United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.1/SR.30

30th meeting of the First Committee

Extract from the
Official Records of the United Nations Conference on Consular Relations, vol. I
(Summary records of plenary meetings and of meetings of
the First and Second Committees)

could not be adopted. Like the Swiss representative himself, he preferred the United States proposal to the Swiss proposal and requested that a roll-call vote be taken on it.

59. Mr. RUDA (Argentina) pointed out that his country had consistently favoured arbitration. Argentina had submitted many important disputes to arbitration, including boundary disputes with its neighbours — Brazil, Paraguay, Bolivia and Chile.

60. However, it was the position of his government that the submission of a dispute to arbitration was subject to the agreement of the parties in each specific case. Hence his delegation could not support any formulation which might lead to the judicial settlement of a dispute without such agreement.

61. Argentina had recognized the compulsory jurisdiction of the International Court of Justice only in respect of a few humanitarian conventions. It had done so in those exceptional cases precisely because of the humanitarian character of the conventions concerned.

62. In the circumstances, his delegation urged that the precedent of the first United Nations Conference on the Law of the Sea and of the 1961 Vienna Conference on Diplomatic Intercourse and Immunities should be followed by adopting a separate optional protocol on the settlement of dispute. If the proposal for an optional protocol were not adopted, his delegation would propose a sub-amendment to the United States amendment replacing the words " shall be submitted at the request of either of the parties to the International Court of Justice " by the words " shall be submitted by mutual consent of the parties to conciliation, to arbitration or to the International Court of Justice ".

63. The Swiss proposal was substantially in line with the position of the Argentine delegation. Paragraph 2, however, was in fact a reservations clause, and his delegation considered reservations undesirable in the case of a convention codifying international law. By dealing with the settlement of disputes in a separate protocol, it would be possible to ensure the universality of the convention on consular relations.

The meeting rose at 1.15 p.m.

THIRTIETH MEETING

Tuesday, 26 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Disputes clause (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the proposals for a clause relating to the settlement of disputes submitted by the United States (A/CONF.25/C.1/L.70) and Switzerland (A/CONF.25/C.1/L.161) and of the Belgian proposal for an optional protocol (A/CONF.25/C.1/L.162).

2. Mr. MARESCA (Italy) said that every legal rule should be accompanied by a guarantee to ensure its application even if one of the parties refused to comply with it. Consular law was no exception to that requirement. The Italian delegation thought that the natural place for a clause providing for settlement of the disputes which might arise over the application or interpretation of the convention was in the body of the convention itself. The settlement of any dispute of that nature should be entrusted to the International Court of Justice, which was competent to decide all disputes coming under international law. The Italian delegation therefore unreservedly approved the solution proposed by the United States (L.70) and hoped that it would become an integral part of positive law. It wished nevertheless to suggest a slight modification of the text, consisting of the insertion of the words " which cannot be settled through diplomatic channels " after the words " this convention ". If the United States proposal did not receive the necessary majority, the Italian delegation would support the alternative solution submitted by Switzerland (L.161), which seemed calculated to allay all fears and provided a generally acceptable way out. If that solution also were rejected, there would be no alternative but to adopt the Belgian proposal (L.162) that the settlement of disputes be dealt with in an optional protocol in accordance with the precedent set by the Convention on Diplomatic Relations.

3. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that the United States delegation had explained the need to include a disputes clause in the convention by the fact that the United States and other countries accepted the compulsory jurisdiction of the International Court of Justice. The draft articles prepared by the International Law Commission contained no provision concerning the settlement of disputes, however, and it might be questioned how far the United States proposal was justified. A study of positive law showed that the choice of methods for settling disputes depended on the will of each State. Article 33 of the Charter listed various means of peaceful settlement of disputes; in other words, it granted each State the right to choose the means it considered most appropriate. Article 36 of the Statute of the International Court of Justice also provided that recognition of the compulsory jurisdiction of the Court depended on the decision of each State. Hence the fact that certain States recognized the compulsory jurisdiction of the International Court of Justice did not mean that all States were obliged to recognize it. In fact, out of more than one hundred States Members of the United Nations, only forty-six had recognized the jurisdiction of the Court as compulsory, and in the great majority of those cases recognition was accompanied by numerous reservations. The United States itself had made numerous reservations; in particular, it did not recognize the compulsory jurisdiction of the International Court in any dispute whose substance came within the domestic jurisdiction of the United States as so defined by the United States itself.

