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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).

submit disputes to regional settlement. Only one third of the States which were parties to the Statute of the International Court of Justice had accepted its compulsory jurisdiction, and in none of the treaties adopted at conferences held during the previous decade was its jurisdiction made compulsory, except in one instance of two articles affecting *jus cogens*. The Conference therefore had no option but to establish procedures which would enable States to choose freely the means of settling their disputes, in accordance with the Charter, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[2] and paragraph 15 of the Declaration of Principles governing the Sea-bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction.[3] The history of relations between States showed that the most common means of settling international disputes was negotiation, particularly meaningful negotiation, and that had been recognized by the International Court of Justice in the judgement concerning the North Sea continental shelf.[4]

10. In establishing machinery for the settlement of disputes arising from the new convention, the Conference should avoid creating new judicial bodies and should make use of existing organs, increasing their authority, if appropriate; consideration might be given to forming, as provided in article 26 of the Statute of the International Court of Justice, chambers to deal with particular categories of cases. Existing regional organs or agreements should be utilized, and States should be urged to provide for the settlement of disputes on a bilateral and regional basis whenever they concluded new agreements or amended existing ones. Finally, the machinery for the settlement of disputes arising from the new convention should be simple, practical and rapid.

11. In short, the best solution for the Conference was probably to agree on an optional clause relating to the jurisdiction of the International Court of Justice, as the court of final appeal in the settlement of disputes. That must constitute the foundation, the starting-point and also the keynote of any kind of mechanism for the settling of disputes which might arise from the future convention on the law of the sea, and it would ensure that judicial settlement procedures were not imposed on States which they had not specifically accepted or which were sometimes even rejected in existing treaties. His delegation had no objection to the provision of such special procedures for specific technical questions such as fishing, pollution and scientific research, or of procedures applicable to disputes concerning the international area and contracts for operations in that area of the sea-bed. The list of exceptions, that would include the points not to be subject to compulsory settlement procedures and those special procedures which were being considered for specific kinds of dispute and for the international area, should be as comprehensive as possible. Any approach that did not take advantage of existing experience was doomed to failure. In the view of his delegation, only States and the International Sea-bed Authority should have the right to resort to dispute settlement procedures, the interests of all other parties should be looked after by the State or States of which they were nationals.

12. On the question of whether the President should prepare an informal single negotiating text on the settlement of disputes, his delegation considered that such action would be premature. The final provisions of the convention or conventions had not yet been agreed upon, and the machinery for the settlement of disputes would have to be modelled on the final text. Furthermore, the subject should first be considered by each of the three Committees to the extent that it related to their terms of reference. An *ad hoc* committee to review the text prepared by the informal working group might be set up, in due course, if necessary.

13. Mr. MAZILU (Romania) said that his delegation agreed that the settlement of disputes arising out of the new convention should be based on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. It was essential that disputes should be settled by the peaceful means mentioned in Article 33 of the Charter. Rules should therefore be established which would enable disputes to be settled in accordance with the goals and sovereign interests of all States.

14. The Conference should ensure that the procedures embodied in the system for the settlement of disputes associated with the new convention complemented those already in existence; the system should, however, be flexible enough to allow advantage to be taken of future improvements in arbitral and judicial procedures. All States, on the basis of full equality of rights, should have access to the procedures agreed upon. His delegation believed that the State alone, by virtue of its rights and obligations, could be a party to the settlement of any dispute which might arise.

15. In the settlement of disputes, the emphasis should be on negotiation in good faith by both parties, on the basis of the principle of equity, and the parties allow a reasonable period to elapse before resorting to settlement procedures. States should mutually agree on the procedures to be chosen for the settlement of their disputes. Legal arbitration should be resorted to only on the basis of each State's consent in the case of each individual dispute.

16. His delegation believed that the provisions regarding the compulsory settlement of disputes should be incorporated in an optional protocol to the convention, in accordance with past practice. That would enable a larger number of States to support the new convention. Finally, his delegation felt that the negotiations on the settlement of disputes should continue with the participation of all interested States.

*Mr. Amerasinghe (Sri Lanka) resumed the Chair.*

17. Mr. LEARSON (United States of America) said that his delegation's views on the need for effective dispute-settlement procedures, as an integral part of an over-all settlement, were well known. His delegation believed that the single negotiating text prepared by the President should be used as a starting-point for negotiations, although it had substantive problems with that text.

