

A Tribunal for the Sea-Bed or the Oceans

*Louis B. Sohn**)

1. Introduction

One of the important issues of the law of international institutions is whether all disputes arising within the framework of an international organization should be referred to the International Court of Justice at The Hague, or whether a special international tribunal should be established.

There are already two special tribunals in Europe — the Court of Justice of the European Communities and the European Court of Human Rights. The problem has arisen now on a global scale in connection with the new régimes proposed for the sea-bed and for the oceans. It is the purpose of this essay to explore the reasons for creating a special tribunal for these régimes.

The Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly of the United Nations on 17 December 1970, provided merely that the

“parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established”¹⁾.

This statement left open the option between “judicial settlement” by the International Court of Justice, envisaged by Article 33 of the Charter,

*) Bemis Professor of International Law, Harvard Law School.

¹⁾ GA Resolution 2749 (XXV), para. 15. GAOR, XXV, Supp. 28 (A/8028), pp. 24—25.

and any special method of settling disputes to be included in the new régime.

That one of the important purposes of the sea-bed (and oceans) régime is "peaceful and compulsory settlement of disputes" was emphasized also in the statement by President Nixon on the United States Oceans Policy, of May 23, 1970, in which it was also noted that such a régime is needed to "save over two-thirds of the earth's surface from national conflict and rivalry"²).

In providing for the settlement of disputes relating to the sea-bed one needs to consider first the types of disputes likely to arise. With respect to parties, there may be disputes: between two or more States; between two or more private persons (individuals or corporations); between States and private persons; between States and an international authority; and between private individuals and an international authority. The disputes may relate to questions of fact, questions of law, or political, economic, financial or technical questions³).

The dispute settlement procedure may lead to a recommendation, an advisory opinion or a binding decision. In some cases, an appeal to another body may be possible, either on matters of excess of jurisdiction or violation of rules of procedure, or on questions of substance. If a final binding decision is rendered, the question of its enforcement may arise.

It is quite obvious that no international agreement is likely to provide for all these contingencies, though in practice most international organizations may find it necessary to deal with them, regardless of the absence of any express provisions on the subject in their constitutional instruments. It is not surprising, therefore, that none of the drafts or studies on the sea-bed has taken into account all the questions noted above, but a few of them go further in this direction than most instruments creating other international régimes or institutions.

The official drafts considered in this paper include the following ones:

a) US, "Draft Convention on the International Sea-Bed Area", hereafter cited as the US Draft Convention⁴).

²) Department of State Bulletin, vol. 62, No. 1616 (June 15, 1970), pp. 737—738.

³) International Law Association, "Report of the Deep-Sea Mining Committee", which includes a "Draft Declaration of Principles", with a Commentary (hereafter cited as the ILA Draft Declaration), comment to Art. XV. International Law Association, Report of the 54th Conference, The Hague (1970), p. 819, at 905—6.

⁴) UN Doc. A/AC. 138/25 (1970), reprinted in Annex V to the 1970 "Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction" (hereafter cited as the 1970 Sea-Bed Committee Report), GAOR, XXV, Supp. 21 (A/8021), pp. 130—176.

b) "Draft Statute for an International Sea-Bed Authority", submitted by the United Republic of Tanzania, hereafter cited as the Tanzanian Draft Statute⁵⁾.

c) USSR, "Provisional Draft Articles of a Treaty on the Use of Sea-Bed for Peaceful Purposes", hereafter cited as the Soviet Draft Articles⁶⁾.

d) Poland, "Working Paper Concerning an International Organization to be Established to Deal with the Problems of the Exploration and Exploitation of the Mineral Resources of the International Area of the Sea-Bed...", hereafter cited as the Polish Working Paper⁷⁾.

e) United Kingdom, "International Sea-Bed Régime: ... Proposals for Elements of a Convention", hereafter cited as the UK Proposals⁸⁾.

f) France, "Establishment of a Régime for the Exploration and Exploitation of the Sea-Bed: Proposals", hereafter cited as the French Proposals⁹⁾.

g) Chile, Columbia, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela, "Working Paper on the Régime for the Sea-Bed...", hereafter cited as the Latin American Working Paper¹⁰⁾.

h) Malta, "Draft Ocean Space Treaty", hereafter cited as Maltese Draft Treaty¹¹⁾.

i) Afghanistan, Austria, Belgium, Hungary, Nepal, Netherlands and Singapore, "Preliminary Working Paper", hereafter cited as the Landlocked Countries' Working Paper¹²⁾.

