United Nations Conference on Succession of States in respect of State Property, Archives and Debts

Vienna, Austria
1 March - 8 April 1983

Document:-
A/CONF.117/C.1/SR.44

44th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

44th meeting

Tuesday, 5 April 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*concluded*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

New articles and annex (Settlement of disputes) (*concluded*)

1. Mr. MONNIER (Switzerland) said that his delegation fully supported the proposal by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1/Corr.1) as it was convinced that the draft convention, because of the nature of its provisions, should provide for machinery for the legal settlement of disputes concerning the interpretation or implementation of those provisions. That conviction was strengthened by the fact that the present convention belonged more to the progressive development of law than to the codification of international law. The disparity of views resulting from different State practices and the lack of unanimity which existed affected both the interpretation and application of the convention.

2. Some delegations had stated during the Committee's earlier discussions that resort to judicial settlement was unacceptable in view of the attitude of many States towards the recognition of compulsory jurisdiction as provided for in Article 36, paragraph 2, of the Statute of the International Court of Justice. However, there was an important difference between unilateral recognition of the compulsory jurisdiction of the International Court of Justice operating generally on the basis of Article 36 and recognition of that same Court's jurisdiction specifically in respect of the implementation of the convention. The proposal by Denmark and the Netherlands included an opting-out clause which ensured that no legal settlement would be imposed on any party, since unilateral recourse to the International Court of Justice was not possible without agreement.

3. The representative of Mozambique, in introducing the proposal in document A/CONF.117/C.1/L.58 (43rd meeting) had said that the proposal by Denmark and the Netherlands was unacceptable in that it impaired the fundamental principle of the free choice of means under Article 33 of the Charter of the United Nations. If, however, the proposal of Denmark and the Netherlands was contrary to the principle of freedom of choice, so, too, was the proposal submitted by Mozambique and Kenya, which allowed unilateral initiation of a conciliation procedure. Furthermore, although the principle of the free choice of means was fundamental, there was an even more fundamental principle, namely the obligation on States to settle their disputes by peaceful means, in accordance with Article 21 of the Charter of the United Nations.

4. If parties did not agree to put an end to their dispute on the basis of the recommendations made as a result of the conciliation procedure, the dispute could and probably would degenerate to such an extent that it was doubtful whether the parties would be satisfied with peaceful settlement. In that case the matter could be settled only by the intervention of a third party. The proposal by Denmark and the Netherlands providing for judicial settlement or, in the absence of agreement, arbitration by unilateral request, had the necessary flexibility within the framework of a compulsory procedure. The system was not new, it had been incorporated as recently as December 1982 in the United Nations Convention on the Law of the Sea, having been adopted by consensus. There was therefore no reason why the participants in the Conference should not agree to incorporate the system in the present convention. Arbitration, moreover, had the advantage of flexibility, and of enabling the parties to influence the procedure through the membership of the arbitration tribunal and its rules of procedure.

5. The Committee was faced with the same problem which had faced the States meeting in Vienna in 1968 and 1969, when it had been felt necessary to provide for the settlement of disputes by arbitration or judicial settlement in view of the destructive effects on the treaties in force of the unilateral implementation of the rule of *jus cogens* and the possible impairment of the security of traditional relations. As the present draft convention contained many references to concepts only vaguely outlined and not universally recognized, a similar solution was called for in its case.

6. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had repeatedly drawn the Committee's attention to the fact that many of the terms used in the draft convention were vague, used for want of something better and open to a variety of interpretations. When introducing the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 (43rd meeting), the representative of the Netherlands had identified the main areas of possible dispute. Many more areas could be added to that list, as could specific terms which, in his delegation's view, called for a sound and well-conceived settlement procedure. Such formulae as "connected with the activity of the predecessor State in respect of the territory to which the succession of States relates", or "property to the creation of which the dependent territory has contributed", or "relate exclusively or principally to the territory to which the succession of States relates" left no doubt in his delegation's mind that a compulsory third-party procedure for the settlement of disputes was imperative.

