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63rd Plenary meeting

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other questions relating to the interpretation and application of the convention should be submitted to the International Court of Justice, whose Statute was sufficiently flexible to enable it to perform such a function.

99. On that basis, his delegation would co-operate in a spirit of compromise in the preparation of a text on the settlement of disputes, which it considered part and parcel of the new law of the sea.

The meeting rose at 1.05 p.m.

63rd meeting

Thursday, 8 April 1976, at 10.30 a.m.

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

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that an additional non-governmental organization in consultative status with the Economic and Social Council, namely the Commission to Study the Organization of Peace, had expressed interest in attending the Conference as an observer. The request would be approved under rule 66 of the rules of procedure if there was no objection.

It was so decided.

Mr. Saidvaziri (Iran), Vice-President, took the Chair.

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

2. Mr. AKRUM (Surinam) said that his delegation was in agreement with the addendum to the informal single negotiating text on the settlement of disputes (A/CONF.62/WP.9/Add.1). The dispute settlement system contained therein was comprehensive because it covered disputes which might arise from any use of the ocean and disputes between States and juridical persons. It also affected international as well as national ocean space and the functions and structure of all the major intergovernmental organizations dealing with the use of ocean space and its resources. It was therefore a model for the kind of ocean management structure that eventually had to emerge if the vast resources of the oceans were to be utilized for the benefit of all countries.

3. With regard to specific aspects of that document, his delegation shared the preference of the Group of 77 for general procedures as opposed to functional or special ones, while realizing that the system must be flexible enough to accommodate the many special issues that might arise. Disputes should be settled at the level and in the area they affected, and new ways of combining functional and general principles were needed. The provision that the general procedure would automatically prevail when parties to a dispute disagreed as to the tribunal to be chosen seemed satisfactory.

4. His delegation also shared the preference of the Group of 77 for a new law of the sea tribunal as opposed to the International Court of Justice, since it would ensure a larger role for the developing countries. The election of the judges should be based on the equality of sovereign States as expressed in the one-State, one-vote system, without discrimination of any kind, and the number of judges should be equitably divided among the various regions. The law of the sea tribunal should have preference in case of disagreement between the parties concerned as to the appropriate forum.

5. The special meeting of States to elect the judges was extremely important because it could also periodically review the general situation arising from the convention, and, specifically, the situation with regard to its observance, thus providing the kind of continuity which was essential for such a complex and novel treaty. His delegation therefore supported the proposal made by the delegation of Sri Lanka at the 59th meeting.

6. Finally, his delegation favoured establishing a special organ of the Conference to deal with the elaboration and negotiation of part IV of the single negotiating text and felt that such an organ should have a legal status and responsibility equal to that of the other main Committees of the Conference. Such a body would not only offer the most efficient way of concluding the work on part IV but would also ensure unity of purpose and comprehensiveness of basic perspectives.

7. Mr. ABUL-KHEIR (Egypt) said that an effective system for the settlement of disputes had to be included in the convention. A special committee should be established to work out details regarding the selection of methods in accordance with Article 33 of the Charter of the United Nations. His delegation favoured negotiation, conciliation and arbitration. Those devices should be available to everyone, and there should be complete freedom of choice of methods by the parties concerned.

8. Where it was necessary to resort to international jurisdiction, uniformity should replace the proliferation of various jurisdictions.

9. Three kinds of questions would arise under the convention: questions regarding the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; traditional questions covered by international law; and questions relating to the national jurisdiction of coastal States.

10. With respect to the first question, the protection of a common patrimony required special rules and special jurisdiction independent of the Authority, and his delegation was therefore in favour of a special tribunal. Organizations with observer status as well as national liberation movements should have access to such a tribunal. With regard to the second question, his delegation was opposed to the proliferation of jurisdictions. The International Court of Justice would be competent if the parties agreed, but a special chamber should be established within the Court to deal with such disputes and judges should be determined on an *ad hoc* basis. Special procedures could be employed for specific technical matters such as fisheries, pollution and scientific research.