⁵⁾ UN Doc. A/AC. 138/33 (1971), reprinted in Annex I (1) to the 1971 "Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction" (hereafter cited as the 1971 Sea-Bed Committee Report), GAOR, XXVI, Supp. 21 (A/8421), pp. 51—64.

⁶⁾ UN Doc. A/AC. 138/43 (1971), reprinted in Annex I (3) to the 1971 Sea-Bed Committee Report, pp. 67—75.

⁷⁾ UN Doc. A/AC. 138/44 (1971), reprinted in Annex I (4) to the 1971 Sea-Bed Committee Report, pp. 76—81.

⁸⁾ UN Doc. A/AC. 138/46 (1971), reprinted in Annex I (5) to the 1971 Sea-Bed Committee Report, pp. 83—91. See also UK, "International Régime: Working Paper", hereafter cited as UK Working Paper; UN Doc. A/AC. 138/26, reprinted in Annex IV to the 1970 Sea-Bed Committee Report, pp. 177—84.

⁹⁾ UN Doc. A/AC. 138/27 (1970), reprinted in Annex VII to the 1970 Sea-Bed Committee Report, pp. 185—90.

¹⁰⁾ UN Doc. A/AC. 138/49 (1971), reprinted in Annex I (8) to the 1971 Sea-Bed Committee Report, pp. 93—101.

¹¹⁾ UN Doc. A/AC. 138/54 (1971), reprinted in Annex I (11) to the 1971 Sea-Bed Committee Report, pp. 105—93.

¹²⁾ UN Doc. A/AC. 138/55 (1971), reprinted in Annex I (13) to the 1971 Sea-Bed Committee Report, pp. 194—96.

j) Canada, "International Régime and Machinery Working Paper", hereafter cited as Canadian Working Paper¹³).

k) Japan, "Outline of a Convention on the International Sea-Bed Régime and Machinery: Working Paper", hereafter cited as the Japanese Convention Outline¹⁴).

l) "Study on the Question of Establishing in Due Time Appropriate Machinery for the Promotion of the Exploration and Exploitation of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction and the Use of these Resources in the Interest of Mankind: Report of the Secretary-General", hereafter cited as the UN Study on Machinery¹⁵).

In addition to the ILA Draft Declaration, cited in note 3 above, the following semi-official and private drafts should also be taken into account:

m) Senator Claiborne Pell, "Declaration of Legal Principles Governing the Activities of States in the Exploration and Exploitation of Ocean Space"¹⁶).

n) Elisabeth Mann Borgese, "The Ocean Régime: A Suggested Statute for the Peaceful Uses of the High Seas and the Sea-Bed Beyond the Limits of National Jurisdiction"¹⁷).

o) Commission to Study the Organization of Peace, "Draft Statute for a United Nations Sea-Bed Authority"¹⁸).

p) Aaron L. Danzig, "Revised Draft Treaty Covering the Exploration and Exploitation of the Ocean Bed"¹⁹).

¹³ UN Doc. A/AC. 138/59 (1971), reprinted in Annex I (17) to the 1971 Sea-Bed Committee Report, pp. 205—25.

¹⁴ UN Doc. A/AC. 138/63 (1971).

¹⁵ UN Doc. A/AC. 138/12, reprinted in Annex II to the 1969 "Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction", GAOR, XXIV, Supp. 22 (A/7622), pp. 81—161.

¹⁶ Included in S. Res. 33 (91st Congress, 1st Session, January 21, 1969), 21 pp. (hereafter cited as the Pell Draft Declaration).

¹⁷ Published in Center for the Study of Democratic Institutions, "A Center Occasional Paper", vol. I, No. 5 (October, 1968), 40 pp. A revised draft, entitled "The Ocean Régime Draft Statute", was prepared by Mrs. Borgese in February 1971, 40 pp.; this revised draft is cited hereafter as the Borgese Draft Statute. It was reprinted in "A Constitution for the Oceans", Working Papers for Pacem in Maribus II (Malta 1971), Doc. II. 5.

¹⁸ Commission to Study the Organization of Peace, The United Nations and the Bed of the Sea (II) (June 1970), pp. 21—28 (hereafter cited as the CSOP Draft Statute).

¹⁹ Prepared for the United Nations Committee of the World Peace Through World Law Center in 1971, it constitutes a revision of a draft, first published by the Center in 1968 in Pamphlet Series No. 10, 36 pp. (hereafter cited as the Danzig Draft Treaty).

2. *Principal Options*

Article 33 of the Charter of the United Nations which was invoked in the 1970 Declaration of Principles, specifies that the parties to any dangerous dispute shall seek to solve it by

“negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other means of their own choice”.

If a dispute is likely to endanger the maintenance of international peace and security, it may be dealt with under Chapter VI of the UN Charter by the Security Council or the General Assembly.

If the dispute involves the interpretation of the Law of the Sea Conventions of 1958, it may be dealt with, as between the States which have become parties to it, in accordance with the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes of the same date²⁰). Some disputes may be also settled by reference to the administrative bodies of an international authority, as is the common practice of several specialized agencies of the UN²¹).

With respect to Article 33, the Canadian Working Paper contains the following comment:

“While the future sea-bed treaty should provide for the resolution of disputes in accordance with Article 33 of the UN Charter it is essential that further procedures for the settlement of disputes should be included in the treaty”²²).

The Soviet Draft Articles provide in the first place for consultation, and only if a request for consultation is refused, the States concerned shall seek the assistance of the Executive Board of the Sea-Bed Agency, which shall “establish, at the request of parties to a dispute, organs of conciliation, arbitration, etc., for settling the dispute”²³).

The Tanzanian Draft Statute also contemplates the settlement of dis-

²⁰) UN Conference on the Law of the Sea, Official Records, vol. II, pp. 145—146 (UN Doc. A/CONF. 13/38; UN Publ. 58 V. 4).

²¹) For an analysis of various alternatives, see UN Study on Machinery, cited above *lit.* 1 and note 15, paras. 75—80. The Maltese Draft Treaty provides that disputes should be first submitted to the Council. Maltese Draft Treaty, cited above *lit.* h and note 11, p. 174, Article 152.

²²) Canadian Working Paper, cited above *lit.* j and note 13, p. 218. See also Polish Working Paper, cited above *lit.* d and note 7, p. 81, para. 24.

²³) Soviet Draft Articles, cited above *lit.* c and note 6, pp. 71—72 and 73—74, Articles 15 and 22 (2) (i).

putes by negotiation, mediation and arbitration, but with respect to some disputes it provides that they "shall be submitted if negotiation, mediation or arbitration fail, to the International Court of Justice" ²⁴).

The Tanzanian proposal reflects to some extent the fact that many international agreements, including several constitutions of the specialized agencies of the United Nations, provide that disputes about their interpretation and application may be submitted by any party to a dispute to the International Court of Justice ²⁵).

It can be argued, however, that the sea-bed treaty will contain many technical provisions requiring judges with a special competence in the field; and that many questions raised under that treaty will relate not to international law but to various administrative aspects of the sea-bed régime which need to be decided not by a general international court but a special tribunal of the administrative type. If this were the only difficulty, one could point out that the Court may establish special chambers for particular categories of cases, and that it could, therefore, establish a special chamber for sea-bed matters, composed of judges with special competence in that area ²⁶). In addition, the Court may appoint specially qualified assessors to sit with it, or with a special chamber, without the right to vote, and thus assist in dealing with the technical problems of sea-bed law ²⁷).

This might be a satisfactory solution, if it were sufficient to provide a method for settling disputes between States. But many disputes will arise not between States but between a State and the international sea-bed authority or between a private person and that authority. The International Court of Justice, under the existing limitations in its Statute ²⁸), cannot be conferred jurisdiction over such disputes. The Commission to Study the Organization of Peace tries to solve a part of this problem by suggesting that any dispute between the sea-bed authority and a State should be submitted to the Court for an advisory opinion ²⁹). Such a solution is, how-

²⁴) Tanzanian Draft Statute, cited above *lit. b* and note 5, p. 63, Article 39. See also Articles 29 (i) and 36. A reference to the International Court of Justice is also provided in the CSOP Draft Statute, cited above *lit. o* and note 18, p. 28, Article 18; and in the Pell Draft Declaration, cited above *lit. m* and note 16, Section III (16).

²⁵) Most of these treaties are listed in International Court of Justice, Yearbook 1970—1971, pp. 38—43, 74—86. Many of the relevant provisions are also published in United Nations, A Survey of Treaty Provisions for the Pacific Settlement of International Disputes, 1949—1962 (UN Publ. 66. V. 5), 901 pp.

²⁶) ICJ Statute, Article 26 (1).

²⁷) ICJ Statute, Article 30 (2); ICJ Rules, Article 7.

²⁸) ICJ Statute, Article 34 (1).

²⁹) CSOP Draft Statute, cited above *lit. o* and note 18, Article 18 (2). Less far-reaching provisions on advisory opinions are also contained in the Tanzanian Draft

ever, clearly unsatisfactory, as there is no obligation to comply with such an advisory opinion³⁰); and the practice of States shows that they show no reluctance in rejecting the Court's advice. Even more difficult would be to provide a proper protection for private persons in advisory proceedings before the Court³¹).

Consequently, it seems preferable to establish a special sea-bed tribunal, open to all interested parties. Such a tribunal might be established *ad hoc* whenever a dispute should arise, or it may be established on a permanent basis. One of the Geneva Conventions of 1958, the Convention on Fishing and Conservation of the Living Resources of the High Seas, provides for a special Commission to be selected in each case³²). Provisions for an *ad hoc* tribunal are also contained in the Japanese Convention Outline³³). Though the provision in the 1958 Fishing Convention has not yet been applied, in many disputes on other subjects it proved difficult to establish a tribunal after the start of a dispute, and a permanent tribunal is greatly preferable. This is the solution adopted by most of the drafts under consideration.

Such a tribunal can be established in many ways. For instance, it can be elected by the General Assembly of the United Nations³⁴), by the International Court of Justice³⁵), or by one of the organs of the proposed sea-bed authority³⁶). Considering the need for the close relationship of the

Statute, cited above *lit. b* and note 5, p. 63, Article 39 (3); and in the Japanese Convention Outline, cited above *lit. k* and note 14, Article 17 (2).

³⁰) It is conceivable, of course, for an international authority and the States parties to a particular treaty to agree to accept in advance the binding character of an advisory opinion. See, for instance, the Convention on the Privileges and Immunities of the United Nations, Section 30. UNTS vol. I, p. 15. See also the Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV (17); Danzig Treaty, cited above *lit. p* and note 19, Article XIV (A) (ii).

³¹) See the Advisory opinion relating to the Judgments of the Administrative Tribunal of the I.L.O. upon Complaints Made Against UNESCO, I.C.J. Reports 1956, p. 77, at pp. 85—86, 108—110, 112, 166—168.

³²) Article 9, UNTS, vol. 559, p. 285; US TIAS 5969.

³³) Japanese Convention Outline, cited above *lit. k* and note 14, Articles 37—38. See also the Pell Draft Declaration, cited above *lit. m* and note 16, Section II (3). The UK Proposals provide for a selection of a tribunal from a panel. UK Proