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61st Plenary meeting

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61st meeting

Tuesday, 6 April 1976, at 3.30 p.m.

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

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

1. Mr. LARSSON (Sweden) said that Sweden was firmly attached to the principle of the peaceful settlement of disputes. The creation of an effective system for the settlement of disputes arising out of a convention on the law of sea should be regarded as one of the pillars of the new world order in ocean space. A system ensuring expeditious, impartial and binding decisions was a necessary complement to any rules codifying international law. A State should not itself be the sole interpreter of such rules, and failure to take account of the need for their uniform interpretation and application could destroy delicate compromises which had been carefully negotiated so as to offer balanced protection to competing rights and interests. His Government considered that the single negotiating text on the subject (A/CONF.62/WP.9 and Add.1 and Corr.1 and 2) was an appropriate basis for further deliberations by the Conference.

2. His Government believed that a system of compulsory settlement of disputes leading to a binding decision on the basis of law should be included in the convention; it did not think that such a system was inconsistent with State sovereignty as its recognition of the compulsory jurisdiction of the International Court of Justice demonstrated. States should agree in advance to accept the jurisdiction of an international forum, so as to ensure the uniform interpretation and application of the future convention. The mechanism for the settlement of disputes should, however, be flexible enough to include a wide choice of methods of settlement. Parties should be free to decide by mutual agreement to utilize any of the methods referred to in Article 33 of the Charter of the United Nations, and, if they failed to agree on any of them, each party should be entitled to refer the dispute to compulsory settlement. That procedure was one way of balancing the rights of coastal States and the rights of other States, and it would also prevent States from being subjected to, for instance, political or economic pressures from other States.

3. The issue of whether there should be compulsory procedures for all issues or for only a limited category of cases was closely related to the question of whether reservations to the procedure for the settlement of disputes should be permitted. The future work of the Conference would show whether provision should be made for reservations, but they should in any event be allowed only on specific points and for specified reasons. The provisions on reservations so far submitted vitiated the rules on the settlement of disputes.

4. His Government considered it essential that the system for the settlement of disputes should be an integral part of the new convention; if the procedures were relegated to an optional protocol, the Conference might appear to have rejected the idea of compulsory settlement procedures. It also believed that the system had to be such as to ensure a wide measure of uniformity in the interpretation and application of the convention. The general use of, for instance,

special settlement procedures for disputes arising out of individual chapters of the convention would be unsatisfactory and inefficient, although such procedures might be warranted in one or two specific fields. Moreover, the greatest possible use should be made of the International Court of Justice.

5. Nevertheless, his Government acknowledged the need for the establishment of a judicial organ within the framework of the convention. The judicial arm of the International Sea-bed Authority should, however, be independent of the Authority itself, and its jurisdiction, powers and functions should be clearly defined in the convention. On the assumption that the International Court of Justice would play an important role under the new convention, the jurisdiction of the proposed tribunal should be limited to three categories of disputes: disputes concerning prospecting and exploration of the sea-bed and the exploitation of its resources, those concerning the interpretation and application of the Authority's rules and regulations and those concerning the legality of measures taken by an organ of the Authority. The tribunal should be available to States and the Authority itself, as well as to natural and juridical persons. Those arrangements would leave all matters concerning interpretation and application of the convention to be dealt with by the International Court of Justice; to the extent that such disputes involved individual persons, natural or juridical, they would, in accordance with prevailing international law, have to rely on the protection of their home States.

6. The Conference should avoid creating a plurality of jurisprudence and, to the extent possible, should provide for the use of existing measures for the settlement of disputes. That was the only way to ensure uniform interpretation and application of the new convention.

Mr. Appleton (Trinidad and Tobago), Vice-President, took the Chair.

7. Mr. GÜNEY (Turkey) said that his delegation believed that provisions concerning the settlement of disputes should be based on the future convention on the law of the sea adopted by the greatest possible number of States. Accordingly, agreement on matters of substance should be achieved first, and thereafter provision should be made for suitable and flexible methods of settling disputes, so as to ensure that the spirit and letter of the provisions of the new convention would be interpreted with uniformity and equity.

8. In his delegation's view, the general obligation of States to settle all disputes peacefully by means of the various methods set forth in Article 33 of the Charter of the United Nations should be maintained and no priority should be accorded to any one in particular so as to respect the competence of States to select the most appropriate means. Special procedures of a functional nature should also be envisaged that would be applicable to specific types of dispute such as those concerning fishing, pollution and scientific research. A functional approach and special procedures might also be considered that would be applicable to sea-bed areas beyond the limits of national jurisdiction and to cases involving contracts for operations in the international area.

9. Turkey had always favoured a compulsory jurisdiction for the settlement of international disputes. It had to be admitted, however, that, as matters stood, States were unwilling to accept binding international jurisdiction, or to

¹ 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).

uniform interpretation of the convention. However, it was prepared to consider alternatives that would give parties more freedom of choice among means of binding settlement. Certain types of dispute might require specialized procedures—which were entirely compatible with a comprehensive system—and they should be carefully developed as part of that system. The proposed special sea-bed tribunal was an example.

