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The dispute settlement provisions of the Convention on the Law of the Sea manifest themselves in highly complex provisions. This Article offers an examination and critique of the subject provisions, concluding that they reflect an inequitable bias in favor of the Group of 77 and, although useful, do not present a significant advance over the present system of international law. The author examines alternatives to the provisions adopted in the Convention and suggests a possible revamping of the ICJ or creation of a similar tribunal so as to resolve the dispute settlement procedure's inherent difficulties and shortcomings.

INTRODUCTION

A proper examination of the Convention on the Law of the Sea (the Convention) cannot divorce the document from its political context. The Convention is not a "neat legal document."1

2. International politics significantly affect negotiations in the United Nations. The explosion in the number of sovereign States within the past twenty years has had a profound impact on the Third United Nations Conference on the Law of the Sea (UNCLOS III). The countries of the Third World now constitute nearly two-thirds of the nations of the world. These less developed countries


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Rather, it reflects political realities, balancing conflicting national

(LDCs) of South and Central America, Oceania, Africa, and Asia have organized into a caucus commonly known as the Group of 77 (G-77). Charney, The International Regime for the Deep Seabed: Past Conflicts and Proposals for Progress, 17 Harv. Int'l L.J. 1, 6 (1976). The G-77 derived its name from the seventy-seven countries which formed the caucus in 1974; today the caucus numbers nearly 120 members. Lee, Deep Seabed Mining and Developing Countries, 6 Syracuse J. Int'l L. & Com. 213 (1978-79). In order to assert greater influence on the management of global resources and international relations, the LDCs formulated the New International Economic Order (NIEO). The NIEO challenges the traditional dominance of the developed countries over world resources and international affairs disproportionate to their percentage of the world population. See Charney, supra, at 5-6; Juda, UNCOLS III and the New International Economic Order, 7 Ocean Devel. & Int'l L. 221, 223-24 (1979). Seeking a more “equitable” distribution of power through the implementation of the NIEO, the G-77 hopes to bring substantial economic and political benefits to the Third World. Charney, supra, at 6; Gamble, Bloc Thinking About The Oceans: Accelerating Pluralism? in LAW OF THE SEA: THE EMERGING REGIME OF THE OCEAN (J. Gamble & G. Pontecoro eds. 1974). The UNCLOS III is a testing ground for the new-found power of the G-77 in implementing the goals of the NIEO.

The developed countries represent the other major voting bloc in the UNCLOS III. In contrast to the organization of the G-77, the developed nations are loosely aligned and lack a formal voice in the international arena. While they share a common goal of maintaining their historically dominant position in natural resource control and international relations, Charney, supra, at 6-7, the developed countries do not present a cohesive front. For example, Canada, as a land-based producer of nickel, has sought to restrict deep seabed mining of nickel, often siding with African exporters of nickel. United States Delegation Report: Resumed Ninth Sess. of the Third United Nations Conference on the Law of the Sea 5 (July 28-Aug. 29, 1980, Geneva). For a discussion of the Canadian position, see Herman, The Niceties of Nickel—Canada and the Production Ceiling Issue at the Law of the Sea Conference, 6 Syracuse J. Int'l L. & Com. 265 (1978-79).

The G-77 appears to enjoy the advantage in the bargaining process in the UNCLOS III. Not only do the LDCs have greater numbers and superior organization, the G-77 is able to take a more aggressive stance than can the developed countries because of their lack of vested economic interests in the issues. In other words, the G-77 has much to gain and little to lose. See Buzan, SEABED POLITICS 296 (1976).

Several factors, however, may offset the power of the G-77. The G-77 operates by caucus. Inherent in this method of operation is a certain inflexibility in the G-77's bargaining position which arises out of extensive internal negotiation and compromise. Buzan, supra, at 300 n.2. In addition, the number of nations and the multiplicity of views within the bloc may act as a force against the cohesion of the G-77. Gamble, supra, at 4.

Second, the consensus-oriented procedure of the UNCLOS III enhances the position of the developed States despite their numerical minority because of their ability to slow or stop the proceedings. Time is an important factor in negotiation. The prolonged passage of time weakens alignments and decreases the commitment of delegations to the convention as States with urgent maritime problems become frustrated with the slowness of the negotiation. Buzan, supra, at 281, 294.

An additional factor which checks the G-77 is the LDCs' lack of maritime technology. Pardo, Commentary in LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS, supra, at 12. The danger that the developed countries may reject any conclusion of the UNCLOS III may have caused the G-77 to moderate some of its demands. Despite these factors, the LDCs' numbers and vociferousness enable them to exert strong moral and political pressures on the UNCLOS III proceedings.

The usual tensions involved in the North-South dialogue are sufficient to ob-
and international goals. The results of diplomatic horse-trading often manifest themselves in complex, if not "baffling," provisions. The dispute settlement provisions of the Convention are no exception. The drafters undertook a staggering task. The provisions attempt to provide dispute settlement mechanisms for all matters of contention arising out of the law of the sea—boundary disputes, navigation and pollution issues, fishery matters, multinational negotiations. In addition to these problems, a number of circumstances present in the UNCLOS III serve to complicate and delay deliberations. Foremost, perhaps, among these factors is the participation in the UNCLOS III of nations with little intrinsic interest in the law of the sea. Gamble, supra, at 5. These are nations which either have no coastlines or lack the capital to engage in maritime activities. These States participate as equal partners in the negotiations with a right to express their views on every issue. Id. Arguably, these nations have an interest in the law of the sea regime because the sea is the "common heritage of mankind" to be exploited for the benefit of all. These nations have substantially complicated the negotiations by introducing non-maritime related issues into the UNCLOS III negotiations. Id. Having little intrinsic interest in the law of the sea, these States have a great temptation to engage in substantial vote bargaining to achieve non-maritime related goals. Pardo, supra, at 12. The injection of extraneous issues complicates the numerous and complex maritime issues.

