



General Assembly

Distr.
GENERAL

A/44/460
24 August 1989
ENGLISH
ORIGINAL: ARABIC/ENGLISH/
FRENCH/RUSSIAN/
SPANISH

FORTY-FOURTH SESSION
Item 143 of the provisional agenda*

PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Report of the Secretary-General

CONTENTS

	<u>Page</u>
I. INTRODUCTION	3
II. REPLIES RECEIVED FROM MEMBER STATES	4
Argentina *	4
Bolivia	5
Byelorussian Soviet Socialist Republic	a
Chad	11
Dominica	12
Libyan Arab Jamahiriya	12
Romania	14
Spain (on behalf of the Twelve States members of the European Community)	17

* A/44/150.

CONTENTS (continued)

	<u>Page</u>
III, REPLIES RECEIVED <i>FROM</i> INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS..	18
A. United Nations specialized agencies and related organisations	18
International Labour Organisation	18
United Nations Educational, Scientific and Cultural Organization .	19
World Health Organization *.....*.*.....	22
Universal Postal Union	23
World Intellectual Property Organization	24
International Atomic Energy Agency	25
General Agreement on Tariffs and Trade *.....****....*	25
B. Other international intergovernmental organisations	26
Council of Europe	26
<u>Annex.</u> Communication from the I..cernational Law Association	31

I. INTRODUCTION

1. On 9 ~~December~~ 1988, the General Assembly adopted resolution 431163, entitled "Peaceful ~~settlement of~~ disputes between States", paragraphs 1 to 5 of which read as follows:

~~"The General Assembly,~~

~~"...~~

"1. ~~Again urges~~ all States to observe and promote in good faith the provisions of the Manila Declaration on the Peaceful Settlement of International Disputes in the settlement of their international ~~disputes~~;

"2. ~~Stresses~~ the need to continue efforts to strengthen the process of the peaceful ~~settlement~~ of disputes through progressive development and codification of international law and through enhancing the effectiveness of the United Nations *in* this field;

"3. ~~Calls upon~~ Member States to *make* full use, *in* accordance with the Charter of ~~the~~ United Nations, of the framework provided by the United Nations ~~for~~ the peaceful settlement of disputes and international problems;

"4. ~~Requests~~ the Secretary-General to submit to the General Assembly at its forty-fourth session a further report containing the replies of Member States, relevant United Nations bodies and ~~specialized~~ agencies, regional intergovernmental organiaations and interested international legal bodies on the implementation of the Manila Declaration and on ways and means of increasing the effectiveness of this instrument;

"5. ~~Decides~~ that the question of the peaceful settlement of disputes between States shall be considered at its forty-fourth session as a separate agenda item, in conjunction with the item of the provisional agenda entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization."

2. By a note dated 17 February 1989, the Secretary-General invited the Governments of Member States to submit the replies referred to in paragraph 4 of resolution 43/163. A similar request was transmitted to the President of the Security Council and the President of the International Court of Justice and, by a letter dated 17 February 1989, to the ~~specialized agencies~~ and the International Atomic Energy Agency (IAEA), regional intergovernmental organizations and interested international legal bodies.

3. As at 11 August 1989, replies had been received from Argentina, Bolivia, the Byelorussian Soviet Socialist Republic, Chad, Dominica, the Libyan Arab Jamahiriya, Romania, Spain (on behalf of the Twelve States members of the European Community), as well as from the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Universal Postal Union (UPU), the World Intellectual

Property Organisation (**WIPO**), the International Atomic Energy Agency (IAEA), the General Agreement **on** Tariffs **and** Trade (GATT) and the Council of Europe. A communication has **also** been received **from** the International Law Association. **Any** further **replies** will be reproduced **in** addenda to the present report,

4. Communication⁶ have been received **from** the **Byelorussian** Soviet Socialist Republic (**A/44/238** and **Corr.1**) and the Union **of** Soviet **Socialist** Republic⁸ (**A/44/171**) advising of their withdrawal **of** reservations made previously concerning non-recognition of the compulsory jurisdiction **of** the International Court of **Justice** in respect of agreement⁸ relating to human **rights**.

II. REPLIES RECEIVED FROM MEMBER STATES

ARGENTINA

[Original : Spanish]

[24 May 1989]

1. The Argentine Republic favour⁶ the mean⁸ set forth in the Charter of the United **Nations** for the peaceful settlement of **disputes**, and ha⁸ demonstrated **this** in practice by the peaceful resolution, through the signing **of** a Treaty of Peace and Friendship, of the problem between Argentina and the Republic of Chile,

2. With respect to the **implementation of** the **Manila** Declaration on the Peaceful Settlement of International **Disputes**, the Argentine Government ha⁸ adopted measures which are in accordance with the letter **and** spirit of the aforementioned Declaration.

3. In **this connection**, the Argentine Government affirm⁸ once again its interest **in** arriving at a peaceful and lasting **settlement of** the dispute with the United Kingdom of Great Britain and Northern Ireland over sovereignty and other pending problem⁶ with respect to the **Malvinas**, and **its r adiness** to begin immediate negotiation⁸ in accordance with the provision⁶ **of** the resolution⁸ adopted by the General Assembly on this question.

BOLIVIA

[Original; Spanish]

[12 July 1989]

1. Territorial and border **disputes** played an important role in the history of the formation and development of the Latin ~~American~~ States. Such disputes, which arose from the need to set the boundaries of State~~s~~ that became independent in the early nineteenth century, obviously had a **major** impact on the historic process whereby **States** affirmed their nationhood by using **various maans of** peaceful settlement, the most prominent being arbitration, particularly at the turn of the twentieth century. That process **made a major** contribution to international law,
2. Those territorial or border disputes (especially those which occurred at the **time** when new States were formed) **arose** not only from difficulties created by imprecisions, *omissions* and *error~~s~~* in the boundaries drawn in colonial times but also in **some cases** from expansion and conquest, economic factors, and political, strategic and military factors.
3. Many **such disputes** have yet to be settled, **Some** date back many years, while other~~s~~ are the result of the emergence of **new** factors. **We must** now undertake their settlement in a renewed spirit of accommodation and good faith, for their perpetuation has a very serious adverse impact on the policy **of** unity necessary to Latin American integration. Procedure~~s~~ will have to be worked out in the light **of** the present situation while drawing on experience, but the use **of** any of these many and varied procedure~~s~~ must involve a renunciation of the **use** of force and the recognition that the peaceful settlement of territorial or border **disputes** in Latin America *is* essential to a continental policy of development and progress in **solidarity**. A multidisciplinary approach must therefore be adopted taking *into* account all of the method~~s~~ and procedure~~s~~ of the **various** disciplines involv~~ed~~. The methodological **analysis must** be accompanied by the **recognition** that an intense, overall effort **must** be made at all levels to alert Latin American public opinion to the need to **seek**, with sincerity and without atavistic passion, the peaceful settlement of all **outstan**ing territorial disputes in Latin America.
4. The persistence of unresolved disputes gives rise to tensions, costly and dangerous arms races and potential situation~~s~~ of violence, which are unacceptable. When we speak of unresolved disputes, we mean both those which, legally speaking, can be **classified** as cases in which a dispute or difference in the strict legal sense exists, and all those situations in which such a definitiou **may** be scientifically and legally questionable but which, objective~~ly~~ speaking, give rise to tension and confrontation.
5. With regard to the procedures Eor settling such disputes, it is clear that the range of possibilities is sufficiently broad to **make** it possible to choose those **most** suited to the nature and particular elements of each case. In very many cases, territorial or border disputes in Latin America ~~were~~ settled peacefully **by** means of arbitration. ~~In~~ fact, in the latter half ~~of~~ the nineteenth century and for most of ths present century, arbitration as a prosedure for the peaceful

settlement of border **disputes** was used more widely in Latin America than anywhere **else**. There is no question that arbitration played a very important **stabilizing** role in the past, although **its use** to settle such **disputes** or differences could perhaps be **said to be** on the **wane** today. An exception is one recent, highly **controversial**, arbitral award, which failed to **settle** the **dispute** over the Beagle **Islands**; the matter was **subsequently** dealt with through papal mediation and direct negotiation, since those procedures **were** felt to be **more** useful and effective in contemporary Latin America.

