United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:

A/CONF.13/L.22

Union of Soviet Socialist Republics: amendment to article 55 as adopted by the Third Committee (A/CONF.13/L.21)

A/CONF.13/L.24

Fourth report of the Drafting Committee of the Conference: proposals regarding the judicial settlement of disputes

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume II (Plenary Meetings)*

DOCUMENT A/CONF.13/L.22

Union of Soviet Socialist Republics: amendment to article 55 as adopted by the Third Committee (A/CONF.13/L.21)

[*Original text: Russian*]
[*23 April 1958*]

Add the following sub-paragraph (*d*) to paragraph 2:

"(*d*) That they are essential in order to ensure the effectiveness of the large-scale measures taken by the said State to safeguard the reproduction of the living resources of the sea."

DOCUMENT A/CONF.13/L.24

Fourth report of the Drafting Committee of the Conference: proposals regarding the judicial settlement of disputes

[*Original text: English*]
[*24 April 1958*]

1. The Drafting Committee of the Conference met on 23 April and, in accordance with the instructions of the Conference given at the 7th plenary meeting on 21 April, considered the following proposals concerning the settlement of disputes:

(*a*) Proposal by Switzerland for the judicial settlement of disputes arising out of the application and interpretation of the body of provisions adopted by the Conference (A/CONF.13/BUR/L.3);[1]

(*b*) Proposal by Colombia for the inclusion in the Convention of an article on general compulsory jurisdiction or arbitration (A/CONF.13/BUR/L.5);[2]

(*c*) Proposal by the Netherlands for the insertion of a new article on settlement of disputes (A/CONF.13/BUR/L.6).[3]

2. In accordance with the Conference's request, the representatives of Switzerland, Colombia and the Netherlands were invited to take part in the Committee's discussion.

3. The representative of Colombia, confirming what he had already stated in the plenary meeting, modified his proposal to read that disputes should be submitted to the International Court of Justice "in conformity with the Statute of the Court" instead of "at the request of any of the parties".

4. In the course of the discussion, it became clear from the statements made by the sponsors of the three proposals that they could not work out a joint text at the present stage because of the differences of substance between the proposals. It was evident, therefore, that certain questions of principle would have to be decided by the Conference prior to the consideration of the proposals. To this end, the following procedural steps, to which the sponsors agreed, are recommended by the Drafting Committee:

(*a*) The Conference should decide, as a matter of principle, whether it wishes to include, in one or more of the instruments to be adopted by the Conference, as appropriate, provisions involving acceptance of the compulsory jurisdiction of the International Court of Justice and compulsory arbitration combined.

If the decision on this is favourable, the Conference should proceed to discuss the Netherlands proposal only (A/CONF.13/BUR/L.6).

If the decision on (*a*) is negative, then:

(*b*) The Conference should decide, as a matter of principle, whether it wishes to include, in one or more of the instruments to be adopted by the Conference, as appropriate, provisions involving acceptance of the compulsory jurisdiction of the Court along the lines of article 74.

If the decision on (*b*) is favourable, the Drafting Committee should be asked to submit a text to the Conference.

If the decision on (*b*) is negative, then:

(*c*) The Conference should decide, as a matter of principle, whether it is prepared to consider the revised Colombian proposal (A/CONF.13/BUR/L.5) and the Swiss proposal (A/CONF.13/BUR/L.3), either as alternative or as complementary proposals.

5. It is emphasized that any decisions taken under paragraph 4 above would be without prejudice to any decision of the Conference to adopt a special procedure for an instrument, or part of an instrument, such as may be the case with articles 57 and 58. Furthermore, should the Conference determine that any provisions adopted should not necessarily apply to all the instruments adopted by it, this would not prejudice the consideration by the Conference of article 74 adopted by the Fourth Committee for inclusion in the convention on the continental shelf.

Annex I

Judicial settlement of disputes arising out of the application and interpretation of the body of provisions adopted by the Conference: letter dated 9 April from the Chairman of the Swiss Delegation to the President of the Conference (A/CONF.13/BUR/L.3)

[*Original text: French*]
[*12 April 1958*]

On behalf of the Swiss delegation, I have the honour to transmit to you and the General Committee of the Conference on the Law of the Sea a proposal concerning the judicial settlement of disputes arising out of the application and interpretation of the body of provisions adopted by the Conference.

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[1] See annex I of the present document.

[2] See annex II of the present document.

[3] See annex III of the present document.

You will see that the attached proposal is not an "amendment" to article 57 or 73 of the International Law Commission's draft. That is why the Swiss delegation did not draft any "amendment" to these articles within the provisional time limits for submitting amendments in the Third and Fourth Committees.

This proposal, on the contrary, is a general one permitting States which believe that clauses for compulsory settlement of all disputes should be included in multilateral treaties to sign agreements under which the jurisdiction of the International Court of Justice may be established by simple application.