Moreover, many of the newly emerged nations have little expertise in the technical and economic aspects of the law of the sea issues. Juda, supra, at 223. This lack of expertise both slows the progress of the UNCLOS III, Buzan, supra, at 280, and prevents the delegations from properly evaluating the impact on their countries from their positions taken at the UNCLOS III. Juda, supra, at 223. (For detailed examination of the factors which affected the progress of the negotiation as a whole, see Buzan, supra, at 280-81, 294-95.)

The drafting of the dispute settlement provision took place against this background of shifting and conflicting policies and goals. The dispute settlement provisions, as discussed infra, mirror the diplomatic negotiations. The task undertaken at the UNCLOS III is staggering—156 participants and some 91 principal issues. Hull, Introduction, 6 SYRACUSE J. INT'L L. & COM. 169, 171 (1978-79). At least one commentator has argued strongly against the United Nations convening another conference the size and complexity of the UNCLOS III because of the impact of the built-in mechanisms for delay and obstructionism. See Miles, An Interpretation of the Caracas Proceedings in LAW OF THE SEA: CARACAS AND BEYOND 39 (F. Christy et al. eds. 1976).


4. Id. Examples of the complexity of the provisions are the choice of dispute settlement procedures, scope of the compulsory procedures, and exceptions to the procedures. See notes 41-47, 77-78 and accompanying text infra.

5. The Eleventh Session of the UNCLOS III is currently underway in New York. According to the United States Delegation Report for the Resumed Ninth Session, supra note 2, the negotiations on the settlement of disputes are substantially completed.

6. Draft Convention, supra note 1, arts. 3-16.

7. Id. arts. 88-115.

8. Id. arts. 192-237.
itimte scientific research\textsuperscript{10} and deep seabed mining disputes,\textsuperscript{11} and transfer of technology problems,\textsuperscript{12} to name a few. Each of these areas involves different political and economic issues, requiring varying degrees of technical, legal, and scientific expertise. The dispute settlement mechanism set forth in Part XV of the Convention raises two salient issues: whether the system is fair and equitable, and whether the provisions present an advance over the present methods of dispute settlement in the law of the sea.

**Procedures for Dispute Settlement**

Part XV of the Convention contains the main dispute settlement provisions.\textsuperscript{13} The drafters divided Part XV into three sections: general obligations and provisions, the procedure for compulsory dispute settlement, and the limitations on the subject matter jurisdiction of the compulsory dispute settlement mechanism.

Section One outlines the preliminary steps to which all disputes are subject, giving due regard to the independent sover-

\begin{itemize}
  \item 9. Id. arts. 115-120.
  \item 10. Id. arts. 238-265.
  \item 11. Id. arts. 150-153.
  \item 12. Id. arts. 266-278.
  \item 13. The development of the Convention's dispute settlement provisions occurred in two stages. From 1974 to 1976, an unofficial informal working group of interested delegates (IWG) prepared draft provisions. The official debate then began in 1976 on a modified IWG proposal known as the "President's Text."

The IWG, meeting at the initiative of the United States, proceeded on the bases of four fundamental principles. In order to avoid economic and political pressure and to preserve the equality of States, an effective system for the settlement of disputes must have its basis in law. The greatest possible uniformity in interpretation of the Convention was desirable. Also, any exceptions to the obligatory dispute settlement provisions had to be drafted narrowly. Finally, the dispute settlement provisions had to form an integral part of the Convention. Adede, supra note 3, at 255-56. The IWG proposal submitted to the President of the UNCLOS III contained a wide range of modes of dispute settlement. It also introduced the concept of a Law of the Sea Tribunal. Characteristic of the proposal was its comprehensive approach, which sought to establish a single system to deal with all manner of disputes, as opposed to a "functional" approach that would have established special procedures to render binding decisions arising out of different parts of the Convention.

The debate over the President's Text continued with respect to the functional versus the comprehensive approach, the applicability of compulsory settlement procedures to coastal States and the exclusive economic zone (EEZ), and the application of the procedure to sea boundary delimitation. The goal guiding the course of the debates was the desire to take dispute settlement out of the arena of force. Parties should choose peaceful methods including compulsory, binding procedures to settle law of the sea disputes. The system which has emerged is highly complex and often unwieldy. A simpler formulation, however, would not have gathered the necessary consensus. Therefore, the dispute settlement provisions reflect, if not accommodate, all the political issues raised during the course of the debates. (For a comprehensive "legislative history" of the early stages of the negotiation over the IWG's and President's Texts, see Adede, supra note 3.)

\end{itemize}
eignty of State parties. The section evidences a dedication to the resolution of disputes by peaceful means14 which are chosen by the parties to the dispute.15 A general obligation on the State parties to "expeditiously . . . exchange . . . views"16 regarding settlement of the dispute strives to further the goal of peaceful resolution of disputes by keeping the lines of communication between the parties open. The Convention makes specific reference to the dispute settlement methods listed in article 33 of the Charter of the United Nations17 as examples of peaceful dispute settlement procedures.18 The Convention provisions also allow a great deal of flexibility as to the dispute settlement forum, including regional, general, or special arrangements.19 Finally, Section One outlines the option of non-binding conciliation. A State party may invite the other parties to submit the dispute to conciliation.20

The parties must agree both on conciliation as a means of resolving the dispute and on the procedure for conciliation.21 On dis-

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14. Article 279 of the Draft Convention, supra note 1, reads:
"States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with article 2, paragraph 3 of the Charter of the United Nations, and, to this end, shall seek a solution by the means indicated in article 33, paragraph 1, of the Charter.

15. Article 280 of the Draft Convention, supra note 1, states:
"Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice."

