Third United Nations Conference on the Law of the Sea

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64th 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)*

consideration should be given to relating the new law of the sea to efforts to create a new international economic order and to restructure the existing United Nations system. Within such a framework, a flexible, compulsory and binding dispute-settlement system with wide application would be an essential part of a new order in ocean space.

The meeting rose at 11.45 a.m.

64th meeting

Friday, 9 April 1976, at 10.20 a.m.

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

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that the Center for Inter-American Relations, a non-governmental organization in consultative status with the Economic and Social Council, had requested permission to participate in the Conference as an observer. If he heard no objection, he would assume that the Conference wished to grant permission in accordance with rule 66 of the rules of procedure.

It was so decided.

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

2. Mr. KWON MIN JUN (Democratic People's Republic of Korea) said that his country had consistently upheld in its international relations the principles of complete equality, independence, mutual respect, non-interference in internal affairs and mutual benefit. Accordingly, all disputes arising from the interpretation and application of the law of the sea should be resolved only on the basis of independence and equality between the parties concerned, through negotiations and consultations aimed in particular at protecting the sovereignty of the developing countries.

3. Disputes arising in the areas within national jurisdiction must be resolved in accordance with national laws and regulations, and the question whether a dispute should be subject to the jurisdiction of an international judicial organ should be decided on a voluntary basis and by agreement between the parties. The Conference should therefore not formulate any provisions that might impose unconditional acceptance by the parties of the jurisdiction of such an organ.

4. The procedures adopted for the settlement of disputes should reflect the just demand of the great majority of States that the old international economic order which had served the interests of the imperialist and colonialist maritime Powers should give way to a new international economic order appropriate to the contemporary world.

5. Mr. COSTELLO (Ireland) said that, while agreement on dispute settlement procedures would not automatically produce an agreed convention, disagreement might well indicate the futility of further effort. The procedures must be comprehensive and as simple and inexpensive as possible, and must permit speedy decision and interim relief. They must be compulsory and decisions must be binding; exceptions must be minimal.

6. His delegation was firmly convinced that States should be encouraged to settle their disputes amicably, and accordingly welcomed the availability of a variety of procedures before recourse was had to a tribunal. He therefore welcomed the conciliation procedure put forward in article 7 and annex IA of document A/CONF.62/WP.9 and the provision for the exchange of information and consultation in annex III.

7. However, failure to reach an agreed solution must lead to mandatory independent adjudication resulting in a binding decision. At the adjudication stage, there should be an adequate range of choice, so that a State was not compelled to submit to the binding decision of an organ in which it lacked confidence. The President's text was also helpful in permitting States to opt for regional arrangements or, in the wider context, arbitration or the International Court of Justice. Where the parties concerned had not taken up any of those options, the jurisdiction devolved on the proposed Law of the Sea Tribunal. Perhaps that range of choices might be made even more acceptable if the option of the defendant, rather than the common option of all parties, were to be decisive with regard to the forum having jurisdiction.

8. Clearly there was a need for special procedures for the settlement of certain categories of disputes, particularly on some questions relating to fisheries, pollution, scientific research and the contractual relations arising from exploration and exploitation of the international sea-bed area. Such issues were likely to be of a technical and scientific rather than a legal and political nature, and would therefore require technical expertise and frequently a speedy settlement. Because of the nature of the issues, the decisions reached should not normally be subject to appeal. However, the limited provision for appeal set forth in paragraphs 3 and 4 of article 10 of the President's text would act as a safeguard against uncertainty and even serious injustice.

9. With regard to general procedures, his delegation had doubts about the establishment of the proposed law of the sea tribunal along the lines of the International Court of Justice, and questioned whether the extra cost could be justified. He was aware that many countries lacked confidence in the Court and in its interpretation and application of a body of international law which they felt had been largely formulated without their participation. However, such misgivings might not justify entrusting the interpretation and application of the future convention to another largely similar tribunal. On the other hand, the jurisdiction of the Court was limited, particularly with regard to the parties having access to it, and a new tribunal could be better tailored to perform the particular task to be entrusted to it. If a significant number of delegations regarded such a tribunal as an essential part of dispute settlement procedures, his delegation would not oppose its establishment.

[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).

10. The Conference should not hesitate to discard or modify the traditional concept whereby access to international tribunals had been confined to States. Under certain circumstances, failure to provide for an individual's right of access could do an injustice. Furthermore, if an appeal to the tribunal was established from any special settlement procedures which might be created in the convention, it would be necessary to provide for access to the Tribunal for both natural and juridical persons in respect of disputes in which they might be involved. Experience would suggest that apprehensions concerning such a jurisdiction were not warranted.

11. In addition, it would appear to be highly desirable that the proposed International Sea-bed Authority should have access to any tribunal that might be established with jurisdiction in relation to part I of the informal single negotiating text (see A/CONF.62/WP.8). Furthermore, an international organization, such as the European Economic Community, might itself have competence in areas covered by the convention and should have right of access in such cases.