7. States were free to accede to the present convention. If it came into effect, it should be accompanied by such a procedure. Without it, the convention would involve an inherent danger of legal insecurity in the application of the rule of law in international relations.

8. The proposal by Denmark and the Netherlands met that need for a compulsory procedure. States opting out of the jurisdiction of the International Court of Justice would have to submit their dispute to binding arbitration. His delegation therefore supported that proposal. The proposal by Mozambique and Kenya was not adequate for the present convention.

9. Mr. PHAM GIANG (Viet Nam) suggested that the Committee might take as its example Part VI of the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] which dealt with the settlement of disputes. Methods of settlement had been discussed in depth at the Conference which had drawn up that Convention and the final text had been adopted without a vote. The delegations of Mozambique and Kenya were therefore to be congratulated for having based their proposal so closely on the 1978 Vienna Convention.

10. The Vietnamese delegation fully supported that proposal because it gave the parties freedom to choose the peaceful settlement procedure which best suited them, while at the same time respecting State sovereignty and equality. Such freedom of choice was one of the fundamental principles of that section of international law.

11. A further reason for his delegation's support for the new articles proposed by Mozambique and Kenya was that they constituted a very flexible proposal and reflected the practice of the great majority of States. Furthermore, the proposal covered almost all the procedures usually employed, ranging from consultation and diplomatic negotiation to conciliation and, finally, compulsory judicial settlement, either by arbitration or by the International Court of Justice. Throughout, the joint proposal by Kenya and Mozambique was based on freedom of choice for the parties.

12. His delegation considered the proposal by Denmark and the Netherlands somewhat rigid, as it obliged sovereign States to take certain courses of action. Furthermore, it reflected only one part of international practice, namely, that of a small group of countries which were at the same level of development and had the same political, economic, social and legal systems. The proposal also appeared to run counter to the fundamental principle of freedom of choice, and had a major deficiency in that it left no room for conciliation, an important part of international law which had proved its worth for many years. His delegation was therefore unable to support that proposal.

13. Mr. KIRSCH (Canada) said that the proposals for the settlement of disputes were particularly important since the text of the draft convention contained a number of provisions concerning which disputes might easily arise in view of the various possible interpretations. The text contained many vague expressions and also mentioned a number of concepts which had been variously referred to as principles or rights but in substance were ill-defined and controversial. The Canadian delegation greatly regretted that lack of precision, which was of benefit neither to predecessor States nor to successor States, since it far exceeded what might be regarded as desirable flexibility or even constructive ambiguity.

14. The Committee appeared to have a choice of two systems open to it, settlement by a third party—either the International Court of Justice or arbitration—or settlement by conciliation. His delegation recognized the merits of the conciliation method proposed by Mozambique and Kenya and would have no objection to seeing it as one compulsory stage in the settlement procedure. The problem of that method, however, lay in what it lacked, since it was clear from the text of document A/CONF.117/C.1/L.58 that, if one of the parties was not satisfied with the recommendations of the conciliation commission, then it could reject them and start again from the beginning, however much the situation deteriorated. Furthermore, if one party was satisfied with the status quo, it would have no reason to negotiate seriously, since there was no time limit. The system was not a very efficient one, nor did it necessarily favour the successor State.

15. The Canadian delegation found it difficult to understand why some delegations were opposed to the principle of settlement by a third party when the same delegations had insisted on the inclusion in the convention of the concepts and principles to which he had referred. The system proposed by Denmark and the Netherlands would promote the progressive development of jurisprudence which would define those concepts and eventually transform them into rules of international law. It would be a great loss to international law, therefore, if that proposal were rejected. His delegation fully supported it.

16. It was necessary, in his view, to bear in mind the distinction drawn by the representative of Switzerland between the general recognition of the jurisdiction of the International Court of Justice and its limited recognition in the context of a particular treaty. Reference had also been made by some speakers to the need to respect the freedom of choice of the parties concerned. Such references were ironical, however, in view of the manner in which certain substantive rules had been adopted during the Committee's proceedings. It had also been said that the proposal submitted by Mozambique and Kenya was a compromise, but in fact the parties to the dispute, having complete freedom of choice, were clearly not expected to compromise.