4. The Soviet Union considered that a dispute should be submitted to the International Court of Justice only at the request of both the parties. In a few cases it had accepted the jurisdiction of the Court, basing its decision on the circumstances on each occasion.

5. Previous conventions, such as the 1958 Geneva conventions on the law of the sea and the 1961 Vienna Convention on Diplomatic Relations did not contain any clause on the compulsory jurisdiction of the International Court of Justice. Such clauses had been included in optional protocols. Hence there seemed to be little justification for the United States proposal. The Convention on Diplomatic Relations had given an example of wisdom and flexibility, which should be followed by adopting the Belgian proposal (L.162).

6. He regretted that the Swiss delegation had submitted its unhappy proposal (L.161), fearing that an optional protocol might be an obstacle to ratification of the convention. That had not been true either of the Geneva conventions on the law of the sea or of the Vienna Convention on Diplomatic Relations, whereas, on the contrary, many countries, including the United States and the USSR, had not signed the 1962 Brussels Convention referred to by Switzerland. Finally, he found it hard to understand the point of the Swiss request that all the amendments should be put to the vote. That could only complicate the discussion; it would be better to seek a compromise solution at once. A few days before, the spirit of co-operation of all delegations had made it possible to overcome a fairly grave difficulty. He thought that representatives could agree on an optional protocol that would be acceptable to all delegations.

7. Mr. CAMERON (United States of America) observed that the USSR representative had spoken of the United States proposal as though it were based on Article 36, paragraph 2, of the Statute of the International Court of Justice; in fact, the proposal had been made in accordance with Article 36, paragraph 1. Moreover, the clause proposed did not differ in any way from those adopted in many treaties.

8. The CHAIRMAN announced that a new proposal had been submitted by the delegations of Ghana and India (A/CONF.25/C.1/L.163).

9. Mr. DADZIE (Ghana) said that the joint proposal was similar to the Belgian proposal. Ghana attached particular importance to the question of the settlement of disputes. To make no provision on that point would doom the convention to remain a dead letter. It was obviously desirable that all States should agree to submit to the same jurisdiction and there was none more appropriate than that of the International Court of Justice. Many countries, however, had not thought fit to accept the compulsory jurisdiction of that Court without paralysing reservations.

10. Consequently, the Ghanaian and Indian delegations proposed the solution adopted by the 1961 Conference, which was to draw up an optional protocol providing for optional recourse to the International Court of Justice. That solution would have the advantage of allowing many States to accede to the Convention, whereas the proposals of Swirzerland and the United States might give rise to many difficulties. Moreover, the United Nations General Assembly had recognized at its seventeenth session that the International Court of Justice could only validly be seized of a dispute when both parties agreed to submit to its jurisdiction.

11. Since their proposal was identical with that of Belgium, the Indian and Ghanaian delegations would be glad to join the Belgian delegation as sponsors of its proposal.

12. Mr. CRISTESCU (Romania) said that his delegation would vote against the proposals of the United States and Switzerland. Similar proposals had often been rejected in the past. When the Statute of the International Court of Justice had been adopted, only a very small number of States had recognized the compulsory jurisdiction of the Court, and most of them had only done so with important reservations. The great majority of States were not prepared to accept the compulsory jurisdiction of the Court. Article 36, paragraph 1, of the Statute of the Court itself limited its competence to cases referred to it by the parties. That was necessary because the contrary solution would infringe the sovereignty of States, which could not be subject to restrictions on the exercise of their prerogatives when they had to decide in each specific case whether the jurisdiction of the Court should be accepted.