6. With **all** the reservations just mentioned, the use **of** arbitration in Latin America helped to settle a large number **of** territorial or border disputes above all between 1885 and 1925 but also **in some** very important cases before and after those **dates**.

7. The subsequent evolution **of** arbitration and, above all, the present crisis in that procedure as a mean⁶ of settling territorial disputes, did not and could not negate its positive legacy. Today, although it could be applied in some cases, it **seems to** have been overtaken by other procedures, **Major** outstanding **issues** (between Colombia and Venezuela concerning the delimitation of the lagoons, sea-bed and **subsoil** of the Gulf of Venezuela; between Venezuela and Guyana concerning the territory of the **Essequibo** region of **Guyana**; between Chile and Bolivia; between Peru and Ecuador! and between Argentina and the United Kingdom concerning the **Malvinas**) will be settled preferably by direct negotiation, good offices or mediation.

8. It is absolutely essential, however, that we carry **out** a thorough legal, political and historical study **of** the use **of** arbitration to settle territorial and border **disputes** in Latin America, if we **are** to work **successfully** for the settlement **of** territorial and border disputes that have **so far eluded** a just settlement and **whose** indefinite persistence is detrimental to the common destiny of all the people⁶ of Latin America,

9. Major effort⁸ have been made to this end, though with little **success**. For instance, on 30 April 1948, the Ninth International Conference of American States held at Bogota, which gave **rise** to the Organization of American States (**OAS**), also signed the American Treaty on Pacific Settlement, called the "**Pact of Bogotá**" pursuant to its article IX.

10. The text of the Pact of Bogota is today identical to the original text drawn up in 1948. The **OAS** Charter, as amended by the **Cartajena** Protocol of 1985, also envisages the peaceful settlement of disputes (arts. **2 (c)**, **3 (h)**, **23**, **26**, **81**, **84**, **86** and **87**). At the world level, articles 12 to 15 of the League of Nations Covenant had already envisaged the peaceful settlement of disputes, but the League had the serious drawback of requiring unanimity for important decisions and therefore failed to achieve its goals. In any event, Chapter VI of the Charter of the United Nations deals with the peaceful settlement of disputes. Article 33 states that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a peaceful solution by any of the means existing under international law.

Should such means fail, the parties are required to **refer** the dispute to the Security Council.

11. The **Security** Council, in the **case** of threats to the peace, may recommend appropriate **procedures** or methods of adjustment, but it **must** first investigate the dispute or difference and propose an in-depth solution. If this solution is rejected and there is any threat to the peace, breach of the peace, or act of aggression, the Security Council may, in addition to making recommendations, decide what measures not involving the **use** of armed force are to be taken. In other words, the **Security** Council **may** recommend and also order, and if its recommendations or orders are disregarded, it **may** take punitive action, such as **asking** States Members of the United Nations to break off diplomatic relations with the State having disregarded the Council's recommendations.

12. The provisions outlined above show clearly that, over the years, the international community at both regional and world levels has been searching constantly for peaceful means that would make a significant contribution to settling disputes **among** States. In the past decade, we have seen that the Manila Declaration is a legal and political instrument that is capable of finding peaceful solutions to international disputes because it embodies the principle of the responsibility of States for preventing and settling disputes on the basis of **norms** and principles of international law. It thus offers each State party the possibility, in the settlement of **disputes**, of identifying common interests or positions through bilateral and multilateral consultations. We have also **seen** that the Manila Declaration seeks to ensure respect for and compliance with the provision of the Charter when mechanisms for strengthening the effectiveness of the **United Nations** in the area of international relations have to be put into practice.

13. The Manila Declaration is guided by the principle of prevention of **disputes** and the use of other peaceful methods, such as restricted consultation through a commission of investigation sent by the Security Council, the **appointment** of special representatives of the Secretary-General, or requesting an opinion from the International Court of **Justice**, as mechanisms for making the United Nations effective.

14. That is why it is maintained that the Manila Declaration is the starting point **for** fulfilling the purposes and principles of the Charter in this area, since it enables Member States to settle their differences equitably on an equal legal and political footing and on the basis of sovereign equality of States, by peaceful means and rejecting the **use** of armed force.

15. **More** than any other **State**, Bolivia has suffered the rigours of armed conflict, with consequences that undermine the principles and norms of international law. We are referring to the Pacific War of 1879, in which Bolivia, after losing a large part of its territory and its access to the Pacific Ocean, was forced under pressure of arms to sign a treaty that had devastating consequences for the country's development.

16. It was for all of the above reasons that, when the item entitled "Peaceful settlement of **disputes** between States", was discussed in the Sixth Committee of the General **Assembly** on 19 October 1988, the delegation of Bolivia supported the **Romanian** proposal to set up a United Nations commission of good offices, mediation or conciliation, based *on* the sovereign equality of States, to implement the Manila Declaration and **ensure** respect for the principle⁶ of the Charter of the United **Nations**, thereby strengthening multilateralism and ensuring that nations have confidence in the Organisation.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[26 June 1989]

1. The **Byelorussian** SSR reaffirms its commitment to the principle of the peaceful settlement of dispute⁶ between States and favours enhancing the effectiveness of the United Nations in this area of its activities.

2. **Efforts** to promote the **peaceful** settlement of disputes between States should not only strengthen the effectiveness of the means provided for under the Charter of the United Nation⁶ for the peaceful settlement of conflict⁶ and **disputes on** the basis of a free choice of such means by the parties to the dispute, but also contribute to their further development.

3. The **harmonization** of bilateral and multilateral relations in many cases also requires the **development** of new forms of international relations, the **internationalization** of dialogue and the negotiation process and the exclusion of ideology from relations between States.

4. The greater peace-making role played recently by the United Nations has once again demonstrated the **Organization's** ability to help its members face formidable challenges and pursue the humanisation of international relations.

5. **By** virtue of its very nature and purpose, the United Nations must promote the strengthening of the international legal order and legality by ensuring unswerving observance of the Charter by all States and affirming the primacy of international law in politics. In the nuclear and space age, the effectiveness of international law must be based not on force but on structures that **reflect** the balance of interests of States and on agreed collective measures.

6. The concept of a comprehensive approach to international security put forward in the United Nations by the group of socialist countries is designed to enhance the **Organization's** role in settling regional conflicts on the basis of the principles laid down in the Charter, and offers a real way of building a safe world where political and legal means must prevail in solving problems.