20. On the question of which parties should have access to the dispute system, his delegation favoured a pragmatic approach. It believed, for example, that the owner or operator of a detained vessel should be permitted to seek directly prompt release of the vessel through summary procedures set forth in the convention.

21. Mr. PERIŠIĆ (Yugoslavia) said that procedures for the settlement of disputes would necessarily be a cornerstone of the agreement being negotiated by the Conference. In public international law the obligation of States to settle their disputes by peaceful means already existed, but there was no obligation with regard to settlement procedures leading to binding decisions, either arbitral or judicial: no State could be sued without its consent.

22. His delegation held that the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations should be reaffirmed in the convention, although the choice of means should be left to the parties in dispute. However, the convention should provide for procedures leading to settlement through binding decisions in cases in which parties failed to settle the dispute by those means. The application of the convention would undoubtedly give rise to disputes as to both interpretation and application, because it would be a comprehensive convention and would embody new legal institutions and rules. It might therefore be difficult for many States to endorse its provisions unless they were certain that there would be no unilateral interpretation in their application. States should therefore have access to an effective system and machinery for the settlement of disputes arising from the interpretation and application of the convention, but there should be nothing to prevent the settlement of disputes through informal and non-compulsory means and procedures, and it should be open to States to choose their own ways to reach agreement before resorting to binding procedures.

23. The practice of Yugoslavia was diversified and selective, depending in each specific case on the importance, nature and requirements of a given bilateral or multilateral treaty or convention. Yugoslavia had ratified the optional protocol to the 1958 Geneva Conventions on the Law of the Sea³ and other multilateral conventions containing obligations to submit disputes concerning interpretation and application to the International Court of Justice, although it had made exceptions and reservations with regard to some of them. Finally, his delegation believed that the norms relating to the settlement of disputes should be an integral part of the convention.

24. With regard to courts and tribunals, the convention should provide for recourse to another court, in addition to the International Court of Justice, to which juridical and natural persons other than States would have access. Such persons, and the Authority itself, should have access to a court as parties to a dispute.

25. His delegation attached particular importance to the compulsory settlement of disputes by arbitration. The convention should therefore allow for arbitral settlement of

disputes. Both *ad hoc* arbitration and institutionalized arbitration had advantages and disadvantages. His delegation did not rule out any form of arbitration, and reserved the right to revert to the matter at a later stage.

26. With regard to the machinery and procedures for settling disputes arising out of the interpretation and application of the convention, his delegation favoured a flexible combination of the general and functional approaches. The time had not yet come to deal with the details of that combination, which should be the object of careful study. The convention might provide for special procedures in the case of specified institutions and norms. Provisions on the composition of judicial and arbitral bodies should stipulate that those bodies should possess adequate technical knowledge, and qualified experts should participate in all bodies taking binding decisions. The relationship between special procedures and the general procedure should be clearly defined in order to prevent secondary disputes arising out of disagreement as to what procedure should be applied in a specific case.

27. With regard to exceptions, it would be best if there were none at all; a list of exceptions would considerably reduce the value and effectiveness of the convention. However, since the exclusion of exceptions might not be acceptable to all States, every proposed exception should be carefully considered and, if accepted, should be formulated very clearly, and its scope and application should be interpreted restrictively.

28. His delegation was prepared to accept, after the current debate in the plenary, an informal single negotiating document, part IV, with the addendum, as a basis for further negotiations.

29. Mr. WITEK (Poland) said that in general his delegation favoured an effective and binding system for the settlement of disputes. The inclusion of such a system in the future convention would make it easier for many delegations to accept certain new concepts and regulations.

30. His delegation favoured the functional approach to the settlement of disputes and consequently supported the establishment of a sea-bed tribunal, as one of the organs of the Sea-bed Authority, which should have jurisdiction in all matters falling within the scope of part I of the convention. It also favoured the establishment of special procedures and bodies to deal with disputes concerning fisheries, pollution, scientific research, and possibly additional matters, such as navigation.

31. His delegation found it difficult to agree that a distinction should be drawn, for the purpose of deciding which type of procedure should be used, between disputes of a technical nature involving the application of articles of the convention and disputes of principle concerning its interpretation. In many cases it would be difficult to distinguish between the two types of disputes and to separate the application of the convention from its interpretation. Moreover, when resort to a special procedure resulted in a binding decision, in principle there should be no appeals procedure. The possibility of appeal would only complicate the settlement of disputes.

32. His delegation did not, however, reject other means for the settlement of disputes, including general judicial procedures, and in that connexion it fully supported article 2 of the text submitted by the President (A/CONF.62/WP.9). However, since the majority of disputes were likely to be settled by special procedures, his delegation questioned the desirability and necessity of establishing a law of the sea tribunal with the comprehensive functions suggested in that document. The arbitration procedures provided for in annex I B of the document, together with the International Court of Justice, provided satisfactory machinery for general proce-

³ *Optional Protocol of Signature concerning the Compulsory Settlement of Disputes* (United Nations, *Treaty Series*, vol. 450, p. 169).