of the sea tribunal should be instituted. His delegation was prepared to listen to any suggestions in an attempt to find a solution which would take all aspects of the matter into account. Various possibilities had already been put forward, apart from the two solutions that he had mentioned.

64. His delegation reserved the right to speak later in the debate on the future procedure for drafting of the articles on the settlement of disputes.

Mr. Driss (Tunisia), Vice-President took the Chair.

65. Mr. ANDERSEN (Iceland) said that although it was difficult to take a definitive position on the question of settlement of disputes before the articles of the convention had taken final shape, some preliminary opinion was now clearly needed. The document presented by the President was therefore very helpful. It was obvious that a dispute settlement mechanism would be required, since the application of the convention would inevitably give rise to conflict in many fields. However, a fundamental consideration was to ensure from the outset that every effort had been made to minimize the possibility of disputes. It was therefore imperative to make the substantive provisions of the convention crystal-clear.

66. The future convention should be constructed on five main pillars: a territorial sea of up to 12 miles; unimpeded transit through straits; the delimitation of the continental shelf; an exclusive economic zone of up to 200 miles; and a régime for the international sea-bed area. At the present stage of the debate his delegation would deal only with the question of the settlement of disputes relating to the exclusive economic zone. His delegation saw that as a realistic economic resource zone in which the coastal State had sovereign rights over the living and non-living resources. So far as the living resources were concerned, the convention should determine that the surplus, i.e. that part of the allowable catch which the coastal State did not have the capacity to utilize, would be made available to other States on the basis of special agreements. Those provisions should be made crystal-clear in order to avoid any misunderstanding.

67. Yet many States, although professing to support the concept of the economic zone, were endeavouring in various ways to weaken it. They wanted to open up the possibility of disputing the decisions of the coastal State, and there could be no doubt that conflicts might arise if the provisions of the convention were not sufficiently explicit, particularly in connexion with decisions concerning conservation standards, the size of the total allowable catch, the coastal State's capacity to utilize the stocks and similar matters. If that were to happen, the concept of the exclusive economic zone would be rendered illusory and meaningless, notwithstanding the fact that it represented a vital element of the package solution on which the future convention must be based. Consequently, the decisions of the coastal State with regard to the resources within the exclusive economic zone must be considered final. That was why, if unnecessary disputes were to be avoided, the provisions of the convention must be spelt out with total clarity at the present stage.

68. Mr. Chang-Choon LEE (Republic of Korea) felt that document A/CONF.62/WP.9 should serve as the basis for discussion with a view to establishing dispute settlement procedures. Compulsory settlement procedures involving a third party were indispensable not only to the stabilization of the new international economic order but also to the maintenance of international peace and security. His delegation unreservedly adhered to the principles embodied in Articles 2 and 33 of the Charter of the United Nations, under which Members were required to settle their disputes by peaceful means—principles which the Republic of Korea had always faithfully respected.

69. An effective system for the compulsory settlement of disputes would clearly provide safeguards against the occurrence of disputes and would permit uniformity of interpretation and application of the future convention. The single negotiating text struck a balance between the scope and nature of national and of international jurisdiction. Such

a system would also be a special guarantee of the rights and interests of small States. In his delegation's view, however, the Conference should consider establishing a special consultant group consisting of a limited number of experts, or an open-ended informal working group, in order to assist the President in carrying out his function, in view of the complexity and special nature of the issue involved.

70. His delegation favoured a comprehensive system which incorporated both general and special procedures, as envisaged in document A/CONF.62/WP.9. Without minimizing the importance of special procedures, his delegation believed that the principle of the compulsory settlement of disputes should find its place in the convention and it therefore favoured the creation of a law of the sea tribunal. The scope and complexity of the problems involved in that field, particularly if one took into consideration the revolutionary trends in development and the parallel evolution of law, required the establishment of a new tribunal and the elaboration of appropriate procedures.

71. His delegation felt that the provisions for the settlement of disputes contained in part I of the single negotiating text (see A/CONF.62/WP.8) could be amalgamated with those submitted in document A/CONF.62/WP.9, it being understood that disputes relating to the sea-bed would be covered by the general procedures set forth in the latter. His delegation accordingly favoured the preparation of a single text concerning the settlement of disputes, which would constitute a separate part of the convention.