[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).

11. It was especially important to safeguard the right to self-determination of Territories not yet independent. Such Territories and their national liberation movements had to be ensured their proper share of the patrimony of humanity.

12. Mr. SIBAHI (Syrian Arab Republic) said that the informal single negotiating text contained in document A/CONF.62/WP.9 and Add.1 was a broad initiative reflecting the importance which the three main Committees attached to the subjects and issues dealt with in it.

13. The international convention on the law of the sea and similar instruments should promote co-operation between the developed and developing countries and ensure the equitable distribution of income deriving from areas outside national jurisdiction. They should provide for the transfer of technology to developing countries in order to remedy the present inequitable international situation in the wider interests of world peace.

14. His delegation supported the Arab community and the developing countries with respect to the guiding principles of the convention. It wished to emphasize, however, that the settlement of disputes should be flexible. Recourse to arbitration and legal procedures should be a last resort where conciliation and diplomacy had failed. It was also important to allow for the free choice of methods depending upon the nature of the dispute and with due regard for national sovereignty. His delegation supported the Law of the Sea Tribunal because the disputes likely to arise would involve technical and scientific as well as legal considerations and the judges therefore required both types of competence. Access to the Tribunal should be limited to Member States, intergovernmental organizations, organizations with observer status and national liberation movements. Other organizations should entrust their case to the State or States of which they were nationals. National courts should have jurisdiction within national maritime zones. In the specific matters of fisheries, pollution and scientific research, recourse to specialized bodies might be necessary.

15. Since the matter of dispute settlement would be considered by the three Main Committees, his delegation favoured the establishment of an *ad hoc* sub-committee to co-operate with them in their work and present the views expressed in the plenary Conference.

Miss Chibesakunda (Zambia), Vice-President, took the Chair.

16. Mr. MALLA (Nepal) said that it would facilitate the work of the Conference to discuss and negotiate both the substantive and procedural parts of the proposed convention side by side. His delegation welcomed the presentation of part IV of the informal single negotiating text (A/CONF.62/WP.9) as a basis for negotiation.

17. His country attached great importance to the peaceful settlement of disputes arising out of ocean uses and boundary disputes and felt that a comprehensive, effective and impartial dispute-settlement procedure must form an integral part of the proposed convention. An optional protocol would not be sufficient. Where negotiation or conciliation had failed, a choice of procedures, which could be general or residual and specialized or functional, for binding settlement must be available. In addition to States and the International Sea-bed Authority, other entities with rights and obligations in the marine area under question should also have access to the dispute-settlement procedure.

18. His delegation supported the establishment of the law of the sea tribunal as the primary juridical organ of the International Sea-bed Authority and felt that its composition should reflect the new international legal order. It wished to express reservations regarding article 14, paragraph 1, and article 18 of document A/CONF.62/WP.9. The exceptions provided in article 18 were too wide and sweeping and if left unchanged would make the compulsory settlement of disputes ineffective, thereby undermining the convention as a whole. Rights were never legal rights unless they were legally protected rights. Hence, the rights of other nations or of the international community should never be left to the unilateral interpretation of an interested party. In that connexion, his delegation could not agree with the view expressed in paragraph 33 but did share those expressed in paragraphs 6, 9, 13 and 25 of document A/CONF.62/WP.9/Add.1.

19. Mr. MAHMOOD (Pakistan) said that the best way to minimize the occurrence of disputes was to make the proposed convention as clear and unambiguous as possible. In article 45 of part II of the single negotiating text (see A/CONF.62/WP.8), the coastal State jurisdiction in the exclusive economic zone had been categorized into four types: "sovereign rights", "exclusive rights and jurisdiction", "exclusive jurisdiction" and "jurisdiction". Such a multiplicity of imprecise terms would lead to different understandings on the part of States and would baffle any judicial body entrusted with interpreting them.

