

## **Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/SR.59**

### **59<sup>th</sup> Plenary meeting**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

economic zone accorded to other States under the convention were entitled to as much legal protection as the regulatory powers of coastal States, particularly as coastal States could act first and enforce their interpretation of the convention against foreign ships. Otherwise, the procedural provisions in the dispute settlement chapter of the convention would virtually render illusory the rights of other States which had been expressly granted in the substantive provisions of other parts of the convention. His delegation therefore suggested that article 18, paragraphs 1 and 2 (a), should be amalgamated and amended so as to bring them in

line with the substantive provisions in other chapters of the convention. Thus, the coastal State's exercise of its exclusive jurisdiction should be exempted from review by the competent tribunal only in so far as the convention expressly or implicitly accorded a discretionary power to the coastal State, provided that in exercising such discretion the coastal State did not interfere with other States' rights, neglect generally accepted international criteria and standards or abuse its discretion to the detriment of other States.

*The meeting rose at 1.05 p.m.*

## 59th meeting

Monday, 5 April 1976, at 3:25 p.m.

*President:* Mr. H. S. AMERASINGHE (Sri Lanka).

### Addition to the list of non-governmental organizations

1. The PRESIDENT said that the Foundation for the Peoples of the South Pacific, Inc., a non-governmental organization in consultative status with the Economic and Social Council, had asked to be invited to participate in the Conference. If there were no objections, he would take it that the Conference decided to include that body in the list of interested non-governmental organizations and to issue an invitation to it in accordance with rule 66 of the rules of procedure.

*It was so decided.*

### Settlement of disputes (*continued*) (A/CONF.62/WP.8,<sup>1</sup> WP.9 and Add. 1)

2. Mr. DE LACHARRIÈRE (France) said that if the international law elaborated by the Conference was to effectively regulate the actions of States, it was essential to provide machinery for the settlement of disputes which might arise in connexion with the application of the new law of the sea. Disputes relating to the delimitation of the areas of jurisdiction of States, which so far had been few in number, would increase as a result of the extension of territorial waters and the adoption of the concept of the economic zone, while delimitation between the continental shelf and the international area could give rise to other disputes. Where there had previously been a single jurisdiction there would be a plurality of powers, giving rise to new conflicts. The "deliberate ambiguity" of certain provisions was another source of disputes. In creating innumerable occasions for disputes, the Conference must at the same time adopt provisions governing the peaceful settlement of such disputes.

3. In the opinion of his delegation, the machinery for the settlement of disputes approved by the Conference would have to be as broad as possible in scope and suit the specific features of international law in general, and of the law of the sea in particular. That meant, first of all, that the illusory over-simplification of applying to relations between States

the machinery appropriate for domestic use should be avoided. The principle of the sovereign equality of States necessarily implied that any international jurisdiction was limited and exceptional, and that recourse to an international tribunal could only be an auxiliary procedure for the settlement of disputes. In addition to that initial conclusion there were certain consequences that derived from the specific features of the law of the sea, which was made up of a complex set of varied legal norms which in turn could give rise to a great variety of disputes. In order to settle them, it would seem wise to begin by classifying disputes by category and by determining the different variables which needed to be taken into account when choosing the methods for settling disputes. That pragmatic approach would make it possible to adopt a set of procedures suited to the nature and subject of each category of dispute. His delegation was not in favour of including among those procedures the possibility of a permanent tribunal having general jurisdiction. States were quite forthright about establishing a specific link between the legal rules they advocated and the peculiarities of their particular situation, especially their geographic situation. From that point of view, a tribunal constituted beforehand, however well chosen it might appear in the abstract, bore the strong risk, in the case of a concrete difference, of being badly constituted, perhaps open to challenge or at all events without moral prestige.

4. Instead, his delegation proposed the acceptance of the principle of settlement through impartial third parties designated in each case by the parties to a dispute and, in application of that principle, it proposed that provision should be made for special procedures, on the one hand, and for arbitration proper, on the other hand.

5. The special procedures would be applied in certain clearly defined areas relating to easily definable problems. In some spheres, recourse to qualified experts provided the best chance of ensuring objective consideration of cases from an essentially technical standpoint. In that way, the risk of decisions motivated by considerations extraneous to the subject-matter of the dispute would be avoided. Problems of a scientific and technical nature which might arise in connexion with the application of the convention in the field of fisheries, marine pollution and scientific research would thus be dealt with by *ad hoc* bodies, composed of independent experts selected by the States parties to the dispute from a list of experts, which could be prepared at the request

<sup>1</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

of the States parties by the international organizations competent in each case, namely for fisheries the Food and Agriculture Organization of the United Nations (FAO), for pollution the United Nations Environment Programme and for scientific research the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Recourse to such special committees should be compulsory in the event of failure of negotiations, and their decisions should be binding on the parties to the dispute. They could also be given fact-finding and even conciliation functions if the States parties to a dispute should so decide.