7. In the period since the adoption of the Manila Declaration, the Byelorussian SSR has given all-round support to the process of elaborating and

adopting international instruments aimed at reducing international **tension** and using a constructive approach in solving international problems in the spirit of the new political thinking.

8. The **most** important of such instruments include the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of **Force** in International Relations (resolution **42/22** of 18 November 1987) and the Declaration on the Prevention and Removal of Disputes and Situations Which May **Threaten** International Peace and Security and **on** the Role **of** the United Nations in this Field (resolution **43/51** of 5 December **1988**), which were adopted by the General Assembly at its forty-second and forty-third sessions, respectively.

9. The basis for putting into practice the concept of the primacy of international law in international relations is the full and non-selective implementation of the provisions of the Charter of the United Nations by all Member States.

10. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization should play **a major** role in formulating this concept.

11. The Byelorussian SSR attaches importance to the elaboration within this body of an international instrument that for the first time in the practice of the United Nations would affirm the importance **of** an international investigation and fact-finding institute as **an** essential component of the Organization's peace-making potential. This component should promote the strengthening **of** trust, predictability and stability in the world. Such an instrument could contain a broad range of investigative and fact-gathering mechanisms and methods that States and United Nations bodies could use in order to obtain the most comprehensive information on disputes and conflicts, anticipate and prevent them, bring about political settlements and carry out impartial monitoring of compliance with settlement agreements.

12. The Byelorussian SSR supports the proposal to establish within the United Nations a commission of good offices, mediation or conciliation as a mechanism for settling disputes between States on the basis of their sovereign equality and observance of the principle of the free choice of means, in keeping with their commitments under the Charter and the principles of international law.

13. It would also be important for the Special Committee to complete the preparation of the handbook containing a wide range of mechanisms and means for the peaceful settlement of disputes and conflicts, which States could use in their mutual relations. This would be a valuable practical manual for States and would serve as a unique guide for their activities **in** the peaceful settlement of disputes and disagreements.

14. Under the Charter, the Security Council has primary responsibility for maintaining international peace and security. In this connection, greater use should continue to be made of the Council's formal and informal consultation mechanisms with the participation of the Secretary-General and the parties directly

concerned. Periodic meetings of the Council at the foreign minister level during **or immediately before** a session of the General Assembly could play a positive role.

15. We **feel** that it would **be useful to entrust the Special Committee** with **considering** questions concerning provisional **measures** taken by the Security Council under **Article 40** of the Charter to **eliminate** crisis situations and regional **conflicts**, to **impose** sanctions against States having **violated** the peace and failed to carry out decisions of the Council, **and to enhance the effectiveness** Of the mechanism for gathering facts on and investigating **international disputes** and conflicts,

16. We **believe** that it is necessary to **make greater use of the** possibilities **offered** by the General Assembly. The increased **impact** of its **resolutions** and **decisions** adopted on the basis of consensus and enhanced **effectiveness of the mechanism** for monitoring compliance with its resolutions would assist efforts to **make fuller use of the General Assembly's potential**. Special sessions of the General Assembly **devoted to specific** questions of ensuring **comprehensive security** could **become** an integral part of this mechanism.

17. The Byelorussian SSP favours **further** expanding the role of the **Secretary-General** in **questions** relating to maintaining **international peace and security**. The Secretary-General could request the Security Council to convene meetings so that he could inform the Council on a regular basis about the situation in **areas of conflict** and submit reports on questions relating to the maintenance of **international peace and security**.

18. The International Court of Justice also has an important role to play **in** the settlement of international disputes. The **letter** from the Minister for Foreign Affairs of the Byelorussian SSR to the Secretary-General issued in April 1989 (A/44/238 and Corr.1) should be viewed as confirmation of the growing importance that the **Republic** attaches to the Court. The letter states that the Byelorussian SSR, mindful of the **need** to affirm the primacy of law in politics and to expand **the** role and potential of **the International Court of Justice**, has taken steps to withdraw its reservations concerning the jurisdiction of the Court in respect of a number of international legal instruments to which the Republic is a party.

19. In order to prevent imminent **armed** conflict, the possibility of using United Nations peace-keeping operations must be taken into account as an important and **integral part of multilateral political guarantees of peace** and as a means for establishing **comprehensive security** by making it possible to improve the situation in areas of **conflict**, avert **imminent** conflict, reduce the burden of military **expenditures** and enhance prospects for development. United Nations peace-keeping operations should be used increasingly for preventive purposes. The Security Council could, after consultations with the **relevant** regional organizations, establish United Nations observer posts in explosive regions of the world.

20. We believe that it would be advisable to send special missions, upon the decision of the Security Council, to investigate situations related to mutual recriminations.

21. The peaceful settlement of international disputes should be viewed as one of the main areas of the activities of the United Nations and, in particular, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation. The Byelorussian SSR, for its part, is prepared to continue to co-operate in implementing the provisions of United Nations decisions on the peaceful settlement of disputes and in the elaboration and adoption of new agreed practical measures to settle disputes and conflicts between States or ensure their timely prevention on the basis of international agreements.

CHAD

[Original: French]

[13 June 1989]

1. Under the terms of Article 33 of the Charter of the United Nations on the peaceful settlement of disputes, the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. This principle leads to the following conclusions:

(a) The commitment of the States Members of the United Nations to resolve peacefully, through bilateral or multilateral negotiations, any dispute the continuance of which is likely to endanger international peace and security;

(b) The obligation of States to resort as a matter of priority to one or the other of the procedures mentioned above;

(c) The peaceful settlement of disputes should enable international peace and security to become a significant element in bringing about détente in international relationships, and stability and progress in the States Members of the United Nations,

3. Yet, in spite of the solemn affirmation of this principle, international relations continue to be disrupted by conflicts of every kind between States, entailing heavy loss of human life and significant material damage.

4. Chad, for its part, has made the Peaceful settlement of international disputes one of the principal foundations of its foreign policy. Its endorsement of this principle has thus led to the re-establishment in October 1988 of diplomatic relations with Libya, which continues to occupy a part of the territory of Chad.

5. With respect to the Manila Declaration on the Peaceful Settlement of International Disputes and to ways and means of increasing the effectiveness of this instrument, the following remarks are relevant:

(A) As part of the continuing effort to strengthen the process of peaceful settlement of disputes, the Manila Declaration could serve as a legal framework within which would be defined a new approach to international relations based on principles of international law and on such elements as respect for promises and the practice of effective solidarity.

(b) Based on its objective of elaborating the provisions of the Charter of the United Nations so as to strengthen that Organization's role as the guarantor of international peace and security, the Manila Declaration, through the gradual evolution of its machinery, procedures and traditions and the applicable law, can become an effective instrument for the peaceful settlement of international disputes.

(c) There can be no doubt that the adoption of this Declaration by the General Assembly will contribute to reducing international tensions and to establishing a climate of peace and confidence in the world. However, even greater progress in international relationships would result if States were to institute and systematically endorse certain practices, in particular the obligation for States to include in any treaties of mutual friendship and co-operation a special provision requesting the parties to a dispute to seek solutions by peaceful means. In implementing such a practice, formulations acceptable to all parties concerned should be sought.