17. Adoption of the proposal by Mozambique and Kenya would be better than having no provision for settlement of disputes in the proposed convention, but it would also mean the loss of the last opportunity to clarify the convention's provisions, as well as of the possibility of their being properly implemented in the future.

18. Mr. PAREDES (Ecuador) said that, while Ecuador was committed to the settlement of disputes in accordance with international law, it considered that the selection of a mechanism for reaching such settlements was a matter for decision by States themselves. His delegation would have difficulty in accepting a text which would have the effect of imposing such mechanisms on States. The proposal submitted by Mozambique and Kenya however, offered the necessary flexibility and had the merit of being in line with

[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

the provisions on the same subject contained in the 1978 Vienna Convention.

19. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation favoured the inclusion of provisions for the settlement of disputes arising in connection with the interpretation and application of the future convention. It supported the proposed text submitted by Mozambique and Kenya for a number of reasons.

20. First, the text proposed was similar to the corresponding provisions of the 1978 Vienna Convention. Although the present draft convention was an independent legal text, it was obviously directly connected with the 1978 Convention, since both dealt with the succession of States. Moreover, the 1977-1978 Conference had deliberated at great length on the question of settlement of disputes; the present Conference should utilize that experience instead of resuscitating old arguments.

21. Secondly, the 1978 Vienna Convention had succeeded in dealing with the question of the settlement of disputes in a manner designed to satisfy all States. Both that Convention and the proposal submitted by Mozambique and Kenya provided in the first instance for compulsory consultation and negotiation; if that procedure yielded no results, a compulsory conciliation procedure was foreseen. In addition, any State could declare its willingness to have a dispute submitted for judicial settlement and arbitration to the International Court of Justice. Provision was also made for settlement by common consent, by whatever procedure the parties agreed to.

22. The proposal submitted by Denmark and the Netherlands, on the other hand, would merely lead to an entrenchment of positions. That proposal was therefore unacceptable to his delegation.

23. Mr. BROWN (Australia) welcomed the revised proposal by Denmark and the Netherlands for the inclusion of a new article on the settlement of disputes; the changes made in that proposal demonstrated a desire to reach a generally acceptable solution.

24. His delegation was also interested to note the text proposed by Mozambique and Kenya which was based on corresponding provisions of the 1978 Vienna Convention—an instrument which had as yet attracted few parties.

25. Recalling his delegation's initiative on the peaceful settlement of disputes at the twenty-ninth session of the United Nations General Assembly,[2] he said that Australia had always been a firm supporter of the International Court of Justice as the final recourse in the settlement of international legal disputes. In conventions such as the present one, where the status and content of several of the principles and rights referred to gave rise to diverse interpretations and opinions, there was a particular need to make provision for judicial clarification. He believed the Expert Consultant would agree that the International Court of Justice would be the most able and competent body for the solution of such matters. While both the proposals before the Committee made provision for judicial settlement, his delegation supported the text submitted by Denmark and the Netherlands, because it gave that element greater prominence.

26. Mr. ECONOMIDES (Greece) said that his delegation attached great importance to the recently adopted Manila Declaration on the Peaceful Settlement of International Disputes,[3] which recommended *inter alia* that multilateral conventions should include procedures and machinery for the settlement of disputes that might arise from their interpretations and application. His delegation supported the proposed text submitted by Denmark and the Netherlands, which was in line with the provisions of the Manila Declaration; it endorsed all the arguments advanced in favour of that proposal by the representatives of Switzerland and Canada.

27. Provisions similar to the proposal by Denmark and the Netherlands were a common feature of legal instruments far easier to interpret than the present draft convention, which contained a number of imprecise terms and referred to a number of ill-defined concepts. Machinery for the settlement of disputes was not only desirable but essential if the convention was to be implemented.