An "optional clause" — the signature and ratification of which even by some of the governments represented at the Conference on the Law of the Sea would doubtless help to develop an international jurisprudence in this important field — should be embodied in a separate protocol, apart from the convention or conventions opened for signature by Powers at the end of the Conference.

The Swiss delegation's proposal therefore concerns a fresh matter, not included in those sent to any of the Conference's committees. Moreover, it extends the principle of compulsory arbitration, in relations between States willing to accept this, to any provisions adopted by the Conference and not only to those of articles 52 to 56 or articles 67 to 72 of the International Law Commission's text.

The proposal of the Swiss delegation is therefore transmitted to the General Committee of the Conference for reference to one of its committees or for any other appropriate action.

(*Signed*) Paul RUEGGER

Chairman of the Swiss Delegation

PROPOSAL

(Optional) *Protocol of Signature concerning the compulsory settlement by the International Court of Justice of disputes arising between the signatory States out of the interpretation or application of the convention(s) adopted at Geneva by the United Nations Conference on the Law of the Sea*

The undersigned representatives of States invited to participate in the Conference of the Law of the Sea held under the auspices of the United Nations at Geneva from 24 February to 1958,

Duly authorized thereto by their governments,

Expressing the wish of their governments to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of any article of the convention(s) on the Law of the Sea of ..... 1958, to the compulsory jurisdiction of the International Court of Justice, unless in a particular case the parties agree within a reasonable period to accept some other form of settlement,

Have agreed on the following provisions:

(1) Every dispute arising out of the interpretation or application of the aforesaid convention(s) shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an ordinary application made by any party to the dispute being a signatory of this protocol.

(*Note:* This wording corresponds to the resolution of the Institute of International Law adopted at Granada on 17 April 1956, the last six words having been added).

(2) This undertaking relates to all the provisions of the Geneva Convention(s) on the Law of the Sea and not merely to some chapters thereof (or to some of those conventions).

(3) With regard to relations between the signatories of this protocol, the procedure of article 1 hereof shall replace that of article 57 (of the International Law Commission's draft) concerning disputes arising out of articles 52, 53, 54 and 56 (of that draft).

Provided that the parties to such an action may agree, within a period of two months after one party has notified to the other its opinion that a cause of action exists, to resort not to the Court but to an arbitral commission under article 57.[1] After the expiry of the said period, either party to this protocol may bring the dispute before the Court by an ordinary application.

(4) Within the same period of two months the parties to this protocol may agree to adopt a conciliation procedure before resorting to the Court.

The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may by an ordinary application appeal against them to the jurisdiction of the Court.

(5) Where an action raises scientific or technical issues, either party may in its originating application submit that the action is one in which the Court should order an expert opinion under Article 50 of its Statute.

(6) A party considering that the settlement of the action is especially urgent may in its originating application request the Court to refer the action to the Chamber of Summary Procedure.

The signatories of this protocol undertake not to object before the Court to a reference to summary procedure.

(7) A party to a dispute may, if it deems necessary, request the Court to indicate under Article 41 of the Court's Statute provisional measures to preserve its rights.

Done at Geneva, ... 1958.

Annex II

Inclusion in the convention of an article on general compulsory jurisdiction or arbitration: letter dated 14 April 1958 from the Chairman of the Colombian Delegation to the President of the Conference (A/CONF.13/BUR/L.5)

[*Original text: Spanish*]
[*14 April 1958*]

The Chairman of the Delegation of Colombia, in a statement to the First Committee on 14 March last,[2] intimated his country's desire for an article on general compulsory jurisdiction or arbitration to be included in the convention under study.

I venture to append for Your Excellency the text proposed by the Colombian delegation on the lines of the present article 73, which deals solely with disputes concerning the continental shelf. Since the Colombian proposal refers to subjects under consideration by various committees, the procedure to be adopted is left to your discretion.

Should the new text be approved, the present article 73 would need to be deleted as redundant.

(*Signed*) Juan URIBE HOLGUÍN

Chairman of the Delegation of Colombia

DRAFT ARTICLE

Except in the case of those disputes to which the arbitral procedure established by article 57 applies, any disputes that may arise between States concerning the interpretation or application of any of the texts of this convention shall be submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.

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[1] *Note.* — Amendments appear, however, to be necessary here. A simple "consultation" with the President of the International Court of Justice as president of the highest international tribunal seems neither satisfactory nor usual.

[2] See summary record of the 16th meeting of the First Committee.

Annex III

Inclusion in the convention of an article on the settlement of disputes: note verbale addressed by the Chairman of the Delegation of the Netherlands to the President of the Conference (A/CONF.13/BUR/L.6)

[Original text: English and French]
[14 April 1958]

The Netherlands delegation has the honour, upon instructions of their government, to submit the enclosed amendment to the Conference.