DOMINICA

[Original; English]

{20 June 1989}

The Ministry of External Affairs of the Commonwealth of Dominica wishes to advise that after carefully examining the Manila Declaration on the Peaceful Settlement of International Disputes, the Government of the Commonwealth of Dominica hereby declares its support for the implementation of the said Declaration,

LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]

[10 July 1989]

1. As a member of the United Nations committed to the principles of the Charter and to international treaties and customary law and one which believes in the right of peoples to live in security and peace, the great Socialist People's Libyan Arab Jamahiriya perseveres in cherishing the importance of the principle of the peaceful settlement of disputes. It is a principle that stems from the Charter and from the purposes and principles of the United Nations and there can be no doubt that, if States were able to solve their Problems accordingly, they would build an edifice

for **peace and** a pillar for international security to the **benefit and** advantage of all peoples,

2. The means that promote and make possible the achievement **of** the principle of the peaceful settlement of disputes are **many and** universal. They include the sincere intention of States to respect each other's sovereignty, non-interference in the affairs of others and the application **of** the principle of good-neighbourliness. States must avoid the occurrence **of** problems in the first instance as a matter of principle. If, however, they should actually arise, the international legal bodies within the United Nations system must be accorded the primary **role** in **resolving** international conflicts by peaceful means,

3. States are required to inform the General **Assembly** and the Security Council **of** their conflicts and problems immediately on their occurrence. There are other technical and legal problems that must be submitted to the International **Court** of Justice, whose jurisdiction in the solution of problems between States must be **recognized**. The Jamahiriya also values the role **of** good offices, mediation **and** conciliation in reconciling the viewpoints **of** States in *conflict* and in encouraging them to solve their differences by peaceful **means**,

4. Proceeding from the need to *reinforce* international peace and security and to prevent the **use** of force in international relations, we are **of** the view that international **conflicts must be** resolved by peaceful **means**. **All must** respect the rights of States to choose their own economic, political and social **systems**, and there must be **no interference** with those **systems**. **By this means**, we will reduce the incidence of conflicts between States. The need **for** collective international security must be appreciated, and there must be action for disarmament. In our view, such action would contribute to reducing international conflict and would *increase* the certainty **of** achieving peace. **States must** embark on **establishing** such bilateral and **multilateral relations** as will settle their problems and **ensure** non-aggression *among* them. International organisations have a duty **to** assist States in achieving rapprochement and mutual understanding, to take the initiative in preventing the occurrence **of** international problems and **conflicts** and to anticipate such problems with a speedy solution.

5. In the framework **of** the legal search for ways to promote the implementation of the principle of the peaceful settlement **of** disputes, the Jamahiriya values the role **of** the International Law **Commission**, which is endeavouring to elaborate an international instrument **on** the peaceful settlement of disputes.

6. The great Socialist People's Libyan Arab Jamahiriya is anxious to embody this Principle in the realm of reality. It is bringing to an end its conflict with its southern neighbour, Chad: it has ~~joined the~~ Arab Maghreb Union; and it is working within the framework of African unity for the peaceful settlement of ~~disputes~~ and to promote the end of the Iran-Iraq war.

7. The great Socialist People's Libyan Arab Jamahiriya, proceeding from its just position with regard to the right of peoples to independence, sovereignty and non-aggression, voted in favour of the resolution recommending support for the principle of the peaceful settlement of disputes at the forty-third session of the General **Assembly**.

ROMANIA

[Original: English]

[31 July 1989]

1. The replies requested by the Secretary-General *in* conformity with paragraph 4 of resolution 43/163 of 9 December 1988 on the implementation of the Manila Declaration on the Peaceful Settlement of International Disputes and on the ways and means of strengthening the effectiveness of this document offer another good opportunity for all States to make known their views and the activities undertaken in an essential field of work of the United Nations during the period from 1982 to 1989.
2. On 21 July 1988, Romania submitted a comprehensive reply on this topical issue. The reply was reproduced in full in the report of the Secretary-General (A/43/530 and Add.1 and 2), which served as a basis for the consideration of the item entitled "Peaceful settlement of disputes between States" during the forty-third session of the General Assembly.
3. Romania wishes to reaffirm its position of principle that all conflicts, all disputes and all litigious problems, without any exception, irrespective of their nature, form, cause, or the place where they occur, can be settled by peaceful means through negotiations between the parties directly concerned,
4. Summing up the position of Romania on this subject, President Nicolae Ceausescu made the following statement on 28 June 1989; "Romania reiterates its firm commitment to the cessation of the conflicts existing in various parts of the world and the settlement of disputes between States by negotiations alone." The most recent Romanian policy documents emphasise the fact that Romania will continue to militate for the elimination of the use of force and the threat of use of force in international affairs and for the settlement by exclusively peaceful means of any dispute between States,
5. In this context, Romania welcomes the initiative embodied in the Hague Declaration of the Meeting of the Ministers of Foreign Affairs of the Movement of Non-Aligned Countries to Discuss the Issue of Peace and the Rule of Law in International Affairs (A/44/191) of 29 June 1989, proclaiming a United Nations Decade of International Law to begin in 1990 and conclude in 1999. Particularly topical are the proposals contained in that Declaration on the promotion and enhancement of peaceful methods for the settlement of disputes between States, as well as those concerning the respect for international legal principles against the threat or use of force, intervention, interference and other coercive measures in international relations.
6. On this point, we would underline the harmonious and organic link between the provisions of The Hague Declaration (A/44/191) and the seventh preambular paragraph of General Assembly resolution 43/163 on the peaceful settlement of disputes, emphasising the responsibility of every State to promote a policy of respect for the national independence and sovereignty of other States, non-interference in

internal affairs and good understanding and co-operation, which **is** a basic requirement **for** reducing **tension** and for establishing a climate **of** peace **and** mutual confidence in the world.

7, The detailed position of Romania on the implementation of the Manila Declaration on the Peaceful Settlement of International Disputes has been expressed in paragraphs 3 to 24 of its previous reply, as **reproduced** in the report of the Secretary-General of 6 September 1988 (A/43/530 and Add.1 and 2). The considerations contained in that reply **still** apply,

8. The provisions of the Manila Declaration on the peaceful settlement of international disputes have continued to be reflected in treaties, joint declarations and **communiqués** and in other bilateral and multilateral **documents of** the Member States of the United Nations. The **practice** of Romania in this field **offers** numerous examples that illustrate the **commitment** of this country to the implementation of the principle of **peaceful** settlement of international disputes.

9. Romania has supported, by co-sponsorship and by favourable vote, many resolutions of the **General Assembly** that contain specific provisions on the peaceful settlement of disputes and conflicts in various areas **of the** world or emphasise the need for further measures to strengthen the principle of the peaceful settlement **of** disputes. Thus, in **General Assembly** resolution **43/88** of 7 December 1988, Member States are urged once **again** to refrain from the use or threat of use of **force**, intervention, interference, aggression, **foreign** occupation and colonial domination **or measures of** political and economic coercion, which violate the sovereignty, territorial integrity, independence and **security** of other States. The same **resolution** urges States to seek, through **more** effective utilisation **of the** means provided for in the United Nations Charter, the peaceful settlement of disputes and the elimination of the focal points of crisis and tension, which constitute a threat to international peace and security,

10, General Assembly resolution **43/163** of 9 December 1988 **initiated** by Romania and co-sponsored by 53 **States**, stresses the need to **continue** efforts to strengthen the process **of** the peaceful settlement of disputes through progressive development and codification of international law and through enhancing the effectiveness of the United Nations in this field.