13. That was the only solution entirely consistent with the concept of sovereignty and it had therefore been adopted in many international conventions. It had been for the same reasons, both theoretical and practical, that in the matter of disputes over the application of the Geneva conventions on the law of the sea, and also of the Vienna Convention on Diplomatic Relations, the majority of States parties to those conventions had no accepted the compulsory jurisdiction of the International Court of Justice. Separate protocols had therefore been concluded for the convenience of some States.

14. At its seventeenth session, the General Assembly had rejected the clause on the compulsory jurisdiction of the Court.[1] Consequently, a provision for the compulsory settlement of disputes over the interpretation or application of the convention had no place in the text.

15. A whole series of modes for the peaceful settlement of disputes were available to States, in particular those mentioned in Article 33 of the Charter. They could likewise be employed in the case of disputes over the interpretation or application of the convention on consular relations.

16. Mr. ALVARADO GARAICOA (Ecuador) fully endorsed the statements made by the representative of Argentina at the preceding meeting. The problem of the settlement of disputes concerning the interpretation or application of the convention was of great importance.

[1] See *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 75, document A/5356, para. 47.

It was necessary to avoid anything that might hinder the application of the convention, and to safeguard the principle of the sovereign right of all States to accept or reject the jurisdiction of the International Court of Justice. It was essential to adopt a flexible solution which was acceptable to the majority and would ensure the final success of the Conference.

17. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he unreservedly supported the principle of peaceful settlement of international disputes by the International Court of Justice. He would accordingly wote for the United States proposal, which laid down very fully the procedure to be followed in regard to interpretation and application of the convention.

18. Mr. PETRŽELKA (Czechoslovakia) said that his delegation could not accept the disputes clause proposed by the United States, because it was at variance with the provisions of Article 33, paragraph 1, of the Charter, in that it gave a single party to a dispute the right to refer it to the International Court of Justice, and gave that method preference over the other methods of settlement mentioned in Article 33. Furthermore, the proposed clause was contrary to the current trend in international law. The best method of settling disputes over the interpretation or application of the convention was direct negotiation between the sending State and the receiving State. The article proposed by Switzerland, which provided for three stages in the settlement of disputes, did not leave States free to choose the method of settlement. Furthermore, it was contrary to the principle that any dispute must be settled with the consent of all parties concerned. Hence the Czechoslovak delegation could not accept the article. On the other hand, it was willing to accept an optional protocol such as that proposed by Belgium and by India and Ghana.

19. Mr. DONATO (Lebanon) said that he would vote for the disputes clause submitted by the United States, which was clear, simple, precise and ethical, and respected the competence of the International Court of Justice. The Lebanese delegation would, however, like the United States proposal to be amended as suggested by the Italian representative. The underlying idea of the oral amendment submitted by Argentina was already implicit in the United States text. If that text was rejected, the Lebanese delegation would vote for the optional protocol proposed by Belgium and by India and Ghana; the new article proposed by Switzerland was too subtle and complicated.

20. Mr. SOLHEIM (Norway) said that his delegation warmly supported the United States proposal. The adoption of that proposal by such a representative conference would be a very important and useful step. If the United States proposal were to be rejected, careful consideration should be given to the proposal submitted by Switzerland, which might, as a compromise, have the support of the majority of delegations. The Swiss proposal was very wisely balanced, because in its paragraph 2 the interests of the States which could not accept the provision in paragraph 1 were taken into account. The experience of the 1961 Vienna Conference, and other experience, showed that a number of States were unable, for different reasons, to accept the compulsory jurisdiction of the International Court of Justice for the time being. That fact was, undoubtedly, the motive behind the Swiss proposal, especially its paragraph 2, and it was therefore the sincere hope of the Norwegian delegation that the proposal would be accepted as drafted.

