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New Trends on Peaceful Settlement of Disputes Between States

Giorgio Bosco*

I. Introduction: The Optional Character of International Jurisdiction

Inter-state disputes arise when perceptions that states have regarding their relative rights and interests come into conflict. A dispute manifests itself when feuding states disagree "on a point of law or fact, a conflict of legal views or of interests between two persons."1 Although states generally agree that disputes should not be settled by the use of force, these same states often resort to war when the conflict cannot be resolved peacefully. The international community, recognizing that war is not always unavoidable, attempts to restrict its excesses through various instruments and conventions loosely described as the "Law of War."2

The notion of war as often necessary remained in vogue until 1945 when the United Nations was formed and made open to "peace-loving nations."3 The peaceful settlement of disputes had always been available, but international law did not require the use of "peaceful means." The Hague Conventions of 18994 and 19075 did not require states to settle their disputes peacefully, and although the Covenant of the League of Nations made some progress by requiring states to give some time for the dispute to "cool down" before the states could resort to hostilities,6 it was the United Nations Charter that marked a watershed in the history of the peaceful settlement of disputes between states. The Charter prohibits the threat or use of force,7 and also imposes an obligation on member states to "settle their international disputes by peaceful means in such a manner that international peace, security, and justice are not

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3 U.N. Charter art. 4, para. 1.
5 Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539.
6 League of Nations Covenant art. 12.
7 U.N. Charter art. 2, para. 4.
endangered.” As a result, international law now imposes on all states the obligation to settle their disputes peacefully.9

The phrase “peaceful settlement of disputes” encompasses a myriad of dispute settlement mechanisms ranging from informal negotiations or “good offices” to binding third party intervention. Historically, the obligation of states to submit to the judicial or arbitral settlement of disputes is in constant tension with the notion of state sovereignty. This Article reviews the evolution of the obligation of states to peacefully settle their disputes, and carefully details the present state of international law in this regard. In particular, the Manila Declaration of 1982, in addition to various proposals made by Italy, are held up as positive progress in the march toward obligatory methods of dispute resolution. The Article concludes that recent developments in the world order may provide an environment in which states feel less constrained by possibly out-moded norms of absolute state sovereignty, and may be more willing to sacrifice part of the same in exchange for a world in which war is not a rule, but rather an aberration.

II. Consent to Judicial Settlement of Disputes

For international disputes to be resolved by judicial means, the consent of the state concerned is always necessary because international law does not provide full “justice” in the domestic sense of the term. Within its own territory, the state rules supreme and can impose compulsory jurisdiction on its subjects to achieve the goals of a well-ordered society. In the international sphere, however, there is no competent sovereign entity to administer justice. The international community has its rules, but its “subjects” retain their sovereignty and do not appear before an international judge unless they have freely accepted to do so.

The principle, affirmed by the Permanent Court of International Justice (PCIJ), that “[i]t is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement,”10 remains valid. However, if a state systematically refused one means of settlement after another it would be violating the obligation of good faith contained in the Charter.11

8 Id. art. 2, para. 3.
11 U.N. Charter art. 2, para. 2.
III. European Systems of Dispute Settlement

The degree of a nation's acceptance of international jurisdiction depends in part on historical and ideological factors. Western European countries, for example, share the same ideals of peace, democracy, and freedom, and have the same foundations of juridical civilization, so it is not surprising that the highest degree of the acceptance of international jurisdiction can be found among these nations. The twelve member states of the European Community have by mutual consent given up a portion of their sovereignty, and accept without exception the compulsory jurisdiction of the Court of Justice of the European Communities for all matters relating to the Treaties of Rome. The scope of the court's jurisdiction is large, which necessarily diminishes the *de facto* or *de jure* jurisdiction of the member states' tribunals.

In the field of human rights, the jurisdiction of the European Court of Human Rights is accepted by all the member states of the Council of Europe which are signatories of the European Convention on Human Rights. The Convention states that "[t]he jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it," although "any of the High Contracting Parties may at any time declare that it recognizes as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention." The jurisdictional loop is completed by the provision which states that "[t]he High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties." In practice, a tight jurisdictional link has been established among the states that are signatories to the Convention, since all the contracting parties now accept the court's jurisdiction. By sacrificing a part of their sovereignty, these contracting states recognize the universal significance of human rights and fundamental freedoms, respect for which—as enshrined in principle VII of the Helsinki Final Act—is essential for peace, justice, and the well-being vital to the development of friendly relations and cooperation among all states.