16. Id. art. 283.

17. The peaceful means of dispute settlement referred to in article 33 of the Charter of the United Nations are "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement, or other peaceful means . . . ." U.N. CHARTER, art. 33, para. 1.

18. Draft Convention, supra note 1, art. 279.

19. Id. art. 282.

20. Id. art. 284, para. 1.

21. Id. art. 284. Annex V of the Draft Convention outlines a possible procedure for conciliation. Any party to a dispute may institute a conciliatory proceeding by notifying the other party in writing. Id. Annex V, art. 1. The Secretary General of the United Nations maintains a list of conciliators. Each State which is a contracting party to the Convention may nominate four conciliators which remain on the list until withdrawn by the nominating State. Id. Annex V, art. 2. The constitution of the Conciliation Commission, which may be modified by mutual consent of the parties, usually will consist of five members. The party instituting the proceeding may appoint two from the Secretary General's list, one of whom may be a national. The opposing party also may select two in the same fashion. If, however, the party does not make an appointment within a prescribed time, the instituting party may either terminate the proceedings or ask the Secretary General to make an appointment. These four conciliators then choose a fifth from the list. The decision apparently must be unanimous. If the conciliators fail to choose a fifth, the Secretary General will do so. Id. Annex V, art. 3. The conciliators,
putes dealing with deep seabed mining, non-State parties also may go to conciliation. Only when the method chosen by the parties fails to settle the dispute, do the provisions of Section Two concerning compulsory procedures entailing binding decisions apply at the request of any party to the dispute.

A State party may choose one or more of the following dispute settlement procedures by means of a written declaration: 1) the International Tribunal for the Law of the Sea (Tribunal); 2) the International Court of Justice (ICJ); 3) an arbitral tribunal; and 4) a special arbitral tribunal for the settlement of disputes concerning fisheries, protection and preservation of the marine environment, marine scientific research, or navigation and pollution by vessels. These courts and tribunals have jurisdiction over all

seeking advice from the parties, will then adopt their own procedure. All decisions and recommendations are by majority vote. The Conciliation Commission proceeds with an eye towards amicable settlement and may attempt to direct the parties to other peaceful means of dispute settlement. The conciliators hear the parties, examine claims and objections, and make proposals. The Conciliation Commission must make a report within twelve months of establishment. Such report is nonbinding on the parties. The conciliation procedure may be terminated in one of three ways: settlement, rejection by the parties of proposals, or automatically three months after transmission of report to the parties.

22. Draft Convention, supra note 1, art. 285.
23. Id. arts. 281, 286.
24. Id. art. 287, para. 1.
25. See notes 48-72, 79-82 accompanying text infra.
26. Annex VII of the Draft Convention, supra note 1, describes the arbitral tribunal. Similar to the procedure for the Conciliation Commission described in note 21 supra, any party to the dispute may institute the proceeding by notifying the other parties. Again the Secretary General of the United Nations maintains a list of arbitrators selected in a manner substantially the same as that of the list of conciliators. Unless the parties otherwise agree, the tribunal usually shall consist of five members. Each party to the dispute shall appoint one arbitrator, preferably from the list. The appointee may be a national. The remaining three members are chosen by agreement of the parties. From among these three, the parties shall appoint a President. Should the parties fail to make the necessary appointments, the President of the Tribunal, unless otherwise agreed, shall make the appointment. The arbitral tribunal adopts its own procedure. The parties to the dispute have the duty to facilitate the work of the arbitrators by providing all the relevant documents and information and by enabling the arbitral tribunal to examine witnesses or experts and visit the locations in question. Decisions of the arbitral tribunal are by majority vote.

The award is final and without appeal, unless the parties agree otherwise. The arbitral tribunal will interpret the award in case of controversy. The parties may agree, however, to submit the award to another court or tribunal for interpretation. The provisions of Annex VII may apply mutatis mutandis to non-State parties.

27. Annex VIII to the Draft Convention, supra note 1, contains the provisions forming special arbitral tribunals. Proceedings are instituted in the same manner as under arbitral tribunals. See id. Annex VIII, art. 1, supra note 26. Separate lists of experts shall be maintained for each of the specialized fields of subject matter.
law of the sea matters submitted to them in accordance with the provisions of the Convention.28 In disputes involving scientific or technical issues, the court or tribunal may select two or more technical or scientific experts to sit without the right to vote with the court or tribunal.29 All State parties have access to these courts and tribunals;30 in addition, the dispute settlement procedures may be open to non-State parties in deep seabed mining disputes.31 The law applicable to the submitted disputes shall be the Convention and such other rules of international law not incompatible with the Convention.32 The court or tribunal, if requested by the parties, may make its decision ex aequo et bono.33 The decisions are final and binding as between the parties.34 The Convention has no provision for an enforcement mechanism similar to that found in the Charter of the United Nations which provides that, in certain circumstances, the Security Council may act as an enforcer of ICJ decisions.35

All contracting parties are covered by a compulsory procedure

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28. Draft Convention, supra note 1, art. 288. The court or tribunal itself shall decide whether it has jurisdiction should a disagreement arise. Id. art. 288, para. 4.

Although the drafters of the provisions professed a desire to attain a high degree of uniformity in the interpretation of the Convention, the drafters surprisingly have proposed a multiplicity of fora which may interpret and apply the Convention.

29. Id. art. 289.

30. Id. art. 291, para. 1.

31. Id. art. 291, para. 2. Non-State parties must meet the requirement of having exhausted local remedies prior to submitting a dispute to a court or tribunal under these articles. Although the provision is not clear, the requirement apparently does not apply to State parties. Id. art. 295.

32. Id. art. 293, para. 1.

33. Id. art. 293, para. 2.

34. Id. art. 296. The court or tribunal also has the power to prescribe provisional measures pending final adjudication. Id. art. 290.