20. Although the possibility of disputes could not be eliminated altogether, when they did arise it was the obligation of the parties concerned to seek a solution by the peaceful means enumerated in Article 33 of the Charter of the United Nations.

21. With regard to the settlement of disputes relating to the international sea-bed area, his delegation supported the establishment of a law of the sea tribunal, the main function of which would be to adjudicate on matters relating to the exploration and exploitation of the international sea-bed area, including contracts and arrangements entered into for that purpose. However, the Tribunal should not be given a role which would detract from the Authority's position as the supreme depository of all powers relating to that area. Disputes relating to zones and areas under the exclusive sovereign jurisdiction of the coastal State fell exclusively under the jurisdiction of the coastal State concerned and should be dealt with under the judicial system of that State. With regard to disputes not relating to the coastal State's jurisdiction, his delegation believed that, rather than set up a new law of the sea tribunal to deal with such matters, it would be preferable to explore all possibilities with a view to making full use of the potential of the International Court of Justice. The latter had the capacity and the flexibility to develop institutions and procedures to deal with questions arising from the convention. It could, for example, as had already been suggested, form different chambers to deal with such specialized questions as fisheries, scientific research and pollution in areas beyond national jurisdiction. It could also take expert advice from specialized bodies. The jurisdiction of the body responsible for settling such disputes—whether it be the International Court of Justice or the law of the sea tribunal—should be compulsory, since only in that way could the system be made effective.

22. Mr. PARDO (International Ocean Institute), speaking at the invitation of the President, said that, although document A/CONF.62/WP.9 had great merit, a number of points required further consideration and possibly modification. Among such points were the unclear relationship between the tribunal of the Authority, as contemplated in part I of document A/CONF.62/WP.8, and the law of the sea tribunal; the complexity of the procedural arrangements contemplated in document A/CONF.62/WP.9; and some of the provisions of article 18 in the latter, which in practice might largely nullify the effectiveness of the proposed dispute settlement system. The effectiveness of the system established by the Conference would depend not only on the perfection of its formal structure but also on whether it took realistic account of the current nature of international society. Account must also be taken of the substantive provi-

sions of the law which the dispute settlement system would serve and of the possibility of ensuring the impartiality of the arbitral or judicial organs responsible for applying or interpreting the law.

23. The essence of the emerging law of the sea would be largely a political compromise between perceived national interests, couched in legal language. Since there were fundamental divergences with regard to perceived national interests among States on a number of important questions, such compromises could sometimes be reached only by deliberate ambiguity of language. In such circumstances, consistency of interpretation could only be legitimately expected from judges with knowledge of the understandings which had formed the basis of the compromises. Consequently, rather than establish formal dispute-settlement procedures of a legal nature, it might be more useful to create a continuing body composed of all States Parties to the convention, capable of overseeing its implementation and of giving authoritative interpretations of such political compromises.

24. Another major short-coming of the text was the contradictory nature of important provisions included in document A/CONF.62/WP.8. It was to be hoped that obvious contradictions would be eliminated from the final text, since few judges were able to reconcile directly contradictory provisions in a convincing manner.

25. Many provisions in all three parts of that document were extremely vague. An example was the very general criteria for delimitation. Since the breadth of the exclusive economic zone was based on the criterion of distance from appropriate straight baselines while that of the legal continental shelf was based on the totally different criterion of natural prolongation of the land mass, complicated situations could arise in which the legal continental shelf of one State lay under the exclusive economic zone of another. Compulsory and binding dispute settlement procedures might not be the most appropriate settlement method when the law and the criteria on which it was based were so vague as to make any decision in some measure arbitrary. Document A/CONF.62/WP.9 in fact foresaw that kind of difficulty by making judicial dispute-settlement measures only the last resort. In other instances, the amount of detail in provisions of the proposed convention might cause difficulty. A case in point was article 50, paragraph 3, in part II of document A/CONF.62/WP.8, which imposed on the coastal State the obligation of taking measures based on such a large number of varied considerations that, in practice, some would have to be ignored.