12 The European Community consists of Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.
15 Id. art. 45.
16 Id. art. 46(1).
17 Id. art. 53.
18 14 I.L.M. 1292, 1295.
The Council of Europe served as the framework in the development of the European Convention for the Peaceful Settlement of Disputes, although the jurisdictional link for this convention is not as tight as that of the European Court of Justice or the European Court of Human Rights. Any contracting party may declare that it will not be bound by chapter II relating to conciliation or by chapter III relating to arbitration. Reservations cannot be made, however, to chapter I, which requires parties to submit all international legal disputes that may arise to the judgment of the International Court of Justice, including those concerning: (1) the interpretation of a treaty; (2) any question of international law; (3) the existence of any fact which, if established, would constitute a breach of an international obligation; and (4) the nature or extent of the reparation to be made for the breach of an international obligation. This formulation is derived from the Statute of the International Court of Justice, but with a substantial difference. While for U.N. member states the acceptance of the court's jurisdiction is voluntary, for the contracting parties of the European Convention this acceptance is mandatory. They can only avail themselves of the provision of article 35 of the Convention, which although not allowing them to escape the court's jurisdiction altogether, permits them to exclude disputes concerning particular cases or clearly specified special matters.

The Convention supplements judicial settlement by providing for political enforcement:

If one of the parties to a dispute fails to carry out its obligations under a decision of the International Court of Justice or an award of the Arbitral Tribunal, the other party to the dispute may appeal to the Committee of Ministers of the Council of Europe. Should it deem necessary, the latter, acting by a two-thirds majority of the representatives entitled to sit on the Committee, may make recommendations with a view to ensuring compliance with the said decision or award.

IV. The Settlement System of the United Nations

The first important principle of the U.N. dispute settlement system is "[t]o bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settle-

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20 Id. art. 34.
21 Id. art. 1.
23 Id.
24 European Convention, supra note 19, art. 1.
25 Id. art. 35, para. 1.
26 Id. art. 39, para. 2.
ment of international disputes or situations which might lead to a breach of the peace." 27 The principal aim of the Organization, i.e. the maintenance of international peace and security, is to be achieved in either of two ways: by collective measures, 28 or by peaceful settlement of disputes. 29 The sentence "in conformity with the principles of justice and international law," 30 refers only to the peaceful settlement of disputes, since collective measures are taken to prevent or repress the use of armed force, and not to reach an articulate solution of the dispute. At the Conference of Dumbarton Oaks, 31 this reference was deemed necessary to avoid recourse to a solution which might sacrifice the rights of smaller and feeblter states on the altar of a doubtful peace.

The Covenant of the League of Nations also refers to justice and international law by stating that "the contracting Parties will promote international co-operation and . . . achieve international peace and security . . . by the maintenance of justice and a scrupulous respect for all treaty obligations . . . ." 32

A second important principle embodied in the U.N. Charter states that "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." 33 One weakness in this formulation is that one state may deny that the situation in question is a "dispute," thereby evading its obligation to settle the contested issue peacefully. The problem can be addressed by recourse to the principle of good faith that states must observe, 34 and by taking into account the definition of a dispute provided by the PCIJ. 35

Chapter VI contains the operative provisions of the Charter regarding the peaceful settlement of disputes. 36 Except for the obligation not to resort to violence, the United Nations system of peaceful settlement hinges on the free choice by the parties of settlement procedures to be agreed upon, and relies upon other independent international agreements which institute as between the parties to a

27 U.N. Charter art. 1, para. 1.
28 Id. arts. 39-51.
29 Id. arts. 33-38.
30 Id. art. 1, para. 1.
32 League of Nations Covenant preamble.
33 U.N. Charter art. 2, para. 3.
35 See Mavromattis Palestine Concessions (Greece v. Gr. Brit.), 1924 P.C.I.J. (ser. A) No. 2, at 11 (Aug. 30). The PCIJ also addressed the subject in the case Relating to Certain German Interests in Polish Upper Silesia by stating that "[n]ow a difference of opinion does exist as soon as one of the Governments concerned points out that the attitude adopted by the other conflicts with its own views." Certain German Interests in Polish Upper Silesia (Germ. v. Pol.), 1925 P.C.I.J. (ser. A) No. 6, at 14 (Aug. 25).
dispute binding or non-binding settlement procedures such as "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".\textsuperscript{37} With regard to the procedural aspect of the means of settlement, the Security Council may try to induce the parties—by a non-binding recommendation—either to choose a peaceful settlement procedure within or without the range of possibilities listed in article 33, or to "recommend appropriate procedures or methods of adjustment".\textsuperscript{38} With regard to terms of settlement (i.e. the merits of the dispute), the Security Council, in a non-binding manner, can recommend to the parties such terms of settlement as it may consider appropriate.\textsuperscript{39}

Unless the parties have already agreed to a means of settlement to be put in motion by unilateral request before the dispute arises, such a procedure will have to be established after the dispute is born, which is difficult if not impossible since the parties are already in dissension. The danger of the principle of "free choice of means" is that a state acting in bad faith could adopt a negative attitude and reject one proposed solution after another. In reality, "free choice" is only an illusion when a weak state is confronted by a stronger state, and in some way, this principle of free choice is contrary to the Charter, especially to the obligation to settle disputes by peaceful means.