21. Norway was among the countries which at a very early stage had accepted the so-called " optional " clause of the Statute of the International Court of Justice, in the hope that all States would accede to that clause. Unfortunately, the hope had not as yet been fulfilled. Nevertheless, his delegation hoped that a great number of countries which were still unable to accept the general " optional " clause of the Statute of the International Court might, as a first step, accept the obligation of international arbitration in the limited field covered by the draft convention before the Committee.

22. Mr. RABASA (Mexico) said that his country had always remained faithful to the principle of the peaceful settlement of disputes. Mexico was a party to several agreements, including the Charter of the Organization of American States and the Bogotá Pact, in which that principle was embodied. Mexico was also firmly attached to the principle stated in Article 2, paragraph 3, of the United Nations Charter, but the clause proposed by the United States restricted the choice of means of the settling of disputes which was left to States by paragraph 3. It was true that Mexico had recognized the compulsory jurisdiction of the International Court, in disputes on the matters referred to in Article 36, paragraph 2, of the Court's Statute, but that did not mean that it accepted the Court's jurisdiction in all cases. The clause proposed by the United States was inspired by the desire to provide for the peaceful settlement of disputes, in particular disputes concerning the interpretation or application of the convention, but, contrary to what the United States representative had stated, it did not fall within the scope of Article 36, paragraph 1, but rather of paragraph 2 of that article, which dealt with the settlement of legal disputes. The Mexican delegation regretted that it could not support the United States proposal, which made the jurisdiction of the International Court of Justice compulsory. Nor could the Mexican delegation vote in favour of the article proposed by Switzerland (L.161). It would, in fact, be difficult for a contracting party to exercise the right conferred on it by paragraph 2 of that article without repudiating paragraph 1, which was inspired by noble ideas.

23. His delegation would, on the other hand, be willing to agree to an optional protocol concerning the settlement of disputes being attached to the Convention as proposed by Belgium and by India and Ghana.

24. Mr. DONOWAKI (Japan) thought that a convention which did not contain a disputes clause would be an ineffective instrument. His delegation supported the clause proposed by the United States which made the jurisdiction of the International Court of Justice compul-

sory for the interpretation and application of the convention and would thus contribute to the maintenance of international peace. However, the last part of the text might be understood to mean that where an alternative method of settlement was merely agreed upon, the parties to a dispute were not obliged to submit it to the Court even when that alternative method had failed to bring about a settlement of the dispute. In order to preclude such an interpretation, the Japanese delegation suggested that the words " unless an alternative method of settlement is agreed upon " should be replaced by the words " unless the dispute is settled by an alternative method ". If that sub-amendment was accepted by the United States, it could be referred to the drafting committee. If the United States proposal was rejected, however, the Japanese delegation would vote in favour of the new article proposed by Switzerland; if that text was also rejected, it would vote in favour of the proposals by Belgium and by India and Ghana to attach an optional protocol to the convention.

25. Mr. MABAMBIO (Chile) said that his country had consistently applied the principle of the judicial settlement of disputes; accordingly, it had voluntarily, and in the exercise of its sovereign rights, made use of arbitration or direct negotiations for the settlement of its boundary disputes. Many countries did not accept the compulsory jurisdiction of the International Court of Justice and it was undesirable for the Conference to seek to make a pronouncement on a point on which there remained profound divergences between States. Consequently, he could not vote in favour of the clause proposed by the United States or in favour of the article proposed by Switzerland although paragraph 2 of the latter article would enable the parties to contract out of the obligation laid down in paragraph 1. On the other hand, he would support the proposals by Belgium and by India and Ghana for an optional protocol.