35. U.N. CHARTER, art. 94, para. 2.
entailing binding decisions. If the parties to the dispute have accepted the same procedure, they will submit the dispute to that procedure. If the parties have not chosen the same procedure, the dispute will go before an arbitral tribunal. If any of the parties to the dispute has not chosen any procedure, Part XV deems the parties to have accepted the jurisdiction of an arbitral tribunal and the dispute is submitted thereto. The parties to the dispute may agree to present the dispute to a forum other than that specified in the foregoing scheme. The freedom of the contracting parties to choose a dispute settlement procedure does not alter the obligation of each contracting State to accept the jurisdiction of the Sea-Bed Disputes Chamber of the Tribunal for deep seabed mining disputes.

Section Three of Part XV delineates the limitations on and exceptions to the compulsory dispute settlement provisions. The limitations on the compulsory procedures exempt certain types of disputes that arise out of the coastal State’s discretionary exercise of sovereignty with respect to the uses of its exclusive economic zone (EEZ). Similarly, the optional exceptions to the procedures remove additional categories of disputes at the discre-

36. Draft Convention, supra note 1, art. 287, para. 4.
37. Id. art. 287, para. 5.
38. Id. art. 287, para. 3.
39. Id. art. 287, paras. 3-5.
40. Id. art. 287, para. 2. This obligation is not clear from the text, but the negotiations indicate that the delegations consider the acceptance of the Chamber's jurisdiction mandatory. Burnhardt, Compulsory Dispute Settlement in the Law of the Sea Negotiations: A Reassessment, 19 VA. J. INT'L L. 67, 68 (1978).
41. Article 297 of the Draft Convention, supra note 1, places the following limitations on the applicability of the compulsory dispute settlement provisions:

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention, shall be subject to the procedures provided for in section 2 in the following cases:
   (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation or overflight or the laying of submarine cables and pipelines, or in regard to other intentionally lawful uses of the sea specified in article 58; or
   (b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention, or
   (c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference acting in accordance with this Convention.

2. (a) disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not
tion of the State party involved. These categories include: sea boundary delimitations, military activities and certain law en-

be obliged to accept the submission to such settlement any dispute arising out of:

(i) the exercise by the coastal State of a right or discretion in accordance with article 246; or

(ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.

(b) a dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation, under Annex V, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.

3.(a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations . . . .

The effects of these exclusions on the practical effects of the Convention are discussed at notes 77-78 and accompanying text infra.

42. Draft Convention, supra note 1, art. 298.

43. Article 298, para. 1(a) of the Draft Convention, supra note 1, allows for the exception of:

1. When signing, ratifying or acceding to this Convention, or at any time thereafter, a State may declare in writing that it does not accept any one or more of the procedures in section 2 with respect to one or more of the following categories of disputes:

(a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V of section 2, and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

(ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;

(iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any
enforcement measures connected with the exercise of sovereignty within the coastal States’ EEZ, and disputes over which the Security Council of the United Nations has exercised its jurisdiction.

**CRITIQUE OF THE DISPUTE SETTLEMENT PROVISIONS**

The Convention’s dispute settlement mechanism is not a fair and equitable resolution to the problem of dispute settlement. The provisions reflect an inequitable bias in favor of the Group of 77 (G-77) and their goals under the New International Economic Order. The limitations and exceptions to the compulsory dispute settlement provisions show the influence of the G-77. Through the use of these provisions, the coastal State members of the G-77 can exercise a great deal of discretionary power concerning the uses of EEZs without having to submit any dispute to a procedure which would entail a binding decision.

Similarly, the newly established Tribunal, in both its composition and organization, favors the G-77. The Tribunal will consist of twenty-one “independent” members. The Convention states that the Tribunal shall represent the world’s principal legal systems and have an equitable geographical distribution. However, such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties.

44. Article 298, para. 1(b) of the Draft Convention, supra note 1, provides for the optional exception of:

(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraphs 2 and 3.

45. Article 298, para. 1(c) of the Draft Convention, supra note 1, permits a nation to exclude:

(c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.

46. See note 2 supra.

47. These limitations and exceptions are the resolution of a “delicate question” concerning the sovereignty of coastal States. Coastal States sought protection from harassment through international tribunals arising out of the States’ discretionary acts within the EEZs. However, the rights and freedoms of the other States would be meaningless if they had no mechanism by which to challenge arbitrary and capricious behavior. Adede, supra note 3, at 262. The Convention appears to have resolved the question in favor of the coastal States. For a brief statement of the arguments against the limitation, see Haight, Commentary in LAW OF THE SEA 250-53 (Miles et al eds. 1976).

48. Draft Convention, supra note 1, Annex VI, art. 2, para. 1.

49. Id. Annex VI, art. 2 para. 2.

The members of the Tribunal are elected by the State parties from a list of persons nominated by the State parties. Id. Annex VI, art. 4, para. 1. Each State
no two members may be nationals of the same State and no fewer than three members shall represent each geographical group established by the United Nations General Assembly. The result of this latter provision is that the nations from the Asian, African, Eastern European, and Latin American regional groups may have as many as eighteen of the twenty-one judges and the group of Western Europe and others (including the United States) may have only three. Thus the entire Tribunal reflects a bias in favor of the G-77. At no time does an industrialized country or its national, which is a party to a dispute, have a guarantee of adequate representation of its legal system or political philosophy.

Only the Tribunal as a whole with twenty-one party may nominate not more than two persons enjoying "the highest reputation for fairness and integrity and of recognized competence in matters relating to the law of the sea." Id. Annex VI, art. 2, para. 1, art. 4, para. 1. At a meeting of the State parties, for which two-thirds of the State parties shall constitute a quorum, the nominees who receive the largest number of votes and a two-thirds majority of those States present and voting shall be elected to the Tribunal. Id. Annex VI, art. 4, para. 4. Each term of office shall be nine years and each member of the Tribunal may be re-elected. Id. Annex VI, art. 5, para. 1.

