## DOALOS/UNITAR BRIEFING ON DEVELOPMENTS IN OCEANS AFFAIRS AND

parties? Even if the treaty is widely ratified, will the multilateral order ostensibly imposed by the treaty disintegrate as states increasingly feel free to act on increasingly ambitious unilateral interpretations of what the treaty does and does not require? Can the law ever provide the stability we seek from it unless it also provides mechanisms for authoritative interpretation and orderly adaptation to changing circumstances?

Many treaties contain dispute settlement provisions. The question a lawyer asks is: "What do they add to the existing obligations of states under Articles 2 and 33 of the United Nations Charter to settle their disputes peacefully by means of their own choice?" In many cases, the answer is, "Not much." In this case, the answer is, "A great deal." Surely less than some hoped for. But much more than experience suggested was likely.

Two features are central. First, the dispute settlement system in the Convention is not relegated to an optional protocol. The Convention as a whole, including Part XV on settlement of disputes, is a single so-called package deal that does not permit reservations.

Second, the dispute settlement provisions are based on the premise that any party to the dispute may submit it to binding arbitration or adjudication, and in that context carve out important qualifications and exceptions. I would like to pay special tribute to the first President of the Third UN Conference on the Law of the Sea, the late Ambassador Hamilton Shirley Amerasinghe of Sri Lanka, who personally oversaw the negotiations on settlement of disputes, for his understanding that in diplomacy and law International Tribunal for the Law of the Sea, one rendered before the arbitral award and one since, is that its approach to the relationship between the Law of the Sea Convention and other agreements is more nuanced and more consistent with the text of the Convention and the intent of the drafters.

Second, Article 297 of the Convention provides that a coastal state shall not be obliged to accept the submission to arbitration or adjudication of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, or any dispute arising out of its exercise of certain rights with respect to scientific research in the exclusive economic zone or on the continental shelf. At the same time, the first paragraph of Article 297 makes clear that disputes with regard to the exercise by a coastal state of its sovereign rights or jurisdiction shall be subject to arbitration or adjudication in three types of cases that may be briefly summarized as follows:

--when it is alleged that a coastal state has acted in contravention of the provisions of the Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or certain related uses;

--when it is alleged that a state exercising these freedoms and rights has acted in contravention of the Convention;

--when it alleged that a coastal state has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment.

Third, Article 298 of the Convention gives states the option of filing declarations at any time excluding specified types of disputes from arbitration or adjudication. These may be briefly summarized as follows:

--disputes concerning delimitation of maritime boundaries between neighboring states;

--disputes concerning military activities, and disputes concerning certain coastal state law enforcement activities respect to fisheries and scientific research in areas subject to its jurisdiction;

--disputes in respect of which the UN Security Council is exercising its functions under the Charter, unless the Security Council removes the matter from its agenda or calls upon the parties to settle it by the means provided for in the Convention.

## Choice of Forum

There was a considerable difference of opinion during the Conference regarding the forum to which a party could submit a dispute subject to compulsory jurisdiction under the Convention. Some preferred the International Court of Justice. Some preferred to create a new standing tribunal. Some preferred arbitration. Among the difficulties posed with respect to use of the International Court of Justice is that it is open only to states.

Notwithstanding this difference of opinion, there was general agreement on two related points. First, Article 280 makes clear that the parties are free to agree on any forum they wish. Second, Article 282 makes clear that if the parties have agreed by virtue

of some other instrument that such a dispute shall, at the request of any party to the dispute, be submitted to a particular forum for a binding decision, that procedure applies in lieu of the dispute settlement procedures set forth in the Convention. Among other things, this provision not only preserves but defers to the jurisdiction that states choose to confer on the International Court of Justice pursuant to Article 36 of its Statute. Similarly, the Implementing Agreement Regarding Part XI, which incorporates by reference the provisions on subsidies and other provisions of the GATT and associated agreements with respect to deep seabed mining, provides that the WTO dispute settlement

Another possible defect of this virtue is that states that are not party to the dispute have no direct role in the selection of the arbitrators, that the composition of the arbitral panel may not reflect the diversity of perspectives of the parties to the Convention, and that there is not necessarily any continuity in the composition of ad hoc tribunals. This may pose particular problems where the unified administration of a regime is entrusted to an international organization, in this case the International Seabed Authority established by the Convention. Part XI, in Articles 186 to 191, has its own jurisdictional provisions regarding disputes concerning mining activities in the international seabed area. They apply not only to states but to the Seabed Authority and to private seabed mining