11, In the light of that provision, Romania welcomes the consensus reached in 1969 in the Special **Committee** on the Charter **of** the United Nations and on the Strengthening of the Role of the Organisation on the proposal concerning the resort to a **commission** of good offices, mediation or conciliation **within** the United Nations for the peaceful settlement of international disputes. Romania also welcomes the progress achieved in the elaboration of the draft handbook on the peaceful settlement of disputes **between** States. The report of the Special **Committee** on its 1989 session (A/44/33), which will be considered at the forty-fourth session of the General **Assembly**, contains the necessary elements to ensure a useful debate on these issues.

12. In the light of the request made by the **General Assembly** in its resolution **43/163** that the **Secretary-General** submit a report containing the replies of Member States, United Nations bodies and other **organizations** on ways and means of increasing the effectiveness of the **Manila Declaration**, Romania believes that the Assembly and the Member States could consider the following **measures**:

(a) The reaffirmation, by resolutions of the General Assembly and other international documents, of the need for every effort to be made so that the Declaration is fully observed and implemented by all States and becomes universally known.

(b) The continued consideration, within the United Nations and other international **forums**, of the issue of the peaceful settlement of disputes in all its aspects. The adoption of the Manila Declaration has by **no** means exhausted this item. It is only a beginning, meant to stimulate the work of codification and progressive development of norms and procedures for the peaceful settlement of disputes, as well as the efforts of Member States for enhancing the power of action of the **United Nations** in this field.

(c) The elaboration and adoption of a universal convention on the peaceful settlement of disputes, which should correspond to the present requirements of international relations.

(d) The inclusion of the peaceful settlement of disputes as a priority element in the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law,

13. Romania welcomes the fact that the idea of drawing up a universal legal instrument on the peaceful settlement of disputes which appeared in paragraph 28 of the reply of Romania of 21 July 1988 reproduced in the report of the Secretary-General (A/43/530) was reflected in The Hague Declaration of the Ministers of Foreign Affairs of the Movement of Non-Aligned Countries (A/44/191) adopted on 29 June 1989. The decision of the non-aligned countries to assign to the Working Group of the Co-ordinating Bureau on Peaceful Settlement of Disputes the task of the examination of existing international instruments on the peaceful settlement of disputes with a view to drawing up such a draft universal convention has a major importance in the present context of international affairs. Romania supports this initiative and believes that its implementation through the United Nations will make a valuable contribution to strengthening the principle and the practice of the peaceful settlement of disputes in the conduct of all States.

14. Commending the initiative of the non-aligned countries in proclaiming a Decade of International Law (1990-1999), Romania considers that the implementation of its programme will lead to the strengthening of all means of peaceful settlement of disputes, to the generalisation of the universal respect for the principles and norms of international law and to a better understanding of the role of law in the promotion and maintenance of world peace and security.

15. Romania reaffirms its conviction that universal respect for the principle of the peaceful settlement of international disputes would make a valuable

contribution to the defence of world **peace** and security, and give **new** impetus to the United Nations to better accomplish its supreme **mission**: to save present and succeeding generations from the scourge of war,

SPAIN

[On behalf of the Twelve States members of the European Community]

[Original: English]

[25 May 1989]

1. The Twelve States members of the European Community wish to recall the **common** statement **made on** their behalf by the representative **of Greece** by way of an explanation of vote before the Sixth Committee on 18 November 1988, which still reflects their **position**:

"We belong to the - unfortunately rather small - category **of those** States which, **in** various matters relating to international co-operation, have accepted obligatory and binding dispute settlement **procedures**, whether at the European Court of Justice at Luxembourg, the Human Rights **Commission** and Court at Strasbourg or other international judicial **bodies such as** the International Court of Justice at The Hague,

"This attitude toward the peaceful settlement **of** disputes is a fundamental **and** natural part of the Twelve's view **on** international relations, and it is **a** matter of common knowledge **that** we are strongly in **favour of any** constructive step that might strengthen the principle of peaceful settlement at the universal level. Nevertheless, owing to the content of paragraphs 4 and 5 and part of the preamble, **most** of us have been unable to support the resolution just adopted.

"With regard to paragraph 4, I should like to recall that we joined in the consensus adoption of the Manila Declaration **on** the Peaceful Settlement of International Disputes, and have not changed our Position in that regard. Last year we said that most of us failed to **see** the merits of establishing a questionnaire procedure on the implementation of a Declaration that had been adopted only six years before, and in particular **on** ways and means to increase its effectiveness. It is obvious that such written replies could not remedy the real problem, namely the widespread lack of political will to use already well-established procedures for peaceful settlement of international disputes.

"What is needed and should be repeated **time** and again is a **strong** appeal to Governments to be aware of and to utilise the many existing procedures for settling international disputes that are referred to in the Charter. The logical place for such an appeal is **in** the resolution on the Special Committee on the Charter **of** the United Nations and on the **Strengthening** of the Role of the Organisation, which already deals **with** problems relating to the settlement

of disputes. A separate agenda item and a separate resolution concerning this subject, as envisaged in paragraph 5, seem to most of us to be **superfluous**.

"The reasons stated above have led most of our delegations not to support the resolution, and in particular paragraphs 4 and 5."

III. REPLIES RECEIVED FROM INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

A. United Nations specialized agencies and related organizations

INTERNATIONAL LABOUR ORGANISATION

[Original! English]

[17 March 1989]

1. Reference **is** made to two sets of provisions in the Constitution of the International Labour Organisation (ILO) governing the settlement of disputes **concerning**, firstly, the **observance** of obligations under ratified conventions and, secondly, the interpretation of conventions or of the Constitution itself, and to the extra-constitutional procedure for the settlement of **disputes** concerning trade union rights.

2. The first set comprises articles 26 to 34 of the ILO Constitution, which deal with situations where a member State **is** not satisfied that another member is **securing** the **effective** observance of an international labour convention that both have ratified. The second **set** of constitutional provisions concerns disputes **over** the interpretation of **the** Constitution or of **any** subsequent **convention** concluded under the Constitution.

3. Other procedures that **may** also be of interest are not explicitly provided for under the Constitution. As a result of decisions taken by the Governing Body of ILO and by ECOSOC, there are two additional bodies within ILO competent to hear complaints, including **complaints** by the Government of a State alleging infringements of trade union rights on the part of a member State, even in cases where that member State **is** not a party to the relevant international labour convention. These are the Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association. Of course, both these latter bodies report to the Governing Body, making appropriate recommendations.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL **ORGANIZATION**

(Original : French]

[2 May 1989]

1. The contribution *of* the United Nations **Educational**, Scientific and Cultural **Organisation** (UNESCO) to ~~the~~ resolution in question **is contained** in Major Programme XII **I**, "Peace, International Understanding, Human Rights and the Rights of Peoples", and particularly in **subprogramme** X111.1.1, "Reflection on the **Factors** Contributing to **Peace**".