If the concept of the free choice of means has any validity, it is only if it does not stand alone, meaning that one of the parties, \textit{sua sponte}, may set into motion a settlement procedure, even when the other party resorts to dilatory methods or avoids "meaningful negotiation". Such latitude is provided, for instance, in the United Nations Convention on the Law of the Sea for certain categories of disputes.\textsuperscript{40}

The Charter also provides that "[i]n making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."\textsuperscript{41} This is a reaffirmation of the court's role as the principal judicial organ of the United Nations.\textsuperscript{42} \textit{Given the synthetic character of the present contribution}, we can only confirm what we tried to demonstrate at length in a recent es-

\textsuperscript{37} Id. art. 33, para. 1.
\textsuperscript{38} Id. art. 36, para. 1.
\textsuperscript{39} Id. art. 37, para. 2.
\textsuperscript{40} See infra notes 116-25 and accompanying text.
\textsuperscript{41} U.N. CHARTER art. 36, para. 3.
\textsuperscript{42} Id. art. 92.
say, that the court is the means of settlement of legal disputes “par excellence.”

The court has not always commanded the respect of the international community. Twenty years ago, widespread concern over the court’s effectiveness prompted General Assembly review of the court’s role, but this trend has been reversed: more states of the Group of 77 have shown confidence in the court by accepting its jurisdiction; the Soviet Union modified its attitude vis-a-vis the court; and the United States, although compelled after the Nicaragua Case to withdraw its general acceptance of the court’s jurisdiction, nevertheless made clear its willingness to submit to the jurisdiction of the court in “appropriate” situations.

The Charter states that the Statute of the court “forms an integral part of the present Charter,” which under article 103 gives the Statute priority vis-a-vis other international agreements, and ensures the stable functioning of the court. As the court itself observed, it is not “an arbitral tribunal constituted by virtue of a special agreement between the parties for the purpose of adjudicating on a particular dispute, but is an institution which has been pre-established by an international instrument defining its jurisdiction and regulating its operation.” This characteristic of continuing jurisdiction, as opposed to one that merely lasts until the resolution of a dispute, allows the court to give continuity to its decisions, thereby establishing a jurisprudence of international law.

V. The International Acts of a Universal Character Having the Settlement of Disputes as a Specific Object

A. Revised General Act for the Pacific Settlement of International Disputes

Among the international acts which have the settlement of disputes as a specific object, one of the most important is the Revised General Act for the Pacific Settlement of International Disputes,

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43 G. Bosco, La Soluzione delle Controversie Giuridiche Internazionali Nel Quadro delle Nazioni Unite (1989).
45 See infra notes 126-28 and accompanying text.
49 U.N. CHARTER art. 92.

The basic text is the same as that approved in 1928 by the League of Nations.\footnote{See Brierly, The General Act of Geneva, Brit. Y.B. Int’l L., 119 (1930); Gonsiorowski, Political Arbitration Under the General Act For the Peaceful Settlement of International Disputes, 27 Am. J. Int’l L. 469 (1933).}

The General Act institutes three distinct procedures: conciliation, judicial settlement, and arbitration. Conciliation, which is the first step toward the resolution of disputes of every kind,\footnote{Revised Act, supra note 51, at 102, art. 1.} requires that disputes be submitted to a permanent or special conciliation commission constituted by the parties to the dispute.\footnote{Id. at 110, art. 17.} Article 11 concerns the attribution to the commission of the power to lay down its own procedure, “which in any case must provide for both parties being heard.”\footnote{Id. at 110, art. 17.} At the close of the proceedings the commission draws up a 
\textit{proces verbal} stating either that the parties have come to an agreement and, if necessary, the terms of the agreement, or that it has been impossible to effect a settlement.\footnote{Id. at 120, art. 36.}

The second procedure provided for in the General Act is the judicial settlement of disputes. Article 17 refers to disputes in which the parties are in conflict as to their respective rights,\footnote{Id. at 110, art. 17.} including third parties who seek to intervene in the dispute.\footnote{Id. at 110, art. 17.} Under this procedure, parties may either agree to submit the dispute to an arbitral tribunal,\footnote{Id. at 112, art. 21.} or to bring the dispute before the International Court of Justice.\footnote{Id. at 22.} If arbitration is chosen, the parties will draw up a special agreement specifying the object of the dispute, “the arbitrators selected, and the procedure to be followed.”\footnote{Id. at 18.}

The third procedure relates to political disputes. If the parties cannot come to an agreement upon the conclusion of the work of the conciliation commission,\footnote{Id. at 19; This article requires a party to give three months notice. Id.} the dispute is brought before a five-member arbitral tribunal.\footnote{Id. at 22.} When this provision was adopted in 1928 by the League of Nations, it was considered a bold and audacious innovation, modelled on the bilateral Locarno treaties.\footnote{Locarno Treaty, Oct. 16, 1925, reprinted in 4 Major Peace Treaties of Modern History 2385 (1967).} These treaties
required all disputes to be submitted first to conciliation. If conciliation proves unsuccessful, the next step is arbitration for "political disputes" and judicial settlement for "legal disputes."\(^6\)