18. A comprehensive system for third-party settlement of disputes was an indispensable part of the future convention. The system should apply to all parties and all parts of the convention, the settlement process should be impartial and swift and the decisions should be binding. Procedures for reaching a settlement should be simple and the cost should not be burdensome for either the parties involved or the international community. While the dispute settlement system should extend to all parts of the convention, it would be necessary to provide for certain limited exceptions, which should be defined carefully and as restrictively as possible. His delegation was not prepared to exclude the economic zone from the settlement procedures.

19. His delegation had consistently stated that a properly constituted law of the sea tribunal would be an effective organ for producing rapid and uniform solutions to disputes and that such a tribunal would contribute to coherent and

[2] General Assembly resolution 2625 (XXV).

[3] General Assembly resolution 2749 (XXV).

[4] *North Sea Continental Shelf, Judgment, I.C.J. Reports, 1969,* p. 3

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 Sea[5] 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-

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

dures for the settlement of disputes. The Statute of the Court allowed it sufficient flexibility to handle disputes expeditiously and with expert advice.

33. His delegation was unable to support the provisions of article 13 of the document, which allowed intergovernmental organizations and, in particular, natural and juridical persons, general access to tribunals. Such provisions were contrary to the general norms of contemporary international law and international practice, and would probably be unacceptable to the majority of States. Under that article, nationals of a State might, against the will of that State, become parties to disputes with foreign States and international organizations, a situation that was incompatible with the recognized principle of the jurisdiction of States over their nationals. His delegation favoured, in principle, limiting access to procedures for the settlement of disputes to States; however, it agreed that the Sea-bed Authority and, in some cases, natural and juridical persons should have access to the proposed sea-bed tribunal, but the scope of and rules for such access should be clearly defined in the convention.

34. With regard to article 18, while his delegation accepted the idea that States, when agreeing to be bound by the convention, might declare that they did not accept certain procedures for certain categories of disputes, it found the exceptions in paragraphs 1 and 2 *(b)* most unfortunate. The jurisdiction of coastal States and other rights and prerogatives of those States should be treated in the same manner as the rights and prerogatives of other States.

35. His delegation was prepared to negotiate on any provisions on the settlement of disputes which would serve the interests of the international community as a whole. Arrangements for considering the draft text under discussion should be announced promptly in order to avoid pressures of time.

36. Mr. BÁKULA (Peru) said that his delegation firmly supported the principle that States should settle their disputes by freely chosen peaceful means, as provided in Article 33 of the Charter of the United Nations. Provisions on the settlement of disputes should be incorporated in the convention, and the system established should supplement other methods already agreed to by States for the settlement of disputes.

37. In his view, a distinction should be made between the area within which States exercised jurisdiction and areas outside that jurisdiction. State organs should have competence to settle disputes on matters arising in the area within the State's own jurisdiction: that was consistent with the need for a balance between the jurisdictional power of the State and its obligations under international agreements and arrangements. His country's position regarding the principles governing freedom of communication was well known.

38. The Conference should, therefore, concentrate on developing a satisfactory system for the settlement of disputes relating to international ocean space. His delegation was not convinced of the advantages of the proposed functional system and its attendant special procedures. To submit disputes to special committees composed of experts recommended by various specialized agencies was undesirable for several reasons, including the possibility of divergent interpretations of the convention, of overlapping jurisdiction and of relations with the existing jurisdictional organ, and the impossibility of differentiating between technical and legal issues. Accordingly, the establishment of a law of the sea tribunal under a general system for the settlement of disputes was preferable. Under such a system, the convention could be uniformly applied and disputes would be settled expeditiously. Equitable geographical distribution should be taken into account in establishing the tribunal. Moreover, while it was desirable to avoid a proliferation of jurisdictional organs, the new law of the sea would constitute a legal order requiring considerable specialization, and the tribunal should accordingly have the necessary technical and expert support.

39. His delegation considered that only States should have access to the jurisdictional organ and be parties to disputes relating to the interpretation or application of the convention. Bearing in mind the responsibilities of the International Sea-bed Authority with respect to the sea-bed, international intergovernmental organizations and persons entering into contracts with the Authority could have access to the jurisdictional organ, but only with respect to disputes arising out of those contracts; they could not be parties to disputes involving a State. Disputes relating to the sea-bed itself should also be submitted to the law of the sea tribunal. The question should be considered by the First Committee, and he welcomed the suggestion to establish an *ad hoc* committee of the plenary to discuss the settlement of disputes in co-ordination with the other Committees.