2. **Activities** since 1987 have been designed to develop the role **of UNESCO** in the teaching and study of international law, including humanitarian law. Essentially, they have taken the following **format** an informal consultation on teaching **and** research in public international law (UNESCO, 2-4 February 1987); an international **seminar** on educational, scientific and cultural factors conducive to peace, including regional co-operation) a post-graduate regional training course on international law; UNESCO publications on international law and peace,

Informal consultation on teaching and research in public
international law

3. At its headquarters from 2 to 4 February 1987, UNESCO held an informal consultation on teaching and research in public international law, which reviewed the **organization's** activities since the **mid-1960s**. The discussions essentially revolved around the following points,

(a) **Teaching**

4. Most of the participants said that there had been a certain regression in the teaching of public international law. This regression is manifested in two ways. On the one hand, in many States there has been a fragmentation of programmes for the teaching of international law, meaning that, at the teaching level, there has been an increase in the number of **specialized courses** limited to more or **less** specific areas of international law. This orientation is due to several factors: an increase in the technical nature of international law, its extension to an increasing number of areas previously left to national law and, without doubt, the expectation by students that they will acquire immediately marketable skills.

5. Although the development of international law requires inevitable specialization, as is true in other legal disciplines, it **must** be remembered that the different parts **of** international law form an indissoluble whole, whose dominant principles and rationale must be understood. Excessive specialization **may** entail neglecting the fundamental principles that underlie the general tenor of international law, at each period of its development. Thus, specialisation **may** also mask the **deep** significance of international law as an expression of a certain culture, based on values which have acquired universal scope over time, and which are essential to the maintenance of world peace and the rapprochement of peoples.

6. The second manifestation of the regression in the teaching of international law can be seen in the optional nature of international law courses. Indeed, this discipline is not always compulsory, even *for jurists and, a fortiori*, economists or political **scientists**, not to mention other students of social or human sciences. As a general rule, even when the courses are compulsory, the number of hours devoted to them is often clearly insufficient,

7. This exchange of views led the participants to express the hope that UNESCO would try to obtain a commitment from States that all students in the faculties of law, economics **and** political sciences will be required to take a course containing a minimum of general knowledge, in order to incorporate the values embodied in the fundamental principles of international law as an important element of general education.

(b) **Research**

8. Several participants underlined the need to adopt a more critical approach to "traditional" international law - which originated in an era when international society was much less heterogeneous than it is now - in view of the diversification of social groups and the appearance of new actors on the international scene. Such an approach would take into account the aspirations of the third world States that have long been excluded from the development of international law. The participants advocated taking a number of different approaches,

9. In particular, it **seems** that, essentially, customary law is nothing more than law originating in the practice of Western States. However, today a practice is developing in the third world States which must be brought to the fore by preparing, with the aid of UNESCO, repertoires of prevailing practice in these States and in the regional and subregional organisations created by them.

10. It was noted that, from the point of view of documentation - without which there could be no research - it would be helpful to distinguish between long-term, medium-term and short-term policy. While it is desirable to have repertoires of practice, such a goal can be reached only in the long term because of the **sizeable** resources required and the difficulty of gathering the available materials.

11. On ~~the~~ other hand, in the short term, it is *no* doubt easier to gear the **research** towards what can be learned about international State practice by means of yearbooks of public international law, such as those published in some States, or at least regional yearbooks. Such initiatives should be encouraged by UNESCO.

12. A number of practical problems must be solved fairly rapidly in order to facilitate the teaching of international law, particularly in **third** world States, which are not as likely as the developed States to have the tools needed to carry out the research such as the basic current or older texts, general or **specialized** bibliographies, data banks or lists of organizations that could provide easily accessible documentation on a particular problem. On this point, UNESCO can make a decisive contribution by helping to solve, in co-operation with other institutions, documentation problems. The preparation of a UNESCO handbook on public international law is a step in this direction,

International seminar on the educational, scientific and cultural factors conducive to peace, including regional co-operation

13. UNESCO held an international seminar on 12-15 October 1987 at Rio de Janeiro, Brazil, *in* co-operation with the International Peace Research Association and the Brazilian Education Society. Thirty specialists from 12 countries of different regions of the world participated in the seminar.

14. The purpose of the seminar was to consider, in particular, a study prepared on the causes and consequences of violations of the principles enshrined in the Charter of the United Nations, the **use** or threat *of* force, foreign intervention, interference in the internal affairs of States and armed aggression,

Post-graduate training course in Africa on international law

15. UNESCO held a regional post-graduate training **course** on international law at Bujumbura on 7-13 January 1988, in co-operation with the University of Burundi. An international team of professors of international law taught the training course in question, in which about 60 persons participated, including **teachers**, national officials, ministry advisers and judges.

16. The participants were divided into working groups to prepare a **mock** tribunal to arbitrate a dispute **among** three States concerning the right *of* transit. To enable the participants to assess the possible ramifications of a dispute of this nature and of the other problems that **might** ensue from it, related questions on land-locked States, State succession in respect of treaties, and State responsibility **were** also discussed.

Publications on international law and peace

17. UNESCO has published several volumes since 1986:

Edward McWhinney. Les Nations Unies et la formation du droit, Relativisme culturel et **idéologique** et formation du droit international pour une **époque** de transition. Paris, **Pedone/UNESCO**, 1986. 292 pages. This work is a translation of United Nations Law Making; cultural and ideological relativism and international law making for an era of transition. New York/London/Paris, Holmes & Meier/UNESCO, published in 1984 (274 p.).

The International Bill of Human Rights. Utrecht, The Netherlands, Institute of Human Rights (SIM), 1986. In English (1986); in French (1988).

International Law. News and information from Asia and the Pacific. Liaison bulletin published semi-annually since December 1986. Bangkok, UNESCO Regional Unit for Social and Human Sciences, Principal Regional Office for Asia and the Pacific.

Chart of **Ratification** of Major International Human **Rights** Instruments as of 1 January 1988. Bilingual, **English/French**. Paris, UNESCO.

Ron/-Jean Dupuy. **La communauté internationale entre le mythe et l'histoire**. Paris, **Economica/UNESCO** (New Challenge6 to International Law), 1987. 182 p.

Nigel **Rodley**. The treatment of prisoners under international law. Paris/London, **UNESCO/Clarendon Press** (New Challenges to International Law, No. 4), 1987. Will appear in Spanish in 1989.

World directory of peace research and training institutions. Paris/London, UNESCO/Berg, 1988. 271 p. Trilingual, English/French/Spanish.

"**América Latina: Enseñanza del Derecho Internacional Público**" (Latin America; teaching of public international law). Caracas, **UNESCO** (URSHSLAC Studies and Documents), 1987. 131 p. In Spanish.

World directory of international law teaching and research institutions. To be published by UNESCO in 1989 in a trilingual edition (English/French/Spanish).

WORLDHEALTHORGANIZATION

[Original; English]

[16 June 1989]

1. The Constitution of the World Health Organization (**WHO**) provides a scheme for the settlement of international disputes, making use of both the contentious and the advisory jurisdiction of the International Court of Justice. A similar provision is contained in the International Health Regulations.

2. While WHO has benefited from an advisory opinion of the International Court of Justice, its member States have not made use of the dispute settlement procedure, probably because matters falling within WHO's competence are not of the kind that give rise to serious dispute at the international level.