States may adhere to all or any of the three procedures,\(^6\) but states are permitted to make some reservations\(^6\) including:

(a) Disputes arising out of facts prior to the accession either of the party making the reservation or of any other party with whom the said party may have a dispute;
(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States; and
(c) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories.\(^6\)

The 1949 Act has attained only a limited number of ratifications,\(^6\) but since the 1928 Geneva Act still might be valid and binding, it would be in force among nineteen states.\(^7\)

**B. Draft of Rules on Arbitral Procedure**

Another legal document which addresses the peaceful settlement of disputes is the Draft of Rules on Arbitral Procedure,\(^7\) based on nine years of work of Special Rapporteur George Scelle and approved by the International Law Commission of the United Nations in 1958. The Draft is not a multilateral convention because the political situation in 1958 did not permit the transformation of the Draft into a General Treaty of Arbitration. The General Assembly limited itself to "taking note" of the Draft,\(^7\) which merely "brought it to the attention" of member states so that they might consider and use them when drafting arbitral treaties.

**C. Declarations of the United Nations**

Two U.N. Declarations, the Declaration on Principles of Interna-

\(^{65}\) Id. at 2387.
\(^{66}\) Revised Act, supra note 51, at 122, art. 38.
\(^{67}\) Id. art. 39(3); If one of party to a dispute has made a reservation, the other parties may enforce the same reservation against that party. Id.
\(^{68}\) Id. art. 39(2).
\(^{69}\) vor der Heydt, General Act for the Pacific Settlement of International Disputes (1928 and 1949) in 1 Encyclopedia of Public International Law 64 (1981); The Revised General Act has been signed by only seven states: Belgium, Denmark, Luxembourg, the Netherlands, Norway, Sweden, and Upper Volta. Id.
\(^{70}\) Id. at 64-65. The General Act is currently in force among Australia, Belgium, Canada, Denmark, Ethiopia, Finland, France, Greece, India, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Peru, Switzerland, and Turkey. Spain and the United Kingdom were once parties to the General Act, but have since denounced it. F.A.F. von der Heydt writes that, "it is evident, therefore, that the question of the current validity and binding effect of the General Act of 1928 on the signatory states (who have not already denounced it) is still a live and open issue." Id. at 65.
The Declaration on Friendly Relations proclaimed that "every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered." Although this language tracks the wording of the U.N. Charter, the similarity exists only in form, because the text does not fulfill the expectations of the delegations of Italy, Japan, the Netherlands, and others who sought an amelioration of the existing system. The Italian proposal is based on the following suggestions as alternatives to a world ruled by force:

- Legal disputes should be referred by the parties to the International Court of Justice.
- General multilateral conventions should provide that disputes relating to the interpretation or application of the convention may be referred by any party to the International Court of Justice.


75 Judge Sette Camara of Brazil, for example, declared in 1974 that "[a]ny attempt to give resolutions and declarations of the Assembly the force of law is tantamount to a subversion of the institutional structure of the United Nations." 29 U.N. GAOR C.6 (1492d mtg.) at 166, U.N. Doc. A/C.6/ SR.1492. On the general question, see Schwarzenberger, The Principles of the U.N. in International Judicial Perspective, 1976 Y.B. World Aff. 307. Despite Judge Camara’s view, many still believe that U.N. resolutions and declarations can constitute principles of international law, but only insofar as they reflect the general conviction of the community of states. This general conviction could not be inferred from the adoption of a declaration or resolution by consensus. The consensus, indeed, is often accompanied by oral statements in which delegations put on record that, were the text to be approved by a vote, they would have abstained.


77 U.N. Charter art. 2, para. 3.


79 Id. at 2.

80 Id.
- Every State should accept the compulsory jurisdiction of the International Court of Justice.\textsuperscript{81}

- Members of the United Nations and United Nations’ organs should continue their efforts to codify and progressively develop international law with a view to strengthening the legal basis for the judicial settlement of disputes.\textsuperscript{82}

- The competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter in the field of peaceful settlement, to ensure that all disputes are settled by means that preserve not only international peace and security but also justice.\textsuperscript{83}

This statement can be read as expressing the hope that under the guidance of the Secretariat, the Special Committee could have applied itself to improving the existing system. For arbitration, the matter could have been resumed where the Draft Rules on Arbitral Procedure had left off in 1958. For judicial settlement and advisory opinions, the Committee could have undertaken a review of the role of the ICJ. In addition, a thorough review could have been made of the reasons why perceptions of the “settlement” role of United Nations (and specifically the court) had progressively declined since the birth of the United Nations in 1945.