40. His delegation reserved its final position on the settlement of disputes pending the outcome of the discussions in the three Main Committees, since the part of the convention relating to the settlement of disputes would depend to a large extent on the agreement reached in those Committees.

*Mr. Shehab (Egypt), Vice-President, took the Chair.*

41. Mr. RANJEVA (Madagascar) said that his delegation was prepared to give its full support to any proposal designed to ensure the peaceful settlement of disputes in international relations, including disputes relating to the law of the sea. In the past such disputes had tended to be settled at the expense of small coastal States, which had had to tolerate flagrant injustices.

42. It was for that reason that his delegation was insisting that the criteria for the jurisdiction of the organ to be established for the settlement of disputes must be clear and simple in order to ensure the effectiveness of the machinery and obviate legal chicanery. Much of the argument with regard to the geographical jurisdiction of the proposed organ seemed to his delegation to be purely speculative and abstract. Disputes arose out of situations or acts which did not exist in the abstract, and they had to be placed within their natural framework with a view to defining their real dimensions. Accordingly, his delegation had in 1973 supported a proposal on the regionalization of the settlement of disputes (A/AC.138/SC.II/L.40).[6] However, in the event that a conflict arose as to what regional organ had jurisdiction, the organ of the State in which the dispute had actually occurred or where its consequences had been felt should be deemed to have jurisdiction.

43. His delegation agreed that the Conference should move beyond the divergent points of view expressed in the informal working group with respect to the jurisdiction *ratione materiae* of organs responsible for the settlement of disputes. While a distinction should be drawn between matters which could be submitted to dispute settlement procedures and others which could not, it would be unwise to allow for too many exceptions. Accordingly, his delegation proposed, as a criterion for admitting an exception, that the only matters not amenable to dispute settlement procedures were those falling within the exclusive competence of the State in question. In practice, disputes arising out of a situation or act which had occurred in the territorial sea or exclusive economic zone of a State would fall within the jurisdiction of the coastal State, and not that of the machinery for the settlement of disputes. The dispute settlement procedure

[6] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21*, vol. III, sect. 29.

must not be distorted in such a way as to jeopardize the economic or legal security of the coastal State.

44. As to the procedures to be applied, his delegation was convinced that arbitration was the most realistic procedure for the settlement of disputes, along with other traditional methods to which the parties might agree. States, in fact, were less afraid of possible infringements of their sovereignty than of procedural errors or abuses, which did not arise in arbitration procedure. His delegation had some difficulty in accepting the distinction made between States accepting the clause attributing competence to a jurisdictional organ and those accepting the clause attributing competence to an arbitral organ. A solution to that situation could be found only in a new definition of the role of the jurisdictional organ, namely, the law of the sea tribunal.

45. The tribunal, in his delegation's view, would be an organ to which parties would appeal against the decisions of regional or specialized organs. The primary responsibility for applying the new rules should rest with those organs, with the tribunal establishing broad principles governing interpretation and the settlement of issues. The tribunal should also monitor the legality of the actions of the International Authority in the application of the convention. The International Court of Justice could, indeed, serve as the law of the sea tribunal, provided that the necessary amendments were first made to its Statute. With regard to access, his delegation considered that only States and intergovernmental organizations should have access to the machinery for the settlement of disputes.

46. His delegation would suggest amendments to the informal single negotiating text submitted by the President when the individual articles were discussed.

47. Mr. NJENGA (Kenya) expressed appreciation of the efforts of the private group of eminent jurists who had been working on the settlement of disputes for some time. However, since the group was entirely informal, its work could not represent the views of either the Government or delegation of Kenya, even though a member of his delegation had participated in it.

48. It was vital that the future convention should contain comprehensive provisions for a viable system for the settlement of disputes. Although his delegation found many positive elements in the proposals contained in document A/CONF.62/WP.9, it had some fundamental difficulties with the approach taken in the paper. First, the text required a State to submit to compulsory settlement any dispute relating to the interpretation or application of the convention. While his delegation would not be unduly concerned about compulsory settlement if it was confined to the interpretation of the convention, the extension of that procedure to the application of the convention caused it serious concern, and was unacceptable with respect to matters which fell within Kenya's national jurisdiction.