50. Id. Annex VI, art. 3, para. 1.


52. One commentator had harsh words for the composition of the Tribunal proposed under an earlier version of the Convention which would have led to a similar result.

There is the question whether a law of the sea tribunal composed of a fixed number of judges appointed for a specified number of years is necessary or advisable and, if so, whether it should be constructed along the lines of Annex VI. ... Article 3 of this Annex provides that members of the tribunal shall be elected according to five geographical groups, the number from each group being specified. The result of this would be that the African, Asian, and Latin American groups would have ten of the fifteen judges and the group of Western European and other states only three. It appears quite clear from this that the developing countries are thinking not in terms of an independent judicial body but of another instrument for the development of their positions. If this view prevails, there would be a built-in bias prejudicial to the settlement of disputes between developed and developing countries or between nationals of the latter and governments of the former.

Haight, supra note 47, at 254.

53. This bias may be lessened in part by article 17 of Annex VI to the Draft Convention, supra note 1. Article 17 provides that members of the nationality of the parties to the dispute may continue to participate in the adjudication of the dispute. Id. Annex VI, art. 17, para. 1. Each party to the dispute—unless several parties have the same interest in which case they are considered as one party only, id. Annex VI, art. 17, para. 5—has the right to have as a member of the Tribu-
members of the entire Sea-Bed Disputes Chamber with eleven members must present an equitable geographical and legal balance. However, a quorum of eleven members is sufficient to constitute the Tribunal although all available members should sit. Similarly, the Chamber needs a quorum of seven members. The quorum of the Tribunal or the Chamber which hears the dispute does not have to reflect the supposed “equitable” balance.

Furthermore, the special chambers which the Tribunal may create are not free from bias. The Tribunal may establish special chambers for three purposes: as necessary to deal with specific categories of disputes, to hear and determine disputes by summary procedure, or at the request of the parties to deal with a particular dispute. The special chambers formed to hear certain categories of disputes will consist of three or more members. The special chamber created to decide disputes by summary procedure is composed of five members. No requirement of equitable geographical distribution and representation of major legal systems governs the selection of members of these special chambers. Equitable representation is likely only in those special chambers established at the request of the parties to deal with a particular dispute. The Tribunal determines the composition of

54. See notes 64-75 and accompanying text infra.
55. Draft Convention, supra note 1, Annex VI, art. 13, para. 1. The Tribunal shall decide who is available to sit on any given dispute, showing due regard to the effective functioning of the Sea-Bed Disputes Chamber and the special chambers. Id. Annex VI, art. 13, para. 2. Certain restrictions exist with regard to the participation of members who have an interest in the dispute or an association with one of the parties. Id. Annex VI, arts. 7-8. The Tribunal hears all disputes unless the Sea-Bed Disputes Chamber or a special chamber has jurisdiction. Id. Annex VI, art. 13, para. 3. The Sea-Bed Disputes Chamber, dealing exclusively with matters arising from deep seabed mining, id. Annex VI, art. 14, is composed of eleven members selected by the majority of the Tribunal. Id. Annex VI, art. 36, para. 1. The special chambers will consist of three or more members. Id. Annex VI, art. 15, para. 1.
56. Id. Annex VI, art. 36, para. 7.
57. The legal independence of the Tribunal and its members is suspect. See notes 80-82 and accompanying text infra.
58. Draft Convention, supra note 1, Annex VI, art. 15, para. 1.
59. Id. Annex VI, art. 15, para. 3.
60. Id. Annex VI, art. 15, para. 2.
61. Id. Annex VI, art. 15, para. 1.
62. Id. Annex VI, art. 15, para. 3.
the chamber but the parties to the dispute must give their approval.\textsuperscript{63}

In the establishment of the Sea-Bed Disputes Chamber of the Tribunal, the G-77 has made an important step towards the objectives of the New International Economic Order at the expense of the developed nations. The G-77 views control over deep seabed mining as a major factor in the global redistribution of wealth and management of world natural resources.\textsuperscript{64} Consequently, the G-77 has sought to strengthen the power of the Authority, the international organization established to regulate deep seabed mining.\textsuperscript{65} Limiting the jurisdiction of the Sea-Bed Disputes

\textsuperscript{63} Id. Annex VI, art. 15, para. 2.
\textsuperscript{64} See note 2 supra.
\textsuperscript{65} The International Sea-Bed Authority (the Authority) is the organization through which State parties will organize and control activities within the “Area,” primarily with respect to mineral resources. Draft Convention, supra note 1, art. 157. The Convention provides that no mining shall take place in the Area except as authorized by the Authority. Id. art. 137. The Area is the seabed, ocean floor, and subsoil thereof beyond the limits of national jurisdiction. Id. art. 1. The Area and its mineral resources are the “common heritage of mankind.” Id. art. 136. This means both that no State may exercise sovereignty over any portion of the Area, id. art. 137, and that any activities carried out within the Area benefit mankind as a whole without respect to geographic location. Id. art. 140, para. 1.

The organs of the Authority are the Assembly, the Council, the Secretariat and the Enterprise. Id. art. 158. The Assembly is the supreme organ of the Authority, setting matters of general policy, electing the members of the other organs, setting the budget, and approving various submissions by the Council. Id. arts. 3, 159, 160. The membership of the Assembly consists of all members of the Authority (i.e. all State parties to the Convention). Id. art. 159. Each member has one vote. Id. Because the G-77 consists of nearly a two-thirds majority, the LDCs have effective control of the Assembly in a manner similar to that currently exercised in the General Assembly of the United Nations.