The Netherlands delegation are not in a position to propose this amendment to one of the committees since it has a bearing upon subject-matters which are being considered by at least three committees. They must, therefore, leave it to your discretion to decide how to lay this amendment before the Conference.

The Netherlands delegation attach great importance to this amendment because the fate to be allotted to it might in the event prove to have a decisive influence upon the final voting on matters of substance. They foresee the possibility that the eventual adoption or rejection of particular substantive provisions, even though acceptable in themselves, will depend upon the question as to whether, in case of dispute about their real scope, ways and means will be available for invoking an impartial judicial or arbitral decision on the construction to be put upon them.

The Netherlands delegation understand that this proposal is not intended to prejudice the special provision concerning the settlement of disputes in fishing matters (article 57) but that, in case of the above amendment being adopted, article 73 of the draft of the International Law Commission might become redundant.

The Netherlands delegation, moreover, consider this proposal as a proposal of principle which might need further elaboration, with a view, for example, to cases in which not two, but three or more parties are involved. For the moment, the proposal is drafted in order to cover the normal case of two opposing parties.

PROPOSAL

Insert a new article as follows:

"1. If a dispute arises between two contracting parties concerning the interpretation or application of this convention which cannot be settled through the diplomatic channel, either of them may either refer the dispute to the International Court of Justice by unilateral request in conformity with the Statute of the Court, or submit it to arbitral settlement by a tribunal composed of five members, only two of which may be appointed by the parties.

"2. If a contracting party proposing to appear as plaintiff prefers recourse to arbitration, it shall be bound to designate its arbitrator when notifying the other party of such preference. In this case, the other party shall be bound to accept arbitration and to designate its arbitrator within a period of one month.

"3. If a contracting party intends to apply to the International Court of Justice, it shall give the other party one month's advance notice of that intention in order that the latter may have an opportunity of expressing its preference for recourse to arbitration. Should that other party prefer recourse to arbitration, it shall be bound to designate its arbitrator when indicating such preference. If the defending party does not designate the arbitrator within the specified time, the plaintiff party may submit the dispute to the International Court of Justice by unilateral request. Should, however, the defending party duly designate its arbitrator, then the plaintiff party shall be bound, within a further period of one month, likewise to designate an arbitrator.

"4. If the second arbitrator is not designated within the specified time, the party concerned may request the President of the International Court of Justice to make the designation at his discretion.

"5. Within a period of two months from the date of the designation of the second arbitrator, the two arbitrators designated as aforesaid shall agree on the designation of the other three members of the tribunal. If no agreement is reached within the specified time, either of the parties to the dispute may request the president of the International Court of Justice to designate a person or persons to fill any remaining vacancy or vacancies. The arbitrators designated as aforesaid shall elect one of their number to act as chairman of the tribunal.

"6. Any vacancy that may occur shall be filled by the procedure set forth in the foregoing paragraphs.

"7. As soon as the arbitral tribunal is constituted, the party which took the initiative may submit the dispute to the tribunal by unilateral request.

"8. If the normal course of the arbitral proceedings should be hampered by one of the arbitrators, then the other members of the tribunal may continue without him and their award shall be valid.

"9. In so far as the parties have not themselves, before the final constitution of the tribunal, settled the procedure to be observed, the tribunal may of its own authority establish such rules of procedure as it may consider necessary, in conformity with the provisions of the relevant articles of the Convention of The Hague of 18 October 1907 for the Pacific Settlement of International Disputes.

"10. In the absence of any stipulations agreed between the parties concerning such matters, the tribunal shall be free to determine the costs of the proceedings, including the emoluments of its members, and the apportionment of the costs among the parties."

DOCUMENT A/CONF.13/L.25

Convening of a second international conference of plenipotentiaries: letter dated 24 April 1958 from the Chairman of the Delegation of Cuba to the President of the Conference

[Original text: Spanish]
[24 April 1958]

I have the honour to submit for your consideration and through your good offices to the Conference, a draft resolution that envisages the convening of a second international conference of plenipotentiaries with a view to further consideration of any questions left unsettled.

As you will note, the attached draft resolution begins by stressing the substantial results achieved by the Conference as the outcome of its deliberations. Having been convened to examine the whole of international maritime law, it has undeniably fulfilled the greater part of its task by approving agreements and other instruments on the régimes applicable to fishing and the conservation of the living resources of the high seas, the exploration and exploitation of the natural resources of the continental shelf and other matters concerning the general régime of the high seas and the access of land-locked States to the sea. Unfortunately, it does not seem possible at the present conference to reach agreement on the breadth of the territorial sea and other matters pertaining to the régime applicable thereto. This fact must therefore be recognized,