49. With regard to the proposals involving the exclusive economic zone, his delegation's understanding was that the coastal State was to exercise exclusive jurisdiction with respect to all matters connected with the exploration and exploitation of the natural resources of the zone. His delegation could not accept any obligation to submit the exercise of such jurisdiction to compulsory third-party settlement mechanisms, since such action might be used as a pretext for turning the exclusive economic zone into an international zone. All matters relating to that zone were exclusively within the competence of the coastal State, and to accept the possibility of compulsory third-party settlement would mean that the coastal State might be subjected to constant harassment by having to appear before international tribunals at considerable loss of time and money. Similarly, where the coastal State had been given clearly defined jurisdiction by the convention, particularly with respect to the preservation of the marine environment, its power would be negated if it could be subjected, each time it exercised such power, to compulsory dispute settlement systems on matters which could be dealt with through the local courts.

50. His delegation therefore found the general scheme provided for in the working paper to be unacceptable. Although article 18 provided a safeguard for the coastal State against being required to submit to the settlement procedure any "disputes arising out of the exercise by a coastal State of its exclusive jurisdiction" under the convention except in certain matters and although an attempt had been made to permit contracting parties to declare, on ratifying the convention, that they did not accept some or all of the settlement procedures in respect of certain kinds of disputes, article 18 did not adequately resolve the basic issue.

51. His delegation believed that it was in articles 9 and 10 that provision should be made for exempting all disputes relating to matters within the exclusive jurisdiction and competence of the coastal State. Consequently, it did not accept annexes II A, II B and II C, as they stood. Naturally, that should not be taken to mean that nothing in the three spheres covered by these annexes could be submitted to compulsory settlement procedures if the convention specifically so provided.

52. His Government was not, as matters stood, prepared to agree that procedures for the peaceful settlement of disputes should be open to intergovernmental organizations or natural or juridical persons on an equal footing with contracting parties, although a case might be made for the competence of such entities with respect to activities in the sea-bed beyond national jurisdiction. Moreover, any system of disputes settlement should allow a State to choose its modes of settlement. A State might first try informal means, and for that reason provisions for the automatic transfer of cases from informal settlement procedures to compulsory formal procedures should be avoided. In cases in which compulsory settlement was appropriate, the defendant State should have the option to determine which of the compulsory forms it would consent to. While his delegation did not object to any State's making that determination on ratifying the convention, it was opposed to inadvertently creating a system of compulsory settlement which might be used by the developed States to impose their will on the developing States through constant international adjudication. It remained committed, nevertheless, to compulsory settlement of disputes in appropriate situations.

53. Finally, although his delegation agreed that it might not be advisable for the time being to establish another committee on the subject, a more formal working group representing a cross-section of the views expressed during the general debate would be needed in order to prepare a suitable settlement mechanism which would emphasize dispute avoidance, as opposed to dispute settlement through adjudicatory procedures. It was, of course, imperative that all legal issues should find a forum for settlement expeditiously and inexpensively.

*Mr. Andersen (Iceland), Vice-President, took the Chair.*

54. Mr. D'STEFANO PISSANI (Cuba) said that the convention had to contain provisions for the settlement of disputes arising out of its application. There were two fundamental considerations: first, the proposed convention was unusual in its complexity, the innovative nature of many of its provisions, the interdependence of the legal, political and economic aspects of its subject, and its status as a source of international co-operation; secondly, everyone agreed that disputes should be settled peaceably in accordance with the principles set forth in Articles 2 and 33 of the Charter of

the United Nations. A corollary of those two considerations was that the new and complex norms might on occasion create uncertainties and contradictions and that the convention itself, by linking *lex ferenda* to *lex lata*, opened new and wide-ranging prospects which would inevitably be subject to interpretation. Accordingly, in order to minimize the possibility of disputes, the suggestion in annex III of document A/CONF.62/WP.9 concerning the desirability of parties making available to one another information regarding the adoption or application of measures within the scope of the convention was very valuable.

55. The next step was for the Conference to establish an informal open-ended working group to deal with the outstanding questions and reach conclusions regarding the type of tribunal to be set up, who should have access to tribunals, how to avoid overlapping of competences and other matters. Many of the reasons advanced for rejecting the compulsory jurisdiction of the International Court of Justice were still valid; it was a fact that some countries still believed that the function of international law was to protect certain interests—in other words, the *status quo*. In addition, the advocates of an optional clause with regard to acceptance of the Court's jurisdiction ignored the fact that not only had very few States accepted Article 36 of the Court's Statute, but those which had had made such reservations on matters falling within their domestic jurisdictions as to render the Article almost meaningless. An international tribunal of any nature could be authorized to apply, in certain circumstances, principles other than those of statute law: for instance, it could settle any dispute *ex aequo et bono* if the parties so agreed, a fact which implied that it could operate as a friendly arbitrator on matters which were not of a purely legal nature. Arbitration was another possibility as, too, were the arrangements provided for in article 66 of the Vienna Convention on the Law of Treaties[7] and the relevant procedure in the annex thereto.