26. The Brazilian delegation had requested him to state that it concurred with those views.

27. Mr. N'DIAYE (Mali) pointed out that when any multilateral agreement was concluded, each contracting party must freely consent to surrender a portion of its national sovereignty, for reservations to a multilateral agreement could prejudice its effective application. His delegation was, however, obliged to make reservations regarding the new article proposed by Switzerland. It was true that in introducing the idea of arbitration into the convention, the Swiss delegation had wished to leave it open to the contracting parties to settle their disputes amicably and thus avoid instituting lengthy proceedings before the International Court of Justice, which were expensive for small countries. Mali was not resolutely opposed to recourse to the International Court of Justice, but considered that States which were not parties to the Statute of the Court should not be obliged to accept its jurisdiction; they should be free to choose the mode of settlement that suited them. Consequently, his delegation, in spite of its sumpathy with the clause proposed by the United States and with paragraph 1 of the article proposed by Switzerland, would not be able to vote in favour of those texts. On the other hand, it strongly supported the proposals by Belgium and by India and Ghana to attach an optional protocol to the convention, since that solution offered maximum safeguards to small countries.

28. Mr. OSIECKI (Poland) said that his country was opposed to the principle of the compulsory jurisdiction of the International Court of Justice. Hence the Polish delegation could not accept the proposals of the United States and Switzerland. On the other hand, it was in favour of the proposals by Belgium and by India and Ghana to attach to the convention an optional protocol similar to that attached to the Vienna Convention on Diplomatic Relations.

29. Mr. ABDELMAGID (United Arab Republic) said that where precedents existed they should be invoked if the circumstances were identical. In the case in point, the precedent was the protocol which the Conference on Diplomatic Intercourse and Immunities had decided to annex to the 1961 Vienna Convention. His delegation therefore supported the proposals submitted by Belgium, and by India and Ghana.

30. Mr. PAPAS (Greece) considered that the system adopted for the Convention on Diplomatic Relations should be adhered to. Honce his delegation could not support the proposals of the United States and Switzerland and would support the proposals by Belgium and by India and Ghana.

31. Mr. BOUZIRI (Tunisia) pointed out that his country had never recognized the compulsory jurisdiction of the International Court of Justice for the settlement of disputes; consequently he could not accept it for the settlement of disputes over the interpretation or application of the convention. His delegation would accordingly vote against the United States and Swiss proposals, but would support the proposals by Belgium and by India and Ghana.

32. Mr. KRISHNA RAO (India) thought that compulsory recognition of the jurisdiction of the International Court of Justice was not a practical solution. He outlined the history of the question since the San Francisco Conference, at which the representatives of the United States and the USSR had been opposed to extending the jurisdiction of the Court. As a result, no precise and generally accepted principle of positive international law had been formulated, and Article 36 of the Statute of the International Court of Justice had finally emerged. At present, only about forty Member States out of 110 recognized the obligation to submit to the jurisdiction of the Court. Too much haste in the matter would be harmful to the final result, and by seeking to confirm the compulsory nature of the Court's jurisdiction they might prevent many States from acceding to the convention.

33. He had always been convinced of the need to recognize the compulsory jurisdiction of the International Court of Justice, and he contested the validity of many of the arguments advanced against that recognition. However, he did not think that the Conference was the proper place to debate such a problem. The best solution, therefore, would be to adopt an optional protocol,

separate from the Convention itself. That was the substance of the joint proposal submitted by Ghana and India, and of the Belgian proposal, and he hoped that the Committee would adopt it despite his sympathy with the other two proposals, particularly that of Switzerland.

34. Mr. EVANS (United Kingdom) said that his delegation would be able to accept any one of the three proposals under consideration. The United States proposal, in particular, was perfectly in keeping with the policy of the United Kingdom, which had accepted the compulsory jurisdiction of the International Court of Justice under numerous treaties and under article 36, paragraph 2, of the Statute of the Court concerning a wide range of disputes. Unfortunately, however, many members of the international community were not yet prepared to accept that jurisdiction. Consequently, if the United States proposal was rejected, it would be necessary to choose between the Swiss proposal and the proposals for an optional protocol. The Swiss proposal had certain disadvantages in that it provided for a procedure which was too elaborate for the purposes of the Convention. In particular, the six-month period of delay for the purpose of trying to arrange arbitration before a party to a dispute could submit it to the International Court of Justice was not satisfactory.