28. The text proposed by Mozambique and Kenya did not, in his delegation's view, go far enough, in view of the recommendations contained in the Manila declaration—an important international legal text which had been adopted by consensus.

29. Mr. TEPAVITCHAROV (Bulgaria) welcomed the submission of proposals for the inclusion in the draft convention of provisions concerning the settlement of disputes. It was rather surprising that the International Law Commission's draft contained no such provisions, since the Commission had doubtless been aware that the interpretation of certain articles might give rise to disputes. His delegation would like to hear the view of the Expert Consultant on that question; its understanding was that the Commission had probably not dealt with the matter because it concerned the application, rather than the codification, of international law.

30. In introducing the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 the representative of the Netherlands had noted that provision for binding third-party arbitration would protect smaller nations against the possible use of force by larger Powers. In his delegation's view, the point at issue was not whether or not third-party settlement was acceptable, but rather how such settlement could be effected.

31. Every State should have the possibility of securing settlement of a dispute in the manner of its choosing. Throughout the draft convention, agreement between the parties concerned was recommended as the general rule. Several delegations had stressed the importance of such agreement—a position his delegation had interpreted as an expression of support for the sovereign right of each State, as a subject of international law, freely to negotiate a settlement to a dispute.

[2] *Official Records of the General Assembly, Twenty-ninth Session, Plenary Meetings*, 2307th meeting, paras. 35 *et seq.*

[3] General Assembly resolution 37/10, annex.

32. In his delegation's view, the proposal by Denmark and the Netherlands was not compatible with Article 33 of the Charter of the United Nations, which regarded arbitration or judicial settlement not as a compulsory procedure, but as a possible complement to the process of negotiation. His delegation was not opposed to compulsory arbitration by the International Court of Justice on an *ad hoc* basis if the parties concerned had agreed to such a procedure, but such arbitration should not be automatic.

33. Compulsory third-party settlement could also lead to conflicting interpretations of Article 36 of the Statute of the International Court of Justice, which specified the Court's jurisdiction. Nothing in either the Charter or the Statute could be interpreted as obliging a Member State to submit to compulsory settlement by the International Court of Justice whenever the other party felt that a compulsory award, even a negative one, would be expedient, for whatever reason.

34. Experience had clearly demonstrated that the cases in which the International Court of Justice had made a positive contribution to the interpretation of international law were precisely those which had been submitted by mutual agreement of the parties concerned.

35. It should also be noted that the Conference was a plenipotentiary body dealing with the codification of international law; it was not concerned with the settlement of disputes as such. He stressed the importance of accurate reflection of the position of the various Governments on the issue. It was difficult to see how the Manila Declaration could be invoked as an argument for or against binding third-party settlement.

36. For the reasons given, his delegation would support the new articles proposed by Mozambique and Kenya; it was unable, as a matter of principle, to accept the proposal by Denmark and the Netherlands.

37. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had been well aware that the present draft convention, more than other codification drafts, required an effective procedure for the settlement of disputes. However, the Commission had simply not had the time to formulate the necessary provision.

38. In his view, the primary concern should be that the procedure developed was an effective one. If it were to focus on the International Court of Justice, which he felt was an underutilized institution, he would understandably be even happier.

39. Several delegations had expressed opposition to compulsory judicial settlement. The proposal submitted by Denmark and the Netherlands had the merit of going beyond the 1978 Vienna Convention—an approach which he welcomed in view of the specific nature of the draft convention. He noted that paragraph 1 referred to "parties to the dispute", whether or not such parties were parties to the future convention. In addition, the text omitted the conciliation phase—a phase to which many delegations attached importance.

40. The text of paragraph 2 was modelled on article 66 of the 1969 Vienna Convention on the Law of Treaties[4] but the two cases were not analogous. In the case of the 1969 Convention, the question had been to determine whether or not a rule was a subject of *jus cogens*; in the case of the present draft convention, it would be a matter of taking a case to the International Court of Justice to determine whether an agreement had been concluded in accordance with certain principles—the nature of the principles themselves would not be at issue.