In late 1960s, times were not yet ripe for the development of new trends on peaceful settlement of disputes. There still existed the rigid, anachronistic doctrines of state sovereignty, embraced by the states of the socialist group, while several newly independent states preferred negotiation, and avoided third-party settlement.\textsuperscript{84}

Thus, the principle enunciated in the Declaration on Friendly Relation did not improve the existing system, but rather, when viewed in light of the U.N. Charter, constituted a regressive step. The Declaration did not mention the International Court of Justice, and it was so reticent on the matter of previous engagements (i.e. compromissory clauses and arbitration treaties) that it is difficult to conclude that it seriously encourages them. Oddly enough, the principle’s seemingly unobtrusive fifth paragraph, “[r]ecourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality,”\textsuperscript{85} is generally regarded as the Special Committee’s only positive achievement, as it dispels the notion that a state derogates

\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} At that time, many delegates of the Group of 77 strongly criticized the ICJ’s judgment in the case of South West Africa (Ethiopia v. S. Afr., Liberia v. S. Afr.) 1966 I.C.J. 6, as being “in favour of a colonial power,” and their attitude was of hostility against the world judicial organ.\textsuperscript{85} G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 123, U.N. Doc. A/8028 (1970).
from its sovereignty when it agrees to submit future disputes to binding third-party adjudication.

2. Manila Declaration on the Peaceful Settlement of International Disputes

The Manila Declaration is the result of the work of the Special Committee that worked on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and consists of a preamble and nineteen paragraphs, divided into two sections. It reaffirms some of the fundamental principles of the U.N. Charter, including the obligations to act in good faith, to settle disputes peacefully, to refrain from the threat or use of force, to refrain from the intervention in the affairs of any other state, to choose among the various means of peaceful settlement, and, in case of failure, to refer disputes to the Security Council. Some U.N. Charter concepts have been modified, such as the inclusion of the adverb “exclusively” in connection with the expression “settle international disputes by peaceful means,” and the void left in the Declaration on Friendly Relations is filled by referring to the obligation under the U.N. Charter as a source of international law.

The Manila Declaration also adds to the classic notion of international law the concept of “generally recognized principles and rules of contemporary international law.” The delegations responsible for this new expression believed that it reaffirmed certain fundamental principles, including the right of self-determination, the nonrecognition of illicit territorial acquisitions, and the permanent sovereignty of states of their natural resources.

Other new elements include the introduction of good offices among the means of settlement and the concept of meaningful negotiation, which is derived from the jurisprudence of the International Court of Justice. The Manila Declaration also expressly refers to the ICJ, urging states to recognize or consider recognizing

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86 Manila Declaration, supra note 74, at 262.
87 Id. § 1, para. 1.
88 Id. § 1, para. 2.
89 Id. § 1, para. 13.
90 Id. § 1, para. 4.
91 Id. § 1, para. 5.
92 Id. § 1, para. 7.
93 Id. § 1, para. 2.
94 Id. § 1, para. 3.
95 Id. § 1, para. 4 (emphasis added).
96 Manila Declaration, supra note 74, at 262.
97 Id. § 1, para 5.
98 Id. § 1, para. 10.
the compulsory jurisdiction of the court. Although the Manila Declaration does not create new methods of settling international disputes, it is a comprehensive and positive legal document. Despite that it is the result of compromise, it is based on a satisfactory common denominator.

VI. Rules of Dispute Settlement Applicable to Multilateral Conventions

Disputes often arise over the interpretation or application of treaties. Such disputes assume greater importance when the text in question is not just a bilateral treaty, but a multilateral convention. The point is so relevant that although the Statute of the International Court of Justice gives the court no discretionary power over such intervention, it does allow any state, and not just the parties to a given dispute, to intervene in the proceedings. In theory, the ICJ is invested with the power to settle disputes. In practice, despite the efforts of U.N. delegations to incorporate an appropriate dispute settlement system into a new convention's preliminary discussion, the role of the ICJ has been challenged.

Each of the four Law of the Sea Conventions of 1958 included an Optional Protocol of Signature concerning the compulsory settlement of disputes, which provided that "disputes arising out of the interpretation or application of any Convention on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the court by an application made by any party to the dispute being a Party to this Protocol." The Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations contain an Optional Protocol identical to the one contained in the Law of the Sea Conventions. The Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations, however, contain an annex relating to conciliation, and allows recourse to the court by only one of

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100 Manila Declaration, supra note 74, at 263, § II, para. 5.
101 Statute of ICJ, supra note 22, at art. 62.
102 Id. at art. 63.
103 This hypothesis is buttressed by the U.N. Charter: "[L]egal disputes should as a general rule be referred by the parties to the International Court of Justice." U.N. Charter art. 36, para. 3.
107 Vienna Convention on Diplomatic Relations, supra note 105 at 241; Vienna Convention of Consular Relations, supra note 106 at 487.
the parties, although only disputes that arise out of the interpretation and application of articles 53 \textsuperscript{110} and 64 \textsuperscript{111} are covered by this procedure. The report of the Conciliation Commission is not binding on the parties under the Vienna Convention on the Law of Treaties.\textsuperscript{112} With respect to the Vienna Convention on the Law of Treaties Between States and International Organizations, the award of the Arbitral Tribunal is final, is not subject to appeal, and is required to be complied with by all parties to the dispute.\textsuperscript{113} Ideally, recourse to the court should be compulsory for a dispute concerning the interpretation of any article in part IV.\textsuperscript{114} Although not ideal, a minimally acceptable result was reached by requiring that significant issues\textsuperscript{115} be subject to compulsory jurisdiction.