UNIVERSAL POSTAL UNION

[Original: English/French]

[28 June 1989]

The Universal Postal Union (UPU) has made provision for three methods of settling disputes between two or more postal administrations concerning the **interpretation** of the Acts of the Union and the responsibility imposed on them by the application of those Acts, namely:

(a) A request, by mutual agreement, for the opinion of the International Bureau as provided for under article 113, paragraph 2, of the General Regulations, this opinion being non-binding upon the parties;

(b) A special compromise solution as provided for under article 127, paragraph 3, of the General Regulations:

(c) Recourse to the arbitration provided for in article 32 of the Constitution: this procedure becomes compulsory in the event that one of the parties decides to resort to it.

"Article 127: Arbitration procedure

"1. If a dispute has to be settled by arbitration, each of the postal administrations party to the case shall select a postal administration of a member country not directly involved in the dispute. When several administrations make common cause, they shall count only as a single administration for the purposes of this provision.

"2. If one of the administrations party to the case does not act **on** a proposal for arbitration within a period of six months, the International Bureau, if so requested, shall itself call upon **the defaulting** administration to appoint an arbitrator or shall itself appoint one ex officio.

"3. The parties to the case may agree to appoint a single arbitrator which may be the International Bureau.

"4. The decision of the arbitrators shall be taken by a majority of votes.

"5. In the event of a tie the arbitrators shall select another postal administration, not involved in the dispute either, to settle the matter. Should they fail to agree on the choice, this administration shall be appointed by the International Bureau from among administrations not proposed by the arbitrators.

"6. If the dispute **concerns** one **of the Agreements**, the arbitrators may be appointed only from among the administrations that are parties to that Agreement. "

WORLD INTELLECTUAL PROPERTY ORGANIZATION

[Original: English]

[17 April 1989]

1. Three of the international treaties administered by the World Intellectual Property Organisation (WIPO) provide a mechanism for the settlement of legal disputes between States party to the treaty **concerned**. The three treaties are the **Paris Convention** for the Protection of Industrial Property (Stockholm Act, 1967; art. 28), the **Berne Convention** for the Protection of Literary and Artistic Works (Stockholm Act, 1967, and Paris Act, 1971; art. 33) and the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and **Broadcasting** Organisations (art. 30). The texts of the articles referred to are virtually the **same**. They provide for the submission to the International Court of Justice by a State party to the treaties of a dispute between it and another State party concerning **its** interpretation or application if the dispute is not settled by **negotiation** or if the **parties** do not **agree** on some **other** method of settlement, As concerns the first *two* mentioned treaties, the mechanism is optional, **i.e.** a State becoming **party** to the treaty may declare that the provisions of the article referred to shall not apply to it.

2. As at 1 January 1989, of the 99 States party to the **Paris Convention**, 74 are and 25 are **not** bound by the **provisions** establishing the **jurisdiction** of the International Court of Justice. Of the latter 25, 20 States chose not to be bound by the said provisions whereas the other 5 are still (and only) bound by the texts of the Convention adopted prior to 1967, **when** the provisions **were** first introduced.

3. As concerns the **Berne Convention**, the situation is as **follows**: of the 82 States party to the **Berne** Convention, 61 are and 21 are not bound by **the** provisions establishing the jurisdiction of the International Court of Justice. Of those States, 14 chose not to be bound by the said provisions whereas the other 5 **are** still (and only) bound by the texts of the Convention adopted prior to 1967, **when** those provisions **were** first introduced.

4. As concerns the Rome Convention, 32 States are party to that Convention and are thus bound by its provisions establishing the jurisdiction of the International Court of Justice.

5. A draft treaty, which was prepared by the International Bureau of WIPO with the **assistance** of the Committee of Experts on Intellectual Property in Respect of **Integrated** Circuits, will be discussed at the Diplomatic Conference for the **Conclusion** of a Treaty on the **Protection** of Intellectual Property in Respect of: Integrated Circuits, to be held in May 1989 at Washington, DC. The draft treaty contains provisions on **consultation** procedures for the settlement of dispute; that

may arise because **one** contracting State believes that another contracting State has not fulfilled its obligations **or** has exceeded its rights under the *treaty*.

6. Under article 12 of the Agreement between the United Nations and **WIPO**, the General Assembly has authorised the latter to request advisory **opinions** of the International Court of Justice **on** legal questions arising within the scope of its competence, other than questions concerning the mutual relationships of the Organisation and the United Nations or other specialised agencies,

7. **Article** 27 of the Agreement between the Swiss Federal Council and WIPO to determine the Legal Status in **Switzerland** of the Organisation ("**the** Headquarters Agreement") calls for the submission by either party to a court of arbitration composed of three members of any difference of opinion concerning the application or interpretation **of** the Headquarters Agreement **that** direct consultations between the parties have failed to settle. Each party is to designate one member **of** the court, and the members thus designated are to choose their **president**; *in* the event of a disagreement between the members as to the choice of the president, the latter is to be designated by the President of the International Court **of** Justice at the request of the members **of** the court of arbitration.

INTERNATIONAL ATOMIC ENERGY AGENCY

[Original: English]

[16 June 1989]

The policy of the International Atomic **Energy Agency** (IAEA) in the area of peaceful settlement of disputes is based **on** the principles of the **Charter** of the United Nations as further elaborated in the Manila Declaration. All agreements to which the IAEA is a party provide for direct negotiations as a primary means to dispute settlement and for the possibility to resort to arbitration and judicial settlement.

GENERAL AGREEMENT ON TARIFFS AND TRADE

[Original: English]

[13 June 1989]

The reply of the General Agreement on Tariffs and Trade (GATT) contains a chronological listing of complaint⁶ under article XXIII of the General Agreement through June 1987, prepared by the GATT secretariat for the Uruguay Round Negotiating Group on Dispute Settlement, **as** well as the text of the decision by the contracting parties on improvements to the GATT Dispute Settlement Rules and Procedures, adopted on 12 April 1989. Both documents are available in the Codification Division of the Office of Legal Affairs of the Secretariat.

B. Other international intergovernmental organisations

COUNCIL OF EUROPE

[Original: English]

[5 June 1989]

1. Provisions concerning **procedures** for the peaceful settlement of disputes between member States of the Council of Europe *are* contained in the European Convention *for* the peaceful settlement of disputes (see I below). A number of other **conventions and agreements** of the Council of Europe also provide for negotiations, **conciliation**, arbitration and judicial proceeding to obtain the peaceful settlement of disputes (see II below).

2. Although the Statute of the Council of Europe does not **contain any** provisions **that directly concern** this question, both the Committee of Ministers **and** the Consultative Assembly, which were set up under the Statute, may seek to obtain the peaceful settlement **of** a dispute. *For* example, the Assembly may **inquire** into the situation and try to conciliate the parties. The Committee *of* Ministers may act as a mediator **and** may make **recommendations** to **Governments** and **invite them to inform it** of the steps taken to comply with such recommendations. Bodies set up by the Committee of Ministers, such as the European Committee on **Cr!me** Problems and the **Standing Committee of** the Convention on the Conservation of European Wildlife and Natural Habitats (see **para.** 34 below) have been **given** the task of facilitating a friendly settlement of **any** difficulty that may arise out of the execution of **certain** Conventions.*

* Article 9 of the **European Convention on the Suppression of Terrorism** (**ETS 90 - 1977**);

Article 10 **of** the second additional Protocol to the European Convention on Extradition (**ETS 98 - 1978**);

Article 10 of the additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (**ETS 99 - 1978**);

Article 17 of the European Convention **on** the Control and the Acquisition of Firearms by Individuals (**ETS 101 - 1978**);

Article 23 of the Convention on the Transfer of Sentenced Persons (**ETS 112 - 1983**) and article 31 of the European **Convention on Offences** relating to Cultural Property (**ETS 119 - 1985**).