The Council is the executive organ of the Authority. It sets specific policies and exercises supervisory control over the activities of the members of the Authority. Id. arts. 161, 162. The Council has thirty-six members elected by the Assembly which must reflect a special geographic and economic distribution. Id. art. 161. The membership of the Council appears to be biased in favor of the LDCs which has negative implications for successful deep seabed mining; among these countries are those which have the least expertise in maritime technological matters, have little or no intrinsic interest in the law of the sea, or have nationalist interests as land-based producers of mineral resources. See note 2 supra. Each member of the Council has one vote, but substantive and procedural questions have different voting majority requirements. Id. The Council has two subsidiary organs, each with fifteen members elected by the Council: the Economic Planning Commission and the Legal and Technical Commission. Id. art. 163. The Economic Planning Commission reviews trends in and factors affecting the supply, demand, and prices of raw materials obtainable from the Area and makes recommendations on how to minimize the adverse impact on developing States which may be land-based producers. Id. art. 164. The Legal and Technical Commission supervises the technical, scientific and environmental aspects of the exploitation of
Chambers is one way to enhance the power of the Authority. While the jurisdiction of the Chamber extends to all deep seabed mining disputes and access to the Chamber is open to the Authority, State parties, and State nationals, the jurisdiction of the Chamber over decisions of the Authority is limited. The Chamber may not make pronouncements on whether the rules and regulations of the Authority conform to the Convention. Thus, the Chamber may rule only on the application of the Authority's procedures and not on their validity.

In addition, the Chamber has no jurisdiction with respect to the exercise by the Authority of its discretionary powers, and the ocean minerals. Among its most important functions are the approval of applications by private and State parties for the mining of the deep seabed and the calculation of annual production ceilings and individual production authorizations. Id. art. 165.

Of the remaining two organs, the Secretariat is the chief administrative organ of the Authority, id. art. 166, and the Enterprise engages in the commercial exploitation of mineral resources. Id. art. 170.

Annex III to the Draft Convention, supra note 1, contains the basic conditions for the prospecting, exploration, and exploitation of deep seabed hard minerals. Article 187 of the Draft Convention, supra note 1, delineates the jurisdiction of the Sea-Bed Disputes Chamber:

The Sea-Bed Disputes Chamber shall have jurisdiction under this Part and the Annexes relating thereto, in disputes with respect to activities in the Area falling within the following categories:
(a) disputes between States Parties concerning the interpretation or application of this Part and the Annexes relating thereto;
(b) disputes between a State Party and the Authority concerning:
  (i) acts or omissions of the Authority or of a State Party alleged to be in violation of this Part or the Annexes relating thereto or of rules, regulations and procedures of the Authority adopted in accordance therewith; or
  (ii) acts of the Authority alleged to be in excess of jurisdiction or a misuse of power;
(c) disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), concerning:
  (i) the interpretation or application of a relevant contract or a plan of work;
  (ii) acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests;
(d) disputes between the Authority and a prospective contractor who has been sponsored by a State as provided in article 153, paragraph 2(b), and has duly fulfilled the conditions referred to in Annex III, article 4, paragraph 6 and article 13, paragraph 2, concerning the refusal of a contract, or a legal issue arising in the negotiation of the contract;
(e) disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2(b), where it is alleged that the Authority has incurred liability as provided in Annex II, article 22;
(f) any dispute for which jurisdiction of the Chamber is specifically provided in this convention.

66. Article 187 of the Draft Convention, supra note 1, delineates the jurisdiction of the Sea-Bed Disputes Chamber:
68. Id. art. 189.
69. Id.
Convention does not define the scope of the discretionary power of the Authority and its subsidiary organs. Thus the "negotiation" of contract terms may be discretionary, as could be the selection from among conflicting contract applications or the refusal to conclude contracts. This limitation on the jurisdiction of the Chamber also casts doubt on the ability of State parties to challenge the acts of the Authority as *ultra vires*. Similarly, the prohibition on the review of the Authority's discretionary acts could prevent the Chamber from hearing disputes between the Authority and a national on issues arising out of contract refusal or contract negotiation. Thus the limitations on the jurisdiction of the Chamber leave little check on arbitrary and capricious behavior of the Authority.

The mandatory nature of the acceptances by contracting States of the Sea-Bed Disputes Chamber's jurisdiction creates an additional problem. If the Tribunal develops into a politically biased organ, State parties to disputes usually have the option of avoiding its jurisdiction by mutually agreeing to accept another forum. This option is not in reality available in deep seabed disputes involving the Authority. If the Chamber is biased in favor of the Authority, the Authority may refuse to submit to alternative fora, thereby forcing the settlement of the dispute into the nonobjective Chamber. In light of the foregoing discussion, 70.

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71. See note 66 supra.
72. Id.
73. See note 40 supra.
74. See note 39 and accompanying text supra.
75. See Ratiner & Wright, supra note 70, at 757. Because of the Authority's power to block a move to another forum, the alternatives offered by article 188 of the Draft Convention, supra note 1, are not meaningful. Article 188 provides in part:

1. Disputes between States Parties referred to in article 187, subparagraph (a), may be submitted:
   (a) at the request of the parties to the dispute to a special chamber of the International Tribunal for the Law of the Sea to be formed in accordance with Annex VI, articles 15 and 17; or
   (b) at the request of any party to the dispute to an *ad hoc* chamber of the Sea-Bed Disputes Chamber formed in accordance with Annex VI, article 37.
2. (a) Disputes concerning the interpretation or application of a contract referred to in article 187, paragraph (c)(i), shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties to the dispute otherwise agree. A commercial arbitral tribunal, to which such dispute is submitted, shall have no jurisdiction to
the Tribunal will display, or at least has the built-in mechanisms for, a strong bias in favor of the developing countries. Consequently, the fair and equitable nature of the Tribunal is suspect.