56. In conclusion, he stressed the need for the dispute settlement procedure to form part of the convention. To achieve that end, all delegations would have to work together to dispel all the doubts which were being revealed in the general debate and to find practical and flexible solutions.

57. Mr. ADENIJI (Nigeria) said that the need for a dispute settlement procedure forming an integral part of the convention was obvious. His delegation believed that such a procedure should be compulsory, because only such a procedure could safeguard the interests of all countries and ensure that the convention would not be rendered useless by unilateral actions. Once parties realized that their actions under the convention were subject to scrutiny by a third party, they were likely to be cautious; that, in itself, might be a good prescription for avoiding disputes. So, too, was the idea contained in annex III of document A/CONF.62/WP.9, concerning information and consultation.

58. His delegation agreed with the President that an effective dispute-settlement procedure would guarantee that the intent of the legislative language of the convention would be interpreted consistently and equitably. That document provided a good focal point for the discussion. Naturally, like the other parts of the convention, the final text would be the product of compromise. Subject to every stage in the settlement procedure being made compulsory, his delegation was willing to support flexibility as to the form of machinery preferred. Indeed, his delegation had earlier advocated the type of flexibility reflected in article 57 of part I of the single negotiating text (see A/CONF.62/WP.8). His delegation accepted conciliation as a basic procedure for dispute settlement and, since compulsory conciliation procedure had already been accepted in the Vienna Convention on the Law of Treaties, it saw no reason why that should not be made applicable in the law of the sea convention.

59. A realistic approach was one that, in addition, permitted States to choose freely between special procedures on specific issues, arbitration, or resort to the International Court of Justice on the understanding that, in each case, the decision would be binding on the parties to the dispute. His delegation would prefer the International Court of Justice to be used in disputes arising from the interpretation and application of the convention in general because, apart from enhancing the Court's role as the judicial organ of the United Nations, States could thus benefit from the experience of the Court in dealing with cases arising out of the 1958 Conventions on the same subject. However, disputes arising out of the exploration and exploitation of the area beyond national jurisdiction were *sui generis* and should be subject to a tribunal other than the International Court of Justice. His delegation was therefore in favour of a permanent tribunal to deal exclusively with the part of the convention relating to the international area. The principle of finality referred to in paragraph 23 of the President's memorandum (A/CONF.62/WP.9/Add.1) would in that way find expression in both bodies.

60. Finally, his delegation was concerned that, if the many exceptions to compulsory jurisdiction formulated in article 18 were accepted, the over-all effect might be to erode the effectiveness of the dispute settlement procedure. Some way should be found to protect the interests of coastal States without vitiating the whole system. In conclusion, he said that when that part acquired the status of the rest of the single negotiating text his delegation would give it the same detailed attention it had given the other parts.

*Mr. Amerasinghe (Sri Lanka) resumed the Chair.*

61. Mr. SARAIVA GUERREIRO (Brazil) said that while widespread understanding might exist on what the basic content of the substantive chapters of a generally acceptable convention on the law of the sea might be, the same was not true with respect to that on dispute settlement procedures. Prior to the general debate, there had been no way of ascertaining the feelings of most delegations on that all-important subject. There had therefore not been enough background for the preparation of document A/CONF.62/WP.9, which was based to a considerable extent on the work of an informal group on the settlement of disputes whose existence had never been endorsed by the Conference.

62. His delegation appreciated the efforts made by the President in preparing the document, but since its provisions endorsed the view of certain major maritime Powers that all disputes should be subject to some form of compulsory dispute settlement, his delegation could not accept it as a basis for negotiation.

63. Although Brazil had extended its territorial sea to 200 miles six years earlier, it was willing to consider the proposal for an exclusive economic zone. His delegation believed—as did the majority of the delegations participating in the Conference—that that zone was one in which the coastal State had sovereign rights or exclusive jurisdiction for economic and related purposes. That position was not compatible with the sweeping premise of document A/CONF.62/WP.9, which would subject matters falling within the exclusive jurisdiction of the coastal State to compulsory international dispute-settlement procedures in all cases. To accept that premise, even as a basis for negotiation, would be implicitly to accept that the national

[7] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70,V.5), document A/CONF.39/27.

economic zone was merely a part of the high seas. Disputes between parties to the convention relating to matters under the jurisdiction of the coastal State should be settled through the peaceful means cited in Article 33 of the Charter of the United Nations. Naturally, procedures could be explored whereby, in clearly defined circumstances, certain matters might be referred to some type of international conciliation or arbitration machinery. However, the ensuing recommendations should not be binding unless the parties had agreed otherwise beforehand. With regard to disputes on matters relating to the area beyond the limits of national jurisdiction, the convention should, in many instances, provide for compulsory jurisdiction.