72. At the same time, it took the view that the right of access to dispute settlement procedures should also be granted to natural and juridical persons and to international organizations, taking into account the special character of the emerging sea-bed régime, as well as the particular needs of the new law of the sea, such as the need for the prompt release of detained vessels.

73. With regard to article 18 of document A/CONF.62/WP.9, his delegation believed that the exceptions provided for therein applied to nearly all important disputes and therefore seemed to defeat the whole purpose of the settlement procedures envisaged. When exceptions were allowed in a treaty extreme care must be exercised. In that connexion, he drew attention to article 19 of the Vienna Convention on the Law of Treaties of 1969 concerning the question of reservations. Bearing in mind that, in international law, States had the capacity to make exceptions to a treaty, it did not seem necessary to make express provision for exceptions in the case of compulsory dispute settlement procedures, since exceptions, exclusions, limitations and other reservations which the parties to the convention might wish to make could be made in the established manner.

74. Mr. KARASIMEONOV (Bulgaria) said that the provision of effective dispute settlement procedures was essential for stabilizing the complex structure of which the convention on the law of the sea would be capstone. He felt that the text submitted by the President was a useful working tool and that the proposed provisions should be grouped together in a special part of the convention in keeping with the approach adopted by the Chairmen of the Second and Third Committees.

75. Articles 1-4 of that text dealt with the general obligation of States to settle disputes by peaceful means, in accordance with the principles of the Charter of the United Nations. They would offer the parties the possibility of choosing among the different methods of peaceful settlement of disputes available to them. Those articles were acceptable to his delegation as they stood.

76. In general, his delegation favoured a system of special procedures, which was gaining increasing support from delegations. It supported the special procedures for the settlement of disputes in the field of fisheries, pollution and scientific research proposed in annex II to the single negotiating text. It also favoured a special procedure of either arbitral or judicial character in the case of disputes concerning the sea-bed. Furthermore, it had no objection to the adoption of special procedures for certain other matters. Since one of the reasons for such procedures was the need for an expeditious settlement, his delegation agreed with the French delegation regarding the possibility of establishing a special procedure for disputes relating to navigation, especially with regard to the detention of vessels.

77. If the principle of special procedures was to be eventually accepted, the question arose whether a general system would be necessary at all. His delegation felt, however, that a general system would make it possible to settle disputes arising from the interpretation and application of the convention. In that connexion, it believed that the existing institutions were adequate and that it was in the interest of the international community to strengthen the role of the International Court of Justice instead of establishing a new tribunal with similar functions.

78. As to the question of the choice of procedure, his delegation took the view that the choice should be left to the parties to the dispute, but it opposed giving a central role to any one of the procedures. In that connexion it would prefer the so-called Montreux formula. States could also have the possibility of making a declaration in the instrument of ratification concerning their acceptance of a special procedure. In the absence of such a declaration, it should be assumed that the State concerned preferred to be bound by the general system.

79. His delegation felt that the right of access to the proposed settlement procedures should be accorded only to States and not to natural and juridical persons. Such persons should, in the event of a dispute concerning them, present their claims through the State whose nationals they were. As to the settlement of disputes arising from the exploitation of the sea-bed in the international area, provisions could be embodied in the contracts concluded with the Authority.

80. Article 18, which dealt with exclusions and exceptions, raised a very complex question because it touched upon the delicate balance with regard to activities concerning the economic zone. His delegation had declared that it approved of clearly defining the rights of a coastal State for the purpose of exploring and exploiting the natural resources of the economic zone. It was therefore ready to accept reasonable exceptions to the dispute settlement procedures. Nevertheless, it could not agree with the exclusion from those procedures of disputes arising out of the exercise of discretionary rights by a coastal State. Exclusion of all disputes arising in areas where a coastal State had some clearly defined rights would leave other States without any possibility of protecting the rights legitimately granted to them in those areas by the convention. On the other hand, his delegation could agree that States should be given the possibility of declaring that they did not accept the dispute settlement procedures concerning boundary delimitations and other matters referred to in article 18, paragraph 2 *(b)* and *(c)*. With regard to paragraph 2 *(d)*, under which parties could exclude disputes in respect of which the Security Council was exercising the functions assigned to it by the Charter of the United Nations, his delegation, while accepting the idea in principle, took the view that it had no place in article 18; rather, it should be made the subject of an independent provision.

The meeting rose at 1.05 p.m.