The dispute settlement provisions, although useful in that they codify and describe alternative international dispute settlement mechanisms, do not present a significant advance over the present system of international law for several reasons. The Convention contains severe limitations on the compulsory dispute settlement provisions which may exclude judicial determination in certain categories of disputes. These limitations and optional exceptions reduce the practical effects of the Convention because those categories which are or may be excluded—certain fishery issues, the exercise of coastal State sovereignty, enforcement authority, and any decision concerning foreign research within an EEZ—are the most likely to lead to dispute. The Convention apparently leaves these matters to the traditional means of dispute settlement. Moreover, with the possible exception of deep seabed mining, the compulsory procedures are only applicable once the means chosen by the parties to the dispute fail. Thus parties are likely to continue to employ traditional methods of dispute settlement extensively.

The Tribunal, while it represents some advances, duplicates most of the ICJ's weaknesses. The jurisdiction of the Tribunal, with the exception of deep seabed mining matters, is based on consent. Again except in the case of deep seabed mining, nationals and international organizations do not have contentious standing. The Tribunal is also of dubious legal independence. The members of the Tribunal are dependent on the Authority for their

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decide any question of interpretation of this Convention. When the dispute also involves a question of interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question shall be referred to the Sea-Bed Disputes Chamber for a ruling.

Id.

With respect to the alternative fora presented in paragraph 1, the Authority may prevent submission of the dispute simply by refusing to consent. With respect to paragraph 2 which subjects particular disputes to commercial arbitration unless otherwise agreed, the Authority may circumvent the provision by requiring that contractors agree to the submission of all disputes of this nature to the Sea-Bed Disputes Chamber as a condition for the Authority's approval of a work plan. Arguably this would be nonreversible by the Chamber because it is an exercise of the Authority's discretionary power in "negotiating" the terms of a contract. See Ratiner & Wright, supra note 70, at 759.

77. See notes 41-45 and accompanying text supra.
78. Breaux, supra note 76, at 287.
79. The Assembly and the Council of the Authority also may request advisory opinions from the Sea-Bed Disputes Chamber with respect to deep seabed activities. Draft Convention, supra note 1, art. 191.
election (and re-election), and the State parties determine the remuneration of the members. The Authority and the State parties bear the expenses of the Tribunal. Finally, the Tribunal must depend on the Authority for the enforcement of its decisions. Thus, the Tribunal is, in a very real sense, a subsidiary organ of the Authority.

Finally, the creation of the Tribunal may weaken the legitimacy of international legal institutions. The overlap of subject matter jurisdiction among the various proposed fora could lead to "unnecessary multiplicity of jurisdictions and conflicting jurisprudence." The fact that the decisions of international courts have no value as precedent in their own proceedings, much less in the disputes before other bodies, further complicates the matter. Should judicial organs of equal status issue divergent opinions, the legitimacy of international adjudication becomes suspect. This conflicting jurisprudence, in conjunction with the possible proliferation of politically biased legal institutions, could lead to increased forum-shopping. The net result would be an even greater reluctance among States to employ international dispute settlement mechanisms.

The foregoing discussion leads to the conclusion that the dispute settlement provisions of the Convention are unsatisfactory. The procedures have a built-in bias towards the G-77, and the system as a whole does not present a significant advance over the current practice of dispute settlement. A number of alternatives to the law of the sea dispute settlement regime exist, yet none is without its political or practical disadvantages.

**ALTERNATIVE DISPUTE SETTLEMENT ARRANGEMENTS**

Some form of compulsory dispute settlement procedure is nec-

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80. See note 49, supra.
81. Draft Convention, supra note 1, Annex VI, art. 18.
82. The Tribunal, if it develops into a politically-biased entity, will exercise a great deal of power because of its affiliation with the Authority to enforce its judgments. One commentator has suggested that "[p]ressure could be exerted in various ways, for instance by denying licenses for resource exploitation to refractory states, or even by denying to these states the use of ocean space beyond national jurisdiction." Pardo, supra note 2, at 15.
83. Adede, supra note 3, at 258.
84. This article assumes that renegotiating the dispute settlement provisions of the Convention to remove the undesirable provisions discussed in Part II is politically impossible within the context of UNCLOS III.
necessary in the Convention to remove dispute settlement from the arena of force.\textsuperscript{85} In order to enable the system to deal with the greatest possible number and types of disputes, any proposed procedure would have to eliminate or at least severely curtail the limitations and exceptions to the compulsory jurisdiction currently found in the Convention. These limitations and exceptions have the effect of removing from the compulsory procedure precisely those matters most likely to lead to dispute.\textsuperscript{86} The political feasibility, however, of eliminating these limitations completely is doubtful. The negotiations on the Convention dispute settlement provisions indicate the sensitivity of coastal States with respect to their exercise of sovereignty in the EEZ.\textsuperscript{87}

Similarly, because of the jealous guarding of State sovereignty, any dispute settlement procedure would have to allow State parties to choose methods of dispute settlement, such as arbitration or conciliation, other than the proposed compulsory mechanism. Nevertheless, use of the compulsory procedure entailing binding decisions should be encouraged. To facilitate this goal, acceptance of the jurisdiction of the proposed court or tribunal should be a mandatory obligation of the signatories of the Convention. In addition, a fair and equitable international court or tribunal may serve to overcome the reluctance of State parties to submit disputes to an international legal institution for adjudication.

Having the ICJ as the main adjudicatory body for dispute settlement in the area of the law of the sea is one possible alternative. The ICJ has several advantages. The institution is already well established, and no expense would be involved in setting up the necessary machinery. Also, the ICJ already has an established procedure with which the international legal community is familiar. If the parties are willing to submit their dispute to an international forum, they are more likely to use the ICJ than a forum with which they have less experience. The ICJ has had some experience in the law of the sea. This, in conjunction with the fact that the ICJ would be the sole adjudicatory forum, would avoid the undesirable effects of a multiplicity of fora. The appearance of a conflicting jurisprudence would be unlikely. Conse-

\textsuperscript{85} As past experience with dispute settlement demonstrates, States with a doubtful legal case are unwilling to submit it to the ICJ. Generally, they maintain open disputes, waiting for a more favorable political climate. Even those States which have accepted the compulsory jurisdiction of the ICJ ignore ICJ proceedings when it has suited their purposes. Usually a State will submit a claim only when it has an irrefutable case or it is the weaker party. The current system also has problems with the execution and enforcement of judgments. Pardo, supra note 2, at 15.