The U.N. Convention on the Law of the Sea\textsuperscript{116} was a monumental event in the history of international law. This enormous Convention cannot be compared with any other international legal document, either in its scope or in the efforts devoted to it by so many nations over so many years.

The dispute settlement system of the Convention is very elaborate, and includes twenty-one articles under part XV.\textsuperscript{117} Additionally, an entire section is devoted to sea-bed disputes.\textsuperscript{118} There are nine annexes to the Convention, of which four deal specifically with the resolution of disputes. Annex V deals with conciliation,\textsuperscript{119} annex VI contains the Statute of the International Tribunal for the Law of the Sea,\textsuperscript{120} annex VII addresses arbitration,\textsuperscript{121} and annex VIII focuses on special arbitration.\textsuperscript{122} Commenting on these various provisions, the late President of the International Court of Justice wrote that "[u]ndoubtedly, the dispute settlement mechanisms of the United Nations Convention on the Law of the Sea constitute the pivot upon which rests the equilibrium of the Convention."\textsuperscript{123}

\begin{itemize}
\item \textsuperscript{110} Article 53 concerns treaties conflicting with a peremptory norm of general international law. See 1155 U.N.T.S. at 347; U.N. Doc. A/CONF.129/15 at 35.
\item \textsuperscript{111} Article 64 concerns the emergence of a new peremptory norm of general international law. See 1155 U.N.T.S. at 347; U.N. Doc. A/CONF.129/15 at 40.
\item \textsuperscript{112} 1155 U.N.T.S. at 353.
\item \textsuperscript{113} See U.N. Doc. A/CONF.129/15 at 59.
\item \textsuperscript{114} Part IV concerns the amendment and modification of treaties. 1155 U.N.T.S. at 341-42.
\item \textsuperscript{115} E.g., those connected with the existence of peremptory norms of general international law ("jus cogens"). U.N. Doc A/CONF.129/15 at 42.
\item \textsuperscript{117} Id. at 198-201, arts. 279-99.
\item \textsuperscript{118} Id. at 186-87, arts. 186-91.
\item \textsuperscript{119} Id. at 214.
\item \textsuperscript{120} Id. at 215.
\item \textsuperscript{121} Id. at 218.
\item \textsuperscript{122} Id. at 219.
\end{itemize}
Article 286 of the Law of the Sea Convention requires disputes concerning the Convention's interpretation to be submitted at the request of any part to the court or tribunal having jurisdiction over the matter.\footnote{U.N. Doc. A/CONF.62/122 at 199.} Disputes concerning marine scientific research, fisheries, and the exercise by a coastal state of its sovereign rights are subject to compulsory jurisdiction with certain exceptions.\footnote{Id. at 200.} It is significant that compulsory procedures entailing binding decisions could be introduced in a text of such universal character.

VII. New Trends: The Conference on Security and Cooperation in Europe

For almost forty years, two distinct viewpoints existed with respect to the peaceful settlement of disputes: Western States generally favored third-party settlement and binding adjudication, while Eastern-bloc nations were decidedly hostile to this type of procedure. Recent developments in Eastern Europe, however, have softened these hard-line stances.

President Michael Gorbachev, writing in 1987, stated that, "[w]e must not forget the potentialities of the International Court of Justice. The General Assembly and the Security Council could apply to the court more frequently for advisory opinions on controversial questions of international law. The Court's compulsory jurisdiction must be recognized by all, at reciprocally agreed conditions."\footnote{Gorbachev, Realities and Guarantees of a Secure Peace, Pravda September 17, 1987; This new approach can be discerned by reading the "Soviet Year-Book of International Law" for 1987, which was reviewed by Hazard in 84 AM. J. Int'l L. 303 (1990).} It also contains truly revolutionary ideas, such as a reconsideration of the concept of state sovereignty.\footnote{The Soviets have stated that "[e]ven long-established concepts of sovereignty must be reviewed: voluntary self-restriction of some sovereign rights must be encouraged. The guiding slogan must be: the primacy of law in politics." Hazard, supra note 126, at 303.}

After showing a willingness to accept the court's compulsory jurisdiction, the President of the Supreme Soviet adopted a decree rescinding reservations to ICJ jurisdiction over disputes arising from interpretation and application of U.N. conventions on genocide, political rights of women, racial discrimination, gender discrimination, and torture.\footnote{See id. at 304.}

This new attitude has sparked fruitful debate in many forums, including the Conference on Security and Cooperation in Europe (C.S.C.E.). Before 1989, the peaceful settlement of disputes had been discussed at length within the Conference, but with unsatisfactory results.

