Special Committee on the Charter

Chilean delegation speech

"Means for the settlement of disputes — Exchange of information on State practices regarding the use of conciliation"

18 to 26 February 2020

Mr. President,

Introduction.

Chile has a very special interest and a long-standing commitment with the peaceful settlement of disputes. We are a State that has promoted it at the regional, hemispheric and universal levels. In particular, Chile, together with fully adhering to the principles and procedures established in Article 33 of the Charter of the United Nations, is also part of the American Treaty on Pacific Settlement of Disputes (known as the Pact of Bogotá) that regulates, among other means, the conciliation. Chile is also part of other instruments to which it attaches special importance such as the UN Convention on the Law of the Sea, or the Vienna Convention on the Law of Treaties, which also establish conciliation mechanisms.

In addition, we have agreed other bilateral instruments that prescribe this method as an available option for the peaceful settlement of disputes. In fact, on March 26, 1920, the Republic of Chile and the Kingdom of Sweden concluded the Convention on the Establishment of a permanent commission of investigation and conciliation, which has been described as the first treaty to regulate conciliation as a method of peaceful settlement of disputes. This treaty set an important precedent, because by 1928 more than 20 similar conventions had been concluded.

Mr. President,

It should be borne in mind that article 33 of the Charter does not impose the obligation to opt for a specific means of solution, but expressly grants that option to the free choice of the Parties involved.

We also consider it appropriate to highlight that the International Court of Justice, in its judgment of October 1, 2018, in the case "Obligation to negotiate access to the Pacific Ocean", reiterated that Article 33 of the Charter reflects a general duty to settle the disputes in a way that preserves peace and international security, and also justice. However, it stated clearly that nothing in that clause indicates that the Parties to a dispute are obliged to resort to a specific method of solution (Paragraph 165 of the ruling).

Ese mismo enfoque fue el adoptado en la resolución 2625 (XXV) de la Asamblea General ("Declaración sobre los principios de Derecho Internacional referente a las relaciones de amistad y a la cooperación entre los Estados de conformidad con la Carta de las Naciones Unidas") y, asimismo, en la Resolución 37/10 ("Declaración de Manila sobre el Arreglo Pacífico de Controversias Internacionales"), en que la Asamblea General proclamó el "principio de la libre elección de los medios" para la solución de controversias (párrafo 166 del fallo "obligación de negociar").

That same approach was adopted in resolution 2625 (XXV) of the General Assembly ("Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in

accordance with the Charter of the United Nations ") and likewise, in Resolution 37/10 ("Manila Declaration on the Peaceful Settlement of International Disputes"), in which the General Assembly proclaimed the "principle of free choice of means" for the settlement of disputes (paragraph 166 of the ruling).

Mr. President,

Regarding to state practice, my delegation considers it pertinent to highlight some aspects that seem relevant in this area:

- The consent of all the Parties involved is an essential requirement for this mechanism to operate. Consent may be expressed on a case-by-case basis, to resolve a particular dispute, or it may be expressed through a treaty establishing conciliation as a mechanism that can be applied to one or more categories of disputes, or to all disputes between the Parties, as they deem appropriate. When the parties regulate the conciliation mechanism through a treaty, they can agree that this means can be activated at the request of either of them, or they may require that it can only be activated with the agreement of both. The parties may also empower the mediating body that they have established in the treaty to offer them their services when it deem appropriate, which will naturally be subject to the decision of the interested parties.
- If the parties decide to regulate the conciliation through a treaty, they will frequently determine the composition of the mediating body there.
- In a treaty, States parties can establish conciliation as an alternative method among several others, or they can establish resort to this mechanism as a precondition that must be met before any of the parties can resort to a judicial means.
- Procedural aspects. The conciliation is a procedure that involves an impartial third party, usually a conciliation commission appointed directly by the parties, or designated with the assistance of another third party, which intervenes for that only purpose.
- Characteristics of the report / recommendations of the conciliation commission. The report constitutes a proposal that the parties can freely accept or reject. It results from the essence of the conciliation that the report is not legally binding, and this constitutes a radical difference with the arbitration award or the judicial decision. Therefore, each Party may propose modifications to the conciliator's proposal or recommendations, and submit them to the consideration of the counterpart.
- Another aspect that, in Chile's opinion, is fundamental, and that shares the conciliation with the other dispute settlement mechanisms set forth in article 33, is that a State should not reopen matters already settled by judicial decision or by a conventional regime already agreed by the parties. That is, the relevant parties must respect the fundamental principles of *res iudicata* and *pact sunt servanda*. These considerations inspire Article VI of the Pact of Bogotá, which includes a well-established practice of the American States. In accordance with this provision, the means of peaceful settlement established in that treaty may not be applied "… to matters already settled by arrangement between the parties, or by arbitral award, or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty".

Thank you.