41. Paragraph 3 of the proposed new article provided for the possibility of reservations; he was not sure that the results of the system would be any more effective than the procedure laid down in the proposal submitted by Mozambique and Kenya, which had the virtue of flexibility.

42. Mr. MAAS GEESTERANUS (Netherlands) said that he had only two comments to make following an extensive debate during which all the various arguments for and against—both genuine arguments and otherwise—appeared to have been put forward.

43. His first observation concerned the remark, made repeatedly during the discussion, that it was desirable to allow the parties to a dispute freedom of choice regarding means of settlement. In fact, the freedom in question—in the form in which it had been asserted—was the freedom of the stronger party to refuse the settlement of the dispute.

44. His second observation concerned the suggestion made by the representative of Senegal at the previous meeting that a compromise formula should be sought in order to reconcile the two proposals at present before the Committee, namely, that contained in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 and that in document A/CONF.117/C.1/L.58. On behalf of the sponsors of the first of those proposals, he could give a response to that suggestion.

45. On the basis of the statement just made by the Expert Consultant, the application of the system of recourse to the compulsory jurisdiction of the International Court of Justice, or to compulsory arbitration, might perhaps be limited exclusively to those matters in the present convention which raised the question of the existence, or otherwise, of a rule of *jus cogens*. For all other matters, the conciliation procedure could be deemed adequate.

46. Mr. KOLOMA (Mozambique) expressed the thanks of the sponsors of the proposal in document A/CONF.117/C.1/L.58 for the comments made on that text and their satisfaction at the widespread support shown for it. Some of the delegations which had opposed the proposal had stressed the need for an effective instrument for the settlement of disputes on the application and interpretation of the draft convention and had held that provision for compulsory jurisdiction of the International Court of Justice constituted the best solution for the settlement of such disputes.

47. That view underestimated completely the effectiveness of non-judicial means of settlement of international disputes. His delegation fully recognized the need for an effective instrument but disagreed entirely with the assertion that such an effective instrument was to be found only in a clause providing for the compul-

[4] *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), p. 287.

sory jurisdiction of the International Court. The effectiveness of non-judicial means of settlement was in fact fully confirmed by widespread State practice: States had so far resorted much more frequently to such means of settlement of their disputes than to the International Court.

48. The arguments put forward in favour of the compulsory jurisdiction of the International Court had failed to convince his delegation. He stressed, however, that the proposal made by his delegation and that of Kenya did not in any way exclude the possibility of recourse to the Court; it simply left States the freedom to have such recourse by common consent.

49. In conclusion, he indicated that the sponsors of the proposal in document A/CONF.117/C.1/L.58 maintained their position and requested a vote on their proposal.

50. The CHAIRMAN put to the vote the proposal for a new article dealing with the settlement of disputes which had been submitted by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1/Corr.1).

The proposal was rejected by 36 votes to 21, with 10 abstentions.

51. The CHAIRMAN said that, following the rejection of the proposal for a new article submitted by Denmark and the Netherlands, the proposal by those same delegations for an annex to the convention (A/CONF.117/C.1/L.57) had now lost its purpose and he would therefore not put it to the vote.

52. He next invited the Committee to vote on the proposal for new articles and an annex, also dealing with the settlement of disputes, which had been submitted by Mozambique and Kenya (A/CONF.117/C.1/L.58).

The proposal was adopted by 50 votes to 2, with 13 abstentions.

53. Mr. MAAS GEESTERANUS (Netherlands), speaking in explanation of vote, said that his delegation had voted against the proposal by Mozambique and Kenya because, in its view, those provisions did not afford the necessary, and adequate, protection of the interests of the parties concerned.

54. Mr. MONNIER (Switzerland) explained that his delegation had voted in favour of the proposal by Denmark and the Netherlands. Following the rejection of that proposal, his delegation had nevertheless been able to vote in favour of the proposal in document A/CONF.117/C.1/L.58 because that proposal made provision for compulsory conciliation, as well as for a form of third-party settlement of disputes.