The subject of peaceful settlement disputes is addressed in the
Fifth Principle of the Helsinki Final Act of 1975, approved when the attitude of the Eastern States was characterized by close-mindedness towards any form of third-party settlement. After a paraphrased reaffirmation of the U.N. Charter, the text of the Helsinki Act does not require the use of any additional means of settlement beyond that to which both parties have consented. By the terms of the Act, the dispute may continue forever, because "[i]n the event of failure to reach a solution by any of the above peaceful means, the parties to a dispute will continue to seek a mutually agreed way to settle the dispute peacefully."  

Subsequent meetings of Conference on Security & Cooperation in Europe experts at Montreux in 1978 and Athens in 1984 did not prove to be any more successful. According to the formulation of the Belgrade mandate, the experts had to "pursue, on the basis of the Final Act, the examination and elaboration of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods." But the results did not live up to these expectations. The Montreux Document produced only eight "criteria" for such an elaboration, of which the last four are so vague so as to preclude interpretation. The Athens Document admits that "divergent views were expressed and no consensus was reached on a method." Due to the efforts of Western delegations,

129 14 I.L.M. 1292, 1294. The fifth principle states that parties will settle disputes by peaceful means, such as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or other peaceful means; they will try to reach a rapid and equitable solution based on international law; and will refrain from action which might aggravate the situation.

130 U.N. CHARTER art. 2, para. 3.

131 14 I.L.M. 1292, 1294 (principle V).

132 The Montreux document is reprinted in FROM HELSINKI TO MADRID: CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE, DOCUMENTS 1973-1983 218 (A. Rofeld ed. 1983) [hereinafter FROM HELSINKI TO MADRID].

133 See East-West Meeting on Settling Disputes Makes Some Progress, Reuters North European Service (May 1, 1984) [hereinafter Athens Meeting].

134 DEP'T. ST. BULL., April 1978, at 42, 44.

135 FROM HELSINKI TO MADRID, supra note 132, at 220. The eight criteria are as follows:

- consistency with the principles and the purposes of the Charter of the United Nations and the Final Act of Helsinki; especially principle V of the latter document;
- consistency with sovereign equality of States and the free choice of means;
- experience and the treaty and diplomatic practice and the views of all the participating States in this field;
- acceptability to all the participating States irrespective of their political, economic or social system as well as of their size, geographical location or level of economic development;
- subsidiarity to existing methods and institutions for the peaceful settlement of disputes;
- flexibility of the method;
- capacity for progressive development of the method.

Id. 136 Athens Meeting, supra note 133.
it was possible to inject into the Athens document some meaningful words: "Particular emphasis was put on ways and means of including a third party element in such a method.")

In light of these poor results, the outcome of the last plenary meeting of the C.S.C.E., held in Vienna on January 15, 1989, which actually produced a meaningful document is to be welcomed. In the chapter titled "Questions Relating to Security in Europe," two principles dedicated to the peaceful settlement of disputes, are as follows:

(6) The participating States confirm their commitment to the principle of peaceful settlement of disputes, convinced that it is an essential complement to the duty of States to refrain from the threat or use of force, both being essential factors for the maintenance and consolidation of peace and security. They express their determination to pursue continuous efforts to examine and elaborate, on the basis of the relevant provisions of the Final Act and the Madrid concluding document and taking into account the reports of the meetings of experts in Montreux and Athens, a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods. In this context they accept, in principle, the mandatory involvement of a third party when a dispute cannot be settled by other peaceful means.

(7) In order to ensure the progressive implementation of this commitment, including, as a first step, the mandatory involvement of a third party in the settlement of certain categories of disputes, they decide to convene a meeting of experts in Valletta from 15 January to 8 February 1991 to establish a list of such categories and the related procedures and mechanisms. This list would be subject to subsequent gradual extension. The meeting will also consider the possibility of establishing mechanisms for arriving at binding third-party decisions.

The acceptance of mandatory third party involvement in unresolved disputes is noteworthy progress. While the Athens Document mentioned third party settlement only generically and even then only at the initiative of a fraction of the delegations, all of the participants in Vienna accepted in principle the mandatory third party involvement.