\textsuperscript{86} See notes 41-45, 77-78 and accompanying text supra.

\textsuperscript{87} See note 47 and accompanying text supra.
quently, a greater uniformity in the interpretation and application of the Convention would result. Finally, the ICJ is currently drastically underemployed. An increased role for the ICJ in the Convention could increase the caseload of the court.

The ICJ is not, however, without drawbacks. The access to the ICJ is restricted. Only States may bring a dispute before the ICJ. Individuals and international organizations have no contentious standing. Thus the utility of the ICJ in the area of deep seabed disputes is limited due to the extensive involvement of natural and juridical persons and international organizations in the process. The solution to this problem would be to amend the Statute of the ICJ to permit access by these entities engaging in deep seabed mining. The question then becomes whether the ICJ should open its doors to other individuals and international organizations having cognizable claims. Having given access to those engaged in deep seabed mining, little justification would exist for the ICJ to distinguish these entities from others participating in different activities.

Assuming that such an amendment of the Statute was politically possible, increased access to the ICJ may have adverse effects on the functioning of the court. Although the ICJ is presently underemployed, the increased access may lead eventually to a flood of cases, creating a backlog in the ICJ's docket. Also, considering the amount of scientific and technical knowledge necessary in the law of the sea alone, whether the court could develop the needed expertise to deal effectively with the diverse issues raised in a vast array of dissimilar cases is doubtful. Finally, the ICJ is not free from a reputation of bias. Lesser developed countries view the ICJ with distrust because

88. Reid, Commentary in Law of the Sea, supra note 47, at 246.
89. Some debate still exists as to whether granting access to international courts and tribunals to individuals and international organizations is desirable:

On the one hand there are states who argue that it would be absurd to have a situation where a national of one state could initiate action against another state without the consent of his host state, or even in a situation where the host state strongly objects to the individual initiating such action. This is alleged to run completely counter to established principles of international law. The argument against this is that in practice there may be several instances where, for example, a smaller state may not wish to initiate or sponsor action on behalf of one of its nationals against a larger state for fear of the diplomatic and political repercussions, but at the same time the host state would be quite prepared to give its blessing to the national pursuing his claim against another state in his own right.

Reid, supra note 88, at 248.
the "Big Five," the United States, Great Britain, France, the Soviet Union, and China, enjoy permanent seats on the court. 90

An international tribunal could be devised whose features would address most of the foregoing problems. This body would replace the ICJ so as to avoid a multiplicity of fora. Access would be open to States, natural and juridical persons, and international organizations. The tribunal would have a number of specialized chambers to deal with specific broad categories of disputes, e.g., human rights, foreign investment, law of the sea, etc. Thus the number of chambers would help prevent a backlog of cases, and the specialization would enable the chambers to develop the necessary expertise. The assistance of scientific and technical experts who would sit without vote with the chamber at the request of the chamber also would further the development of the desired expertise. Appeals from these chambers could be had to an international court of appeals. This procedure could place a check on any chamber which may demonstrate a political bias. Furthermore, the procedure would promote a reputation for impartial and equitable adjudication.

The General Assembly of the United Nations would select the members of the chambers and the court of appeals with an eye toward representation of all principal legal systems and equitable geographical distribution. Also, the number of seats could be divided equally among the different political blocs so that the number of Western members would not outnumber the Eastern ones or the Northern members outnumber the Southern ones by a significant margin. This assignment of seats is a delicate affair as the political alignments change over time. A rough division may be all that is required to achieve an equitable balance.

Keeping the members of this international tribunal independent from other international organizations and from States would be highly desirable. To achieve this end, members should be elected to serve a single ten-year term without the possibility of re-election. Also, the remuneration of the members should not be decreased during their tenure, and automatic cost-of-living increases in remuneration may be useful to prevent the international organization which controls the finances of the tribunal from exercising undue financial pressure on the members of the tribunal. While this system would help promote impartial adjudication of claims and a comprehensive, uniform jurisprudence, the tribunal would not be entirely free from the possibility of undue influence by the organization which controls its budget. Also,

many of the current problems with the execution and enforce-
ment of judgments would continue to exist.

CONCLUSION

The dispute settlement provisions of the Convention deserve
careful scrutiny because the Convention represents a significant
step in international lawmaking. If the Convention enters into
force, the world will have achieved "a written constitution for
nearly three-quarters of the area of the earth's surface." The
impact of the Convention reaches beyond the oceans. The ulti-
mate resolution of the law of the sea will influence the outcome of
similar issues in other global common areas such as international
airspace, the airwaves, and outer space. Thus any provision of
the Convention must be evaluated not only in terms of the law of
the sea, but also with respect to its precedential value for future
conferences.

The current proposal for dispute settlement in the Convention
is disappointing. The Convention has created a biased adjudica-
tory process which does not present an advance over current cus-
tomary international law. This unsatisfactory result may have the
effect of causing nations to deal with law of the sea disputes in an
individual or regional manner rather than on an international
level. Serious consideration must be given to revamping the ICJ
or creating a similar tribunal in an effort to increase the legiti-
macy of international dispute adjudication.

91. See U.S. Bans Treaty for Now on Use of Sea Resources, New York Times,
March 7, 1981, at 1, col. 5.

92. Statement by Ambassador at Large Elliot L. Richardson, Special Repre-
sentative of the President for the Law of the Sea Conference, Ninth Session of the