/...

I, **The European Convention for the Peaceful Settlement of Disputes**
(European Treaty Series ETS 23 - 1957)

3. Under chapter I of the Convention, the parties shall submit to the judgment of the International Court of Justice all international legal disputes that may arise between them, *in* particular, those concerning!

(a) The interpretation of a **treaty**;

(b) Any question of **international law**;

(c) The existence of **any** fact which, if established, would constitute the breach of **an international obligation**;

(d) The nature or extent of the reparation to be made **for the breach of the international obligation**.

4. For other disputes, or **where** the parties to a dispute have agreed to resort to the procedure of conciliation before that of judicial settlement, **chapter II** provides that the parties shall submit to **conciliation** all disputes that may arise between them. The Convention provides **for** the setting up of a **permanent conciliation commission by the parties concerned or a special conciliation commission**. The Convention contains details **concerning the proceedings of the special conciliation commission**.

5. Arbitration is used in the case of disputes other **than those provided for** under chapter I which have not **been** settled by conciliation, **either because the parties have agreed not to have prior recourse to it or because conciliation has failed** (chap. III).

6. The provisions *of* the Convention do not apply to those disputes which the parties agree to submit to another procedure of peaceful settlement. With regard to disputes provided **for** under chapter I, the parties **may not invoke as between themselves agreements that do not provide for a procedure entailing binding decisions**.

7. The Convention does not affect the application of the provisions of the European Convention of Human Rights.

8. If one of the parties to a dispute fails to carry out its obligations under a decision of the International Court of Justice or under an award of the Arbitral Tribunal, the other party may appeal to the Committee of Ministers of the **Council of Europe**, which may make recommendations with a view to ensuring compliance.

II. Other conventions and agreements of the Council of Europe dealing with the settlement of disputes

9. A number of conventions and agreements of the Council of Europe, *in* addition to making use of negotiations and conciliation to obtain the settlement of a dispute, also provide for the following means of settlement;

(a) Arbitration

10. Article 47 of the European Convention for the Protection of Animals during International Transport (ETS 65 - 1968) provides that **if** a dispute **under the** Convention cannot be settled by the **competent authorities** **it shall be referred to** arbitration.

11. Under article 71 **of the** European Convention on Social Security (ETS 78 - **1972**), if negotiations or an **opinion** given by the Committee of Ministers of the **Council of Europe** fail to settle the dispute, the dispute may be subject to arbitration proceedings.

12. Arbitration proceedings are also provided *for in* the European interim agreement **of** social security schemes relating to old age, invalidity and **survivors** (ETS 12 - 1953) and the European Interim **Agreement of social** security other than schemes for old age, invalidity **and** survivors (**ETS** 13 - 1953). Under article 11 of both agreements, if **negotiation** fails to resolve a dispute it shall be submitted to arbitration. A similar provision is contained in article 20 **of the** European Convention **on social and** medical assistance (**ETS** 14 - 1953).

13. Under article 10 **of the** European Convention **on the** Suppression **of** Terrorism (ETS 90 - **1977**), if a friendly settlement **cannot** be reached the dispute shall be referred to arbitration at the request of any party.

14. Article 18 **of the** Convention on the Conservation of European Wildlife and Natural Habitats (ETS 104 - 1979) deals with the settlement of disputes and provides **that the Standing Committee set up under the Convention shall use its best endeavours to facilitate** a friendly settlement of any difficulty. If the dispute is not settled, it shall be submitted to arbitration at the request of one of the parties, **unless agreed otherwise.**

15. The European **Agreement on** Transfer of Responsibility *for* Refugees (ETS 107 - 1980) also contains an article concerning arbitration. Under article 15, if a dispute is not settled by negotiation or other means, the dispute shall, at the request **of** any party to the dispute, be referred to arbitration.

16. The European Convention on **Consular** Functions (ETS 61 - 1961) requires the parties to a dispute first of all to seek to resolve it by means of negotiation, conciliation or arbitration, **or by any other methods of peaceful settlement** accepted by **mutual** agreement between them (art. 56 - see also **para.** 19 below).

17. Under article 26 **of the** European Convention on Transfrontier Television, if the parties concerned cannot settle a dispute in accordance with the provisions of

article 25 of the Convention they may submit it to arbitration, the procedure for which is provided for in an appendix to the Convention.

(b) Judicial proceedings

The International Court of Justice

18. Paragraph 1 of article 31 of the European Convention on Establishment (ETS 19 - 1955) provides that any dispute concerning the application of the Convention shall be submitted to the International Court of Justice by special agreement or by application by one of the parties to the dispute, unless the parties agree on a different method of peaceful settlement. Paragraph 2 of article 31 provides that after the entry into force of the European Convention for the Peaceful Settlement of Disputes, the parties to that Convention shall apply those of its provisions which are binding upon them to all disputes which may arise between them concerning the establishment Convention. Similar provisions are contained in article 19 of the European Convention on Establishment of Companies (ETS 57 - 1966).

19. Article 56 of the European Convention on Consular Functions (ETS 61 - 1967) provides for procedures for peaceful settlement of disputes by mutual agreement. If the parties do not succeed in settling the dispute, it shall be submitted to the International Court of Justice at the request of one of the parties.

20. The European Convention on State Immunity (ETS 74 - 1972) also enables disputes to be submitted to the International Court of Justice on the application of one of the parties to the dispute or by special agreement, unless the parties agree on a different method of peaceful settlement of the dispute (art. 34, see also para, 21 below).

The European Tribunal

21. The Additional Protocol to the European Convention on State Immunity (ETS 74 - 1972) adds provisions concerning a European procedure for the settlement of disputes that may replace the International Court of Justice. The Protocol establishes the European Tribunal, which may take a decision on the interpretation and application of the Convention.

The European Commission and Court of Human Rights

22. A party to the European Convention on Human Rights (ETS 5 - 1950) may refer to the European Commission of Human Rights any alleged breach of the Convention by another contracting party (art. 24). The procedure is referred to as "inter-State application". The Commission investigates the case and, if conciliation has failed, either of the States party to the dispute may refer the case to the European Court of Human Rights for a decision, providing that the Court's jurisdiction has been recognized. The case may also be referred to the Court by the Commission or by another contracting party to the Convention, if its nationals are alleged to be victims,

23. States are bound to ~~abide~~ by decisions of the Court in any case where they are parties (art. 53) and the Committee of Ministers supervises the enforcement of the decision (art. 54).

24. If the case is not referred to the Court, the Committee **of Ministers decides** whether there has been a **violation** of the Convention and if necessary ensures that satisfactory measures are taken to **give** effect to its decision (art. 32).

25. Article 62 provides that the parties, except by special agreement, will **not** avail themselves **of** treaties, conventions or declarations in force between them for the purpose of **submitting, by** way of petition, a dispute **arising out** of the interpretation or application of this Convention to a means of settlement other **than** *those* provided **for** in the Convention.

ANNEX

Communication from the International Law Association

[Original: English]

[20 March 1989]

At the *Conferences* of the Association held at Seoul (1986) and Warsaw (1988), workshops were held on various aspects of the peaceful settlement of disputes between States.