12. In order to achieve general agreement on the settlement procedures, it might be necessary to permit certain minimal exceptions. In his delegation's view, those proposed in article 18 of document A/CONF.62/WP.9 were too broad. Since the convention would contain many new laws of universal application, it was desirable to ensure confidence in them by providing fair procedures for the settlement of disputes. Difficulties would no doubt arise in relation to the interpretation and application of the convention, and compulsory recourse to an established binding procedure should be considered in the interests of all States.

13. The procedures must ensure an expeditious, fair and inexpensive settlement. In that connexion, the traditional rule of international law relating to the exhaustion of domestic remedies might be excluded or modified. That rule, while based on concepts of sovereignty, was one on which in practice States might not be able to rely in many disputes and which could result in delays and indeed injustice. Its modification would not weaken the legitimate rights of the parties, but its retention might be harmful to the proper working of the settlement procedures.

14. Further, more detailed discussion on the settlement of disputes should be undertaken in an official forum of the Conference in which all delegations could participate. He would prefer such discussions to commence as soon as possible, but appreciated that smaller delegations might not yet be able to undertake that extra burden. He was satisfied that the President would make a timely and appropriate arrangement for a thorough examination of the question.

15. Mr. OMAR (Libyan Arab Republic) said that detailed dispute-settlement procedures could not be formulated at the current stage, since they were closely related to the substantive provisions of the convention. Commenting in general on the question of the settlement of disputes, he said that, first, his delegation approved the principle of pacific settlement in accordance with Article 33 of the Charter of the United Nations. Secondly, States should be given freedom to choose whichever procedure they preferred; it would be unrealistic to seek to impose acceptance of compulsory jurisdiction. Thirdly, disputes arising from matters relating to State sovereignty should be distinguished from other categories of dispute. Fourthly, his delegation had no objection to the inclusion in the convention of provisions governing the peaceful settlement of disputes; detailed provisions could, however, be included in a separate optional protocol.

16. His delegation would support the establishment of a fourth committee to deal with the question of settlement of disputes, but was ready in a spirit of co-operation to study any other proposals that might further the objectives of the Conference.

Mr. Moreno-Martínez (Dominican Republic), Vice-President, took the Chair.

17. Mr. AL-ADHAMI (Iraq) said that the President's text (A/CONF.62/WP.9) contained positive elements that could form the basis for an acceptable compromise. In order not to upset the delicate balance reached after lengthy negotiations, it would be necessary to adopt compulsory procedures for the settlement of disputes, and all decisions must be binding. Only in that way was it possible to ensure respect for the rights of small developing countries. Such a system would also strengthen international peace and security.

18. His delegation wished to make the following points. First, the provisions governing the settlement of disputes should form an integral part of the future Convention. Secondly, parties to the dispute should have the freedom to choose any of the various peaceful means of settlement; compulsory procedures should be instituted only if the parties failed to reach agreement. Thirdly, a tribunal, as proposed in the text, should constitute the main mechanism for the settlement of disputes. Access to the tribunal should also be accorded to those national liberation movements that were participating in the Conference.

19. His delegation would express its views on the remaining aspects of the settlement of disputes within the body that had been proposed to deal with that question.

20. Mr. EL MEKKI (Sudan) noted that article 9 of the President's text provided for compulsory jurisdiction in the settlement of disputes, and gave the parties the option of choosing the jurisdiction of the proposed Law of the Sea Tribunal, an arbitral tribunal or the International Court of Justice. Yet many delegations opposed the establishment of the Law of the Sea Tribunal. Furthermore, many developing countries, including his own, were reluctant to accept the compulsory jurisdiction of any particular judicial organ or that of a third party. The nature of the dispute and the interests and status of the parties should indicate the best settlement procedure. To compel a country to follow certain procedures constituted interference in the internal affairs of that State and restricted its freedom of choice under Article 33 of the Charter of the United Nations. States should have full freedom to choose the procedure most appropriate for settling any dispute. He agreed with the representative of France that article 9 was a step forward from the corresponding provision formulated by the informal group on the settlement of disputes. It might not, however, be possible for States, especially the developing countries, to choose from the compulsory procedures put forward in article 9, which might place them at the mercy of groups of States or persons that would compel them to appear before the body in question.

21. Mr. NANDAN (Fiji) said that procedures for the settlement of disputes arising from the interpretation and application of the convention were essential and should be an integral part of the convention. The new convention would be a delicately balanced compromise and there would inevitably be widely divergent interpretations of its provisions. The procedures for the settlement of disputes must therefore be prompt, final and of universal application. They must also ensure equality of treatment of all States before tribunals that were impartial, neutral and readily accessible. Uniform interpretation of the convention was also essential in order to give effect and meaning to its provisions.