6. Secondly, the machinery of special procedures could also be used for the settlement of disputes relating to the exploration and exploitation of the international sea-bed area. There account had to be taken of the characteristics of the legal régime established by the Conference and, in particular, of the establishment of the proposed International Authority. In that regard, his delegation could not agree to the establishment of a permanent judicial organ within the framework of the Authority because, since the Authority could itself be a party to a dispute, there was no likelihood that one of its organs, even its judicial organ, could settle such a dispute equitably. An impartial judge should be *supra partes*, especially when the issue was to determine the legality of an act by the Authority in terms of the convention.

7. However, the system of special committees could be applied in the case of disputes not arising out of the execution of contracts entered into by the Authority. That formula would make it possible to suit the settlement procedures to widely varying types of dispute between States, or between the Authority and a State, relating to the definition of an advance prospecting operation in the area, or an operation involving the evaluation of resources, or to any other problem of an essentially economic nature. In those spheres, before resorting to the special committees, provision could be made for prior consideration of the dispute by the Technical Commission or the Economic Planning Commission of the Authority with a view to achieving conciliation.

8. He stressed that, in any event, the various special procedures would not cover all disputes arising out of the application of the convention; they would apply essentially to disputes of a technical rather than a legal or political nature. Accordingly, in addition to the system of special procedures, his delegation believed that provision should be made for the possibility of arbitration to be applied in two clearly defined areas.

9. First, it would apply in the case of disputes of a contractual nature in which the International Authority might be involved. The various contracts concluded by the Authority or Enterprise, on the one hand, and by States or natural or juridical persons, public and private, on the other hand, with the exception of employment contracts—to which the normal procedures of the United Nations system would be applicable—should include an arbitration clause whereby any dispute arising in connexion with the interpretation or execution of the contract would be submitted, at the request of one of the contracting parties, to an arbitration body, on the understanding that the composition of that body would be determined, in each particular case, in the light of the specific problem involved.

10. Secondly, his delegation was in favour of providing for arbitration by including in the convention a general clause for the compulsory settlement of disputes. However elaborate and specific an international convention of the kind that the Conference was required to draft might be, the possibility of differing interpretations as to the way in which the States parties should apply its provisions could not be ruled out in advance. His delegation therefore considered it essen-

tial to include a clause on the compulsory arbitration of disputes relating to the interpretation or application of the convention which involved two or more States parties or the International Authority and one of its member States. In any event, it would be a mistake to rule out the possibility of having recourse, before resorting to the arbitration machinery, to a conciliation procedure which could be entrusted to a third party.

11. The system outlined could be criticized on two counts. First, there was the need for a prompt decision in certain cases, especially in the case of seizure of vessels by a State, and the delays inherent in the establishment of an arbitral tribunal would not be conducive to such a decision. In such cases, his delegation was in favour of empowering a special body, which could be formed within the Inter-Governmental Maritime Consultative Organization (IMCO), to take the necessary emergency measures, which would in no way prejudice a subsequent settlement regarding the merits of the dispute.

12. The second criticism was that uniformity of jurisprudence was useful for the interpretation of an international convention, whereas the diversity of arbitral decisions would be a drawback. The contrast seemed somewhat exaggerated. On the one hand, the divergencies in arbitral jurisprudence were explained by the fact that arbitral decisions covered a long period, over which the law had evolved; moreover, they reflected differences pertaining to the legal framework within which the arbitrators had to act, and they related to problems that were hardly comparable in view of their extreme diversity. On the other hand, in spite of the supposed uniformity of jurisprudence in the case of an international tribunal, a considerable evolution in jurisprudence was to be noted. In conclusion, he wished to emphasize, on behalf of a Government currently involved in arbitration on a matter concerning the law of the sea, the advantages which arbitrators had over judges. First, Governments wanted their disputes to be, or at least agreed that they should be, settled by impartial third parties on condition that the latter did not lay down the law. It would be possible in the case of a permanent binding tribunal for a certain temptation to arise of government by judges, but one had still to hear of government by arbitrators. The second advantage derived from the fact that the basic problem with regard to the settlement of international disputes was to ensure that States agreed that the settlement should be entrusted to third parties. Such acceptance could not be imposed on a sovereign State. Instead, its consent was needed, and experience showed that such consent depended on trust. Ultimately, in his delegation's opinion, the basic advantage of arbitration, at the current stage of international relations, was that that trust was placed in arbitrators rather than in judges.

13. Mr. LOGAN (United Kingdom) said that his country, which had always supported the principle of the peaceful settlement of disputes, supported the inclusion in the convention on the law of the sea of procedures leading to binding decisions on the basis of law. Of course, negotiation and conciliation had an important role to play, but some disputes might prove so intractable that they could only be resolved through binding procedures.

14. His delegation believed that the appearance of document A/CONF.62/WP.9 served to emphasize the importance of the settlement of disputes in the over-all effort to establish a law of the sea which was not only just but also effective. What was particularly notable was the concept that States, on ratifying the new convention, would at the same time accept the principle that disputes about the meaning of the new convention should be settled by peaceful means. Experience showed that when a dispute had arisen, the deterioration of bilateral relations made it difficult for the States