55. The system which the Committee had just approved constituted a bare minimum machinery for the settlement of disputes on the interpretation and application of the draft convention. He would almost say that it constituted an inadequate minimum. His delegation had nevertheless voted in favour of that system because it contained the element of third-party settlement.

56. He welcomed the suggestion by the Netherlands representative that an attempt should be made to develop a compromise formula which would retain the method of judicial settlement and compulsory arbitration for the settlement of disputes relating to certain matters. He was convinced that a compromise formula on those lines would enhance the prospects of acceptance of the whole convention by many countries, including his own.

57. Mr. OESTERHELT (Federal Republic of Germany) explained that his delegation had abstained in the vote on the proposal in document A/CONF.117/C.1/L.58 for the sole reason that, in its view, that proposal did not constitute an adequate solution in the case of the present draft convention. The reasons for that position had been stated by his delegation at the previous meeting during the discussion of the subject of provisions concerning the settlement of disputes. His delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 for the reasons already given in its earlier statements.

58. Mr. SKIBSTED (Denmark) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.58 because it considered that the present draft convention needed an effective and compulsory provision on the settlement of disputes. In its view, the text of the draft convention contained references to many imprecise concepts which were not unanimously accepted by the international community. The reference to those matters made it absolutely essential to include in the text an effective clause concerning the settlement of disputes. The system proposed in the above-mentioned document would not be of assistance in solving disputes arising in connection with the interpretation and application of the present draft convention. The wording which the Commission had just adopted would not make for effectiveness in that regard.

59. Mr. DOS SANTOS E S. BRAVO (Angola) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because practice had shown that the system of compulsory jurisdiction of the International Court of Justice was incompatible with the sovereignty of States. It was significant that out of over 150 States Members of the United Nations, only 46 had accepted the optional clause providing for the compulsory jurisdiction of the International Court of justice under Article 36, paragraph 2, of the Statute of the Court. There could thus be no doubt that the overwhelming majority of members of the Organization were not in favour of the compulsory jurisdiction of the International Court.

60. Mr. MOCHI ONORY di SALUZZO (Italy) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 as it established machinery for the settlement of disputes that was suited to a convention such as the present one, which contained many vague terms whose interpretation could give rise to disputes.

61. His delegation had abstained in the vote on the proposal in document A/CONF.117/C.1/L.58 because the provisions it contained were insufficient for the purpose of settlement of the disputes which might arise in connection with the application of interpretation of the draft convention.

62. Mr. PASTOR RIDRUEJO (Spain) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 for the reasons it had already given at the previous meeting in the course of the discussion in the Committee on the question of settlement of disputes.

63. Following the rejection of that proposal, his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.58, despite its inadequacy for the intended purpose, because it had at least the merit of restricting in some degree the freedom of choice of means of settlement by making provision for compulsory conciliation.

64. Mr. KÖCK (Holy See) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because it strongly believed that compulsory jurisdiction or arbitration, constituted the most efficient, and in some cases in the last resort the only possible, way to secure a final, peaceful settlement of an international dispute.

65. Since, however, that proposal had not been adopted—a fact which his delegation viewed as a retrograde step in the progressive development of international law—his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.58, in the belief that it was better to have in the draft convention some procedure for the settlement of disputes—deficient though it might be—than to have no procedure at all.

66. Mr. DALTON (United States of America) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because it embodied the right approach to the question of settlement of disputes for the present draft convention.

67. Following the rejection of that proposal, his delegation had also been able to vote in favour of the proposal in document A/CONF.117/C.1/L.58 simply because it deemed it marginally preferable to have some provision on the settlement of disputes in the convention that to have nothing at all. The provisions contained in the proposal just adopted were, in fact, quite inadequate for the intended purpose and he believed that their inclusion in the text could well affect the attitude of many countries towards the convention as a whole.