26. Another example of vagueness related to the concept of reasonable exercise by a State of its rights, which was fundamental to both traditional and emerging law of the sea. Reasonable exercise of rights could not be judicially interpreted when no criteria of reasonableness were given in the law. For example, every State had the right to draw straight baselines from which the breadth of marine areas under national sovereignty or jurisdiction was measured. How long did such a baseline have to be for the action of the coastal State to be considered unreasonable?

27. Document A/CONF.62/WP.8 also contained serious lacunae. Military activities, exclusively for peaceful purposes, in the marine environment interacted with other uses of ocean space. A dangerous category of potential disputes could perhaps be avoided in part through some clarification of the legal status of foreign military activities in national jurisdiction areas. Parts II and III of the document, while stressing the rights and competences of the coastal States, showed less concern for the achievement of international equity or for the development of those effective measures of close international co-operation which were so desperately required for the management of ocean space resources and the harmonization of inc usive and exclusive uses of the seas. Finally, the document as a whole looked to past rather than future uses of ocean space. For example, future developments in industrial farming of ocean space would require early and radical revision of many provisions included in the single negotiating text.

28. Assured impartiality on the part of organs charged with implementing binding dispute-settlement procedures was essential. Without such impartiality, it would be difficult to achieve consistency in adjudications and to secure the international support necessary for full implementation of a settlement system. Consequently, it was perhaps unfortunate that the Statute of the Law of the Sea Tribunal proposed that members of the Tribunal should be elected in accordance with a geographic pattern. A more appropriate procedure might be to seek a continuing balance of interests rather than one of geographic regions.

29. In view of the current nature of international law and society, of the grave uncertainties and obsolescent nature of document A/CONF.62/WP.8 and of the doubtful impartiality of the proposed tribunal, a compulsory and binding dispute-settlement system might be excessively innovative. Nor would replacement of the law of the sea tribunal by the International Court of Justice change the situation.

30. If the excessively vague or inadequate provisions contained in document A/CONF.62/WP.8 were not changed substantially in the final text of the convention, the dispute settlement system currently envisaged might be too advanced for the context in which it was to operate and might itself become an object of serious dispute or not be fully or impartially implemented. That did not mean, however, that the Conference should not affirm the obligation of contracting parties to settle any dispute relating to the interpretation or application of the future convention through the peaceful means referred to in Article 33 of the Charter of the United Nations or through other peaceful means of their choice. Provisions for the exchange of information, for consultation, for impartial fact-finding and for conciliation procedures would be very constructive, as would binding arbitration procedures for certain categories of disputes where the underlying law was reasonably clear and where differences concerned clearly technical matters.

31. A tribunal for binding adjudication of disputes was clearly required, and it was equitable that persons or entities other than States should be afforded access to such a tribunal. With some further clarification of the provisions contained in part I of document A/CONF.62/WP.8, the proposed tribunal could also be entrusted with the authoritative interpretation of that part of the convention. The whole system could be completed by the creation of the continuing body to which he had already referred. To attempt more might be counterproductive.

32. If, on the other hand, the more serious inequities, uncertainties and built-in obsolescence of the provisions contained in document A/CONF.62/WP.8 were eliminated from the final text, the prospects for the viability of the proposed convention would be considerably improved, thus justifying an attempt to create a compulsory and binding dispute-settlement system on the lines proposed in document A/CONF.62/WP.9. It was not yet too late for the great majority of States to reconcile their basic approaches to the law of the sea within an equitable legal framework which, while taking full account of inevitable developments in uses of ocean space, would also be conducive to the attainment of highly desirable general goals such as reduction of world tensions, reduction of inequality between States, co-operative resource management and development, and control of dangerous technologies. In that wider framework, due

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).