*The meeting rose at 6 p.m.*

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# 62nd meeting

Wednesday, 7 April 1976, at 10.25 a.m.

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

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

1. Mr. NIMER (Bahrain) said that the President's single negotiating text (A/CONF.62/WP.9) remedied many of the deficiencies in existing conventions on the settlement of disputes. The settlement of disputes in the past had been adversely affected by the unwillingness of one of the parties to co-operate for reasons involving national sovereignty.

2. Under articles 8, 9 and 10 of the text, the parties to a dispute would be required to recognize the jurisdiction of the law of the sea tribunal, an arbitral tribunal or the International Court of Justice. Article 9, paragraph 1, provided that the law of the sea tribunal would have compulsory residuary jurisdiction to decide upon the matters in dispute; thus an attempt was being made to achieve what the former Permanent Court of International Justice and the present International Court of Justice had failed to accomplish in the general field of international relations.

3. The compulsory jurisdiction of the proposed law of the sea tribunal should be limited to matters concerning the international sea-bed area as defined in General Assembly resolution 2749 (XXV). Disputes relative to areas outside the international area should be settled by the law of the sea tribunal in accordance with the procedures set forth in article 9, paragraph 2, of the President's text, as was the case with the arbitral tribunal and the International Court of Justice.

4. His delegation welcomed the provisions of article 13, paragraph 4, and felt that they should be extended to cover the liberation movements which had participated in the Conference as observers.

5. The idea of entrusting the settlement of disputes concerning fisheries, pollution and scientific research to technical bodies was unacceptable because it was provided for in the general procedure in the text, and because the members of such bodies might not have the necessary legal knowledge not only to apply, but occasionally to interpret, the convention.

6. Under article 18, paragraph 1, States would not be required to submit to the dispute settlement procedures any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction in the exclusive economic zone, save in two categories of dispute. That provision might have unduly adverse effects on land-locked and geographically disadvantaged countries and should be reviewed.

*Mr. Medjad (Algeria), Vice-President, took the Chair.*

7. Mr. GAYAN (Mauritius) said his delegation was aware that the chapter on the machinery for the peaceful settlement of disputes might well prove to be the key to a widely accepted convention. For the sake of completeness, and because of the many new activities that would be carried out in ocean space, the new convention on the law of the sea should prescribe a procedure for the settlement of the disputes arising out of it. Ideally, the Conference should draw up a convention that would minimize the possibility of conflicts and should provide for a system for resolving any conflicts that might arise before they had time to develop into serious disputes. Its primary concern, however, should be to draft clear substantive provisions with a view to avoiding conflicting interpretations.

8. His delegation was glad to note that the President's text (A/CONF.62/WP.9) gave concrete form to some of the peaceful means of dispute settlement enumerated in Article 33 of the Charter of the United Nations. The starting-point, in so far as the settlement of disputes between States by a third-party procedure was concerned, was the consent of the States parties to the dispute. That fundamental principle should be fully reflected in the future machinery for the peaceful settlement of disputes under the new convention on the law of the sea.

9. Disputes could be expected to arise in two areas: first, the exclusive economic zone or the continental shelf of a State; and, secondly, all areas beyond the limits of national jurisdiction.

10. Since the coastal State exercised sovereign rights over the first area, it was natural that the national tribunals of that State should be the only competent forums for the settlement of disputes arising in that area; that principle was intrinsic to the basic notion of State sovereignty. To opt for any other system would be to invite abuse by, for example, States entitled to participate in the exploitation of the living resources of the exclusive economic zone of a coastal State. Under a compulsory procedure system, such States might bring the coastal State before tribunals whenever the latter adopted measures within its exclusive economic zone. Were that to happen, needless tension and bad feeling would be created among neighbouring States. It might be argued that the neighbouring States should be presumed to act reasonably, but there would have to be the same assumption in the case of the coastal State. The premise on which the new convention should be based was that of co-operation be-

[3] 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).