35. All things considered, as between the Swiss proposal as it stood and a separate protocol, he would prefer the latter. But if the Swiss delegation was willing to substitute the United States text for the first paragraph of its proposal he would support it; otherwise he would have to abstain from voting on the Swiss text. However, as a last resort, the United Kingdom delegation would vote for a separate protocol.

36. Mr. RUEGGER (Switzerland) explained that paragraph 1 of the Swiss proposal had been borrowed from existing international conventions, but his delegation was quite willing to replace it by the United States text, which left no loophole.

37. Mr. de ERICE y O'SHEA (Spain) said that the 1961 Conference had encountered the same difficulty, and he paid a tribute to the delegations which had shown their legitimate desire for peace and harmony by defending the cause of compulsory jurisdiction. The representative of Mali had said that the requirements of national sovereignty should be reconciled with those of compulsory international jurisdiction. While, admittedly, States might be asked to surrender some part of their sovereignty in the interests of international justice, they should not as a consequence be subjected to the unilateral will of a State with which they were in dispute. That was exactly what would be the regrettable result of the clause proposed by the United States.

38. Commenting on the Swiss proposal, he agreed with the United Kingdom delegation that the procedure for submission and the six-month period would give rise to needless complications. True, the Swiss proposal left the States free to make reservations, but that possibility would only impair the structure of the convention and the desired cohesion among the signatories. He was therefore unable to support the Swiss proposal.

39. He remained firmly convinced of the usefulness of the International Court of Justice and of the need to recognize its jurisdiction, but, for the moment, the optional protocol adopted for the Vienna Convention of 1961 and again proposed by Belgium, and by Ghana and India was the best solution. Any States which would make reservations if the Swiss proposal was adopted would need to do nothing more than refrain from signing the protocol. That solution would have the advantage of being acceptable to the majority, especially to the Latin American States which had been unable to accept the idea of compulsory jurisdiction even within the framework of the Organization of American States. In other words, any States which would consider it necessary to make reservations should still be able to ratify the convention.

40. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that the United States proposal was based on an idea which had been rejected by most of the delegations in 1961 because it invalidated the basic principle of the equality of rights between States. A dispute should not be referred to the Court except with the consent of all the parties concerned. The protocol solution would have the advantage of respecting the majority view while enabling those in favour of compulsory jurisdiction to accept it by signing the protocol. He would vote against the United States and Swiss proposals, and urged other delegations not to depart from the sound precedent of the 1961 Conference but to vote in favour of the proposals by Belgium and by India and Ghana. He hoped that the United States delegation would spare the Conference needless complications and contribute to good understanding by withdrawing its proposal.

41. Mr. BARTOŠ (Yugoslavia) agreed with the United Kingdom representative; so far as the Yugoslav delegation was concerned, all three proposals were acceptable. Yugoslavia was party to some twenty international conventions concluded under the auspices of the United Nations and its specialized agencies, and all of them included a clause on the compulsory jurisdiction of the Court. Accordingly, he supported the substance of the United States proposal, as well as that of the Swiss proposal, although the latter had some drawbacks, particularly the provision concerning the six-month period within which the party concerned could apply to the Court for a ruling in the dispute, and that allowing States to make reservations which might place them in an embarrassing position. It would be more practical to adopt an optional protocol as proposed by the three delegations. In addition, the solution proposed by them was in conformity with the case-law of the International Court of Justice as reflected in its advisory opinion concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.[2] Yugoslavia, which had signed and actually ratified the Optional Protocol of 1961, nevertheless did not rule out the possibility of finding a procedure acceptable to the other parties to the conventions of which it was a signatory. He would vote against the United States and Swiss proposals, and in favour of the three-power proposal.

[2] *ICJ Reports 1951.*

42. Mr. GUNEWARDENE (Ceylon) agreed with the representative of India. While recognizing the merits of the United States proposal, his delegation considered that a general debate on the recognition of compulsory jurisdiction was inadvisable and would not facilitate the Committee's work. The important thing was to adopt a convention on consular relations and, for that purpose, to find the most generally acceptable formula.