68. Mr. GÜNEY (Turkey) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1, and in favour of the proposal in document A/CONF.117/C.1/L.58, for the reasons indicated in its statement made at the 43rd meeting of the Committee of the Whole.

69. Mr. ECONOMIDES (Greece) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1. It had, however, abstained in the vote on the proposal in document A/CONF.117/C.1/L.58 because those provisions were inadequate for dealing with the difficult problems of interpretation and application to which the convention would give rise.

70. Mr. SUCHARIPA (Austria) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 for the reasons it had given at the previous meeting. Following the rejection of that proposal, it had voted in favour of the proposal in document A/CONF.117/C.1/L.58 for reasons similar to those given by the delegation of Switzerland.

71. The text adopted by the Committee of the Whole required improvement in order to make it suitable for inclusion in the draft convention. He hoped that such improvement might be effected at a later stage.

72. Mr. THIAM (Senegal) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 and had subsequently voted in favour of the proposal in document A/CONF.117/C.1/L.58. He regretted that it had not been possible to develop a compromise formula to reconcile the two proposals before the vote just taken. His delegation still saw a need for such a compromise formula.

73. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because it was generally in favour of such a provision on the compulsory settlement of disputes. Such a provision was particularly important in the present convention, for the reasons which his delegation had already explained in the course of the debate.

74. Upon the rejection of that proposal, his delegation had found it necessary to vote in favour of the one contained in document A/CONF.117/C.1/L.58 because the Committee did not have before it any other proposal on the subject of the settlement of disputes. He wished to stress, however, the inadequacy of the provisions in the text just adopted, particularly for the present draft convention.

75. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 essentially because it believed that the system of compulsory jurisdiction was incompatible with the sovereignty of States and with their freedom to choose the means of settlement of their disputes and their freedom to accept or not the jurisdiction of the International Court of Justice.

76. Should a dispute arise with regard to the interpretation or application of the provisions of the present draft convention, that dispute should be dealt with by means of conciliation and negotiation before any question arose of an agreement between the parties to refer the case to the International Court of Justice. It was for those reasons that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.58.

New article (A/CONF.117/C.1/L.60) (*concluded*)

77. Mr. FAYAD (Syrian Arab Republic) said that, in the light of discussions with a number of delegations, his delegation wished to revise the text of the proposal it had submitted in document A/CONF.117/C.1/L.60. The revised text would read:

> "No provision in the present convention is considered as affecting the right of any people represented by an organization recognized by the United Nations and any international regional organization

to request measures to safeguard their rights in the light of the right of self determination and the principle of permanent sovereignty of every people over its wealth and natural resources."[5]

78. He requested that his delegation's proposal, as thus revised, should be voted upon by the Committee.

79. Mr. KOREF (Panama) asked the representative of the Syrian Arab Republic to whom he envisaged that the request referred to in his delegation's proposal might be addressed.

80. Mr. FAYAD (Syrian Arab Republic) said that an organization which was recognized by both the United Nations and an international regional organization because it represented a people could make such a request to the United Nations or to any State which had a direct relationship with the territory which that organization represented. In fact, such an organization could addresss the request to the international community, either collectively or individually.

81. Mr. ROSENSTOCK (United States of America) said that, even as revised, the proposal of the Syrian Arab Republic remained unacceptable to his delegation. In his view, it did not constitute a significant step towards a middle ground. It was completely irrelevant to the present draft convention and its adoption would affect the attitude of his delegation towards the convention as a whole. It was unacceptable, moreover, on two specific grounds. First, it related only to the rights of some people to self-determination whereas, under the Charter of the United Nations, all peoples had an equal right to self-determination. Second, it arrogated special rights for certain "organizations", which was a very vague term.

82. Mr. ECONOMIDES (Greece) said that his delegation was not prepared to take an immediate decision on the revised Syrian proposal. When the proposal had first been introduced, he had had the impression that it was essentially a safeguard clause. However, on further consideration he perceived that that was not the case. If a provision of that nature was to be inserted in the draft convention it must be formulated as a true safeguard clause, similar to articles 5 and 6. That would require the phrase "as affecting" to be replaced by "as prejudging". In any case, he would wish to see the revised proposal in writing.