Although determining which disputes are to be settled by third party involvement is likely to reopen old quarrels such as distinguishing between legal and political disputes, and between "justiciable" and "non-justiciable" disputes, it is at least preferable to

137 Id.
139 A good attempt to synthesize this distinction is to be found in Goodrich, Hambro & Simon, THE CHARTER OF THE U.N. - COMMENTARY AND DOCUMENTS (1969):

The attempt to draw a distinction between 'legal' and other kinds of disputes is as old as the effort to establish international machinery for pacific settlement. Generally, 'legal' disputes have been considered as those in which the parties are in dispute over conflicting claims of legal right; their solution is to be sought in the established rules of international law. In the case of other
discuss such issues rather than to refuse altogether to even consider third-party settlement. Now that attitudes are more open, the C.S.C.E. has included some interesting initiatives in its program. The Valletta meeting of experts following the Paris Conference of November 1990 established a Vienna-based European Center for the Prevention of Conflicts.140

VIII. The U.N. Declaration on the Prevention and Removal of Disputes

The changed international atmosphere towards dispute settlement has also affected the United Nations. In 1987, the General Assembly approved Resolution 42/22,141 ending a decade of confrontation in the Special Committee Concerning Non-Use of Force. The Declaration reaffirms that all states must settle their disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,142 and invites states to strengthen international peace and security by referring legal disputes to the International Court of Justice.143 The Declaration also exhorts the General Assembly and the Security Council to request advisory opinion on any legal question from the court.144 A year later the General Assembly approved 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.”145

The Declaration is evidence of the new trend. For instance, while the earlier Manila Declaration affirmed that “all States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations,”146 the 1988 Declaration states that “States should act so as to prevent in their

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140 On the various C.S.C.E. developments, see L. Ferrari Bravo, Peaceful Settlement of Disputes in Europe in the Year 2000 and Beyond, in “La Comunità Internazionale”, pp. 522-37 (1990). On the institution of the Center, President Gorbachev, in his speech at the CSCE summit in Paris, said on November 21, 1990: “Among the innovative decisions ... I would like to mention specially the conflict prevention center as a sort of regulator of the military and political situation. We predict that it will have a great future and gradually turn into a kind of ‘European security council’ having at its disposal efficient means for extinguishing the flames of any conflict.”


142 Id. at 288.

143 Id. at 289.

144 Id.


146 Manila Declaration, supra note 74, at 262, § 1, para. 1.
international relations the emergence or aggravation of disputes or situations, in particular by fulfilling in good faith their obligations under international law." The 1988 Declaration, by fulfilling obligations under international law as a measure of good faith, is clearly superior to the Manila Declaration because the principles of the Charter do not cover all fields of international law.

There is also greater specificity about the role of the Security Council in the 1988 text. The Manila Declaration, for example, merely stated that states should "consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter." The more specific 1988 text states that "the Security Council should consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence, including observers and peacekeeping operations, as a means of preventing the further deterioration of the dispute or situation in the areas concerned."

The 1988 Declaration also enhances the role of the International Court of Justice. Although the role of the ICJ as the principal judicial organ of the United Nations is underlined in the Manila Declaration, the 1988 Declaration makes an express reference. Moreover, the 1988 Declaration provides that the General Assembly, "if it is appropriate for promoting the prevention and removal of disputes or situations, should consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question."

IX. Conclusion: Toward A Third International Peace Conference at the Closing of the U.N. Decade of International Law

The movement of the United Nations towards the development of new and important documents in the field of dispute settlement culminated in 1989 with Resolution 44/23 of November 17, 1989, on the United Nations Decade of International Law. The Resolution emphasizes the maintenance of "international peace and security, and to that end to bring about by peaceful means, in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a
breach of the peace." \[154\] The Resolution notes that in the next ten years, the anniversaries of the adoption of important international legal documents will be celebrated, including the centennial of the first International Peace Conference, held at The Hague in 1899, which adopted the Convention of the Pacific Settlement of International Disputes and created the Permanent Court of Arbitration, and the fiftieth anniversary of the adoption of the Charter of the U.N. The period of 1990 to 1999 is solemnly declared as the United Nations Decade of International Law, whose main purpose should be:

(a) To promote acceptance of and respect for the principles of international law;

(b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;

(c) To encourage the progressive development of international law and its codification;

(d) To encourage the teaching, study, dissemination, and wider appreciation of international law. \[155\]

It should be noted, and it is to be welcomed, that Resolution 44/23 after expressing the very general aim of promoting the principles of international law, makes a welcome direct reference to the International Court of Justice, \[156\] which stands in stark contrast to the days when court was ignored altogether, or at most referred to in a very cautious, roundabout way. In addition, in its third operative paragraph the Resolution considers sponsoring a Third International Peace Conference or other suitable international conference at the end of the decade. This would represent a worthy celebration of the Centenary of the First International Peace Conference of 1899.

The decade ahead presents itself under favorable auspices. States and international organizations, both governmental and non-governmental, are examining the program for the decade and the agenda for a 1999 Conference. The idea has already been advanced that the Conference might achieve success by compiling a list of those justiciable disputes that were in the past attempted to be "opted-in". If such a list could be established, it could provide incentive to a more widespread use of judicial means of settlement and could increase the inclination of states to accept the ICJ's compulsory jurisdiction, albeit with restrictions and reservations. The Manila Declaration contains an exhortation towards this end, as it is an appeal to states to manifest by their acceptance of this compulsory jurisdiction a world governed by law and not by force.

\[154\] Id.
\[155\] Id. at 2.
\[156\] Id.