43. The Swiss proposal was a praiseworthy compromise, but suffered from the drawback of obliging more than half of the States Members of the United Nations to make express reservations. He urged the representatives of the United States and Switzerland, in the interests of justice and good understanding, to withdraw their proposals and thus enable the Committee to arrive at a unanimous decision.

44. Mr. GHEORGHIEV (Bulgaria) noted that the International Law Commission had not seen fit to include a compulsory arbitration clause in its draft. That meant that it had been aware of the difficulties which the problem had raised at the 1961 Conference. The omission of that clause was even more justified in the case of the convention on consular relations. Since arbitration affected the sovereignty of States, it should not be mandatory; rather, parties to disputes should be free to choose whatever procedure they wished. He would vote in favour of a separate protocol, and against the United States and Swiss proposals.

45. Mr. JELENIK (Hungary) agreed with the representatives who had criticized the Swiss and United States proposals. As in 1961, his delegation would support the fundamental principle of the voluntary acceptance of the jurisdiction of the Court and it would vote in favour of an optional protocol.

46. Mr. van SANTEN (Netherlands) said that the United States proposal offered the simplest solution and would receive his delegation's support, al the more as the traditional policy of the Netherlands was based on the universal recognition of law and justice to be based on final decisions of a court. The Committee had rejected the idea that States parties to the convention would be free to conclude treaties at variance with the terms of the convention. The consequence would be that disputes relating to the interpretation or application of so rigid a convention would be much more serious, and hence the clause dealing with the settlement of disputes should logically form an integral part of the convention. The fact that obligatory submission of disputes to judges had not been achieved at an earlier codification conference did not invalidate his argument, nor was the fact that many States were not prepared to recognize a compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court a sound reason against accepting a compulsory jurisdiction clause in the Convention, as that clause would be in keeping with the provisions of Article 36, paragraph 1, of the Statute of the Court to which all Members of the United Nations and of the Court were bound. That being so, he could not understand the objections raised by certain small States for whom the maintenance of the law through the courts was of such great importance.

47. In his opinion, the only difference between the Swiss proposal and the proposal for a separate protocol was that, in the first case, it was the refusal of compulsory jurisdiction — in the form of a reservation — which was exceptional, whereas in the second case, it was the acceptance of compulsory jurisdiction which was exceptional. For the international lawyer, therefore, the Swiss proposal was the more appropriate. He could not share the Spanish representative's opinion on the question of reservations, for he regarded the fact of relegating the matter to a protocol outside the Convention as itself constituting a reservation forced upon all the parties thereto. The question of the settlement of disputes within the Convention was of the highest importance, and he urged the Committee to accept at least the Swiss proposal, if it found it impossible to adopt that of the United States.

48. Mr. WU (China) said that the United States proposal was preferable in that it made express provision for the jurisdiction of the International Court of Jurtice, to which all States Members of the United Nations should refer their disputes. It was true that many of them did not recognize the compulsory jurisdiction of the Court, but, inasmuch as the disputes to which the interpretation of the convention might give rise would never be so serious as to endanger fundamental principles, it would be particularly desirable for the Conference to encourage the universal acceptance of the Court's jurisdiction and so to promote the progressive development of the international rule of law. The Republic of China had accepted the Court's jurisdiction from the start and would vote unreservedly for the United States proposal.

49. Mr. EL KOHEN (Morocco) moved that the vote on the various proposals should be postponed so as to enable certain delegations to obtain instructions from their governments concerning the very recently submitted proposals for an optional protocol.

It was so agreed.

The meeting rose at 6 p.m.

THIRTY-FIRST MEETING

Thursday, 28 March 1963, at 10.15 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Disputes clause (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the proposals for a clause relating to the settlement of disputes submitted by the United States of America (L.70) and Switzerland (L.161) and of the proposals by Belgium (L.162) and by Ghana and India (L.163) for an optional protocol.