83. Mr. AL-KHASAWNEH (Jordan) said that his delegation would have to vote against the proposal of the Syrian Arab Republic. The whole idea of that proposal was irrelevant to the draft convention and a court responsible for interpreting the proposed article would have difficulty in understanding the phrase "request measures to safeguard".

84. The formulation was more appropriate to a United Nations resolution than to a norm of positive law. The provision might well lead to *a contrario* arguments to the effect that organizations not recognized by the United Nations were deprived of the right to request safeguard measures—which would constitute infringement of the equal right of all peoples to self-determination.

85. Mr. NATHAN (Israel) referred to the statement he had made at the 42nd meeting of the Committee when the Syrian proposal had first been introduced. In his delegation's view the revised proposal was just as irrelevant to the framework and contents of the draft convention and was therefore totally unacceptable.

86. Mr. IRA PLANA (Philippines) said that the revised Syrian proposal was substantially different from the text in document A/CONF.117/C.1/L.60. As he had already stated, the Philippines adhered to the formula used by the United Nations which specifically referred to national liberation movements as such. His delegation's decision would be guided accordingly.

87. Mr. MOCHI ONORY di SALUZZO (Italy) observed that in the revised Syrian proposal the expression "national liberation movements" had been replaced by "any people represented by an organization". He asked the Expert Consultant what the legal scope of the latter formulation would be. Before commenting on the substance of the revised proposal, his delegation would like to see the latter in writing.

88. Mr. KÖCK (Holy See) asked the Expert Consultant whether the phrase "affecting the right . . . to request that measures be taken" should be construed as referring merely to the right to make such a request or to the right to have appropriate measures taken.

89. The CHAIRMAN announced that the representative of the Secretary-General of the United Nations was present to reply to the question which the representative of the Netherlands had raised at the 42nd meeting of the Committee of the Whole.

90. Mr. MAAS GEESTERANUS (Netherlands) recalled that his question had been whether the United Nations could take protective measures if a request that it do so was addressed to it, in accordance with the proposal under consideration, by an organization recognized by the United Nations and any international regional organization.

91. Mr. FLEISCHHAUER (Legal Counsel of the United Nations representing the Secretary-General) said that it was difficult to give a general answer to the question. There was certainly no rule in the Charter of the United Nations or in international law which would totally bar the United Nations from replying positively to a request such as was envisaged in the proposal of the Syrian Arab Republic. However, such a request would have to be examined and decided upon by the competent organ in each individual case.

92. Mr. BEDJAOUI (Expert Consultant) referred to the views he had expressed at the 43rd meeting on the text of the proposal submitted by the Syrian Arab Republic. He observed that in the revised proposal the term "national liberation movements" had been replaced by "any people represented by an organiza-

[5] Subsequently issued under the symbol A/CONF.117/C.1/L.60/Rev.1.

tion". He had been asked whether the right of such an organization was limited to the making of a request or whether the organization had right also to action in response to that request. He read the text simply in the terms in which it had been submitted by its sponsor. He took the concluding phrase to mean that all peoples enjoyed the right of self-determination and were entitled to benefit from the protection which might be afforded by application of the principle of permanent sovereignty over natural resources.

93. The CHAIRMAN suggested, in view of the desire of a number of delegations to see the revised proposal of the Syrian Arab Republic in writing,[6] that action on the proposal should be deferred.

It was so decided.

The meeting rose at 12.35 p.m.

[6] Subsequently circulated as document A/CONF.117/C.1/L.60/Rev.1, which was not, however, put to a vote in the Committee of the Whole.

A draft resolution on the question (A/CONF.117/L.1) was submitted by the Syrian Arab Republic to the Conference at its 10th plenary meeting, on 7 April 1983, when it was adopted by 45 votes to 1, with 25 abstentions. For the text of the draft resolution, see volume II, section F.