22. His delegation believed that document A/CONF.62/WP.9 constituted a suitable basis for negotiation even though it had reservations regarding certain aspects of the text. His delegation supported the concept of freedom of

choice in the procedures to be followed and in the selection of tribunals. However, it had doubts about the provisions of article 9, which could have the effect of imposing on parties to a dispute a particular tribunal that was not of their choice. Article 9 of the text submitted by the informal group on the settlement of disputes should be retained, because it was more likely to give effect to the wishes of the parties. In the event of disagreement, it provided for the determining choice of forum to be made by the defendant.

23. His delegation also had reservations regarding the exception provisions contained in article 18, paragraph 2, because they were too broad and ambiguous. Such a broad range of exceptions could result in wide disagreement on the extent of the exclusions. It would also exclude from the dispute settlement procedures many disputes which by their very nature should be the subject of prompt compulsory settlement. Exceptions, if any, should be restricted to the absolute minimum and spelt out with great clarity.

24. With respect to the law of the sea tribunal, his delegation favoured the establishment of one tribunal only, having comprehensive jurisdiction to consider all disputes, including those relating to the international area. That, of course, was without prejudice to the special procedures envisaged in annexes IIA, IIB and IIC. The tribunal should be small both in size and in cost, and his delegation therefore supported the concept of a small cadre of permanent members readily available to deal expeditiously with urgent matters such as applications for interim measures. In addition, there should be a panel of members to be used on an *ad hoc* basis, as and when required for sittings of the tribunal. A tribunal of 15 members would be too large and unwieldy to function efficiently and expeditiously. Furthermore, the expense of maintaining such a body on a permanent basis could not be justified.

25. With respect to the Conference's future work on the settlement of disputes, his delegation had grave doubts about the practicability of the formation of a fourth committee at the late stage the Conference had reached. It would prefer to proceed with consideration of that matter on an *ad hoc* basis, possibly under the chairmanship of the President of the Conference.

Mr. Al-Adhami (Iraq), Vice-President, took the Chair.

26. Mr. AL-MOUR (United Arab Emirates) said that document A/CONF.62/WP.9 was not the result of consultations and therefore did not reflect the main trends in the Conference. The present debate on the settlement of disputes was the true starting-point for the elaboration of texts on that subject. The document under consideration should therefore be revised to reflect a realistic balance and to lay a solid basis for international relations.

27. Integrated systems for the settlement of disputes were necessary if the convention was to be accepted and implemented by all. Procedures for the settlement of disputes should therefore be given priority in accordance with Article 33 of the Charter of the United Nations and recognition should be given to bilateral or multilateral arrangements concluded by States for the peaceful settlement of their disputes.

28. His delegation supported the establishment of one permanent tribunal to consider all disputes arising from the interpretation and application of the convention, since such a body would permit the harmonization of decisions. In establishing such a tribunal, however, the interests of developing countries must be taken into account, particularly with respect to the principle of equitable geographic distribution. The tribunal should also have two separate chambers, one for sea-bed disputes and the other for other matters relating to the law of the sea.

29. If the tribunal and the International Court of Justice had parallel competences, there would be conflict in the decisions taken. It was obviously clear that decisions taken by an international tribunal in matters relating to international relationships might affect not only the States parties to the dispute but the community of nations as a whole, owing to the fact that such decisions might deal with general rules of public international law, such as decisions on the delimitations of maritime areas.

30. Moreover, his delegation wished to draw attention to situations in which a dispute related to a topic with interrelated elements and in which only some of those elements were within the competence of the tribunal on the law of the sea while other elements were not. In such a case, could such a topic, with all its elements, be referred to the tribunal on the law of the sea that was to be established?

31. His delegation supported the concept of a simplified settlement of disputes and believed that the nature of the procedures should depend on the nature of the disputes. Accordingly, it did not object to special procedures for specific cases.

32. His delegation did not, however, agree with the principle of compulsory jurisdiction in matters relating to the exercise of sovereignty or sovereign rights or jurisdiction or regulatory powers in maritime areas within national jurisdiction. It therefore believed that article 18, paragraph 2, was fully warranted and supported the right of a State to express reservations when ratifying the convention so that it would not be compelled to apply some or all of the procedures specified therein.

The meeting rose at 11.25 a.m.

65th meeting

Monday, 12 April 1976, at 11.15 a.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. MacEACHEN (Canada) said that he was pleased to note that the Conference had made considerable progress in two years, thanks to the determination of representatives; much remained to be done, however, and time was running out.

2. At the thirtieth session of the General Assembly he had stated that the viability of an increasingly interdependent world order rested on the creation of a more equitable international economic order. The new law of the sea therefore had to lay down duties to go hand in hand with every new right recognized and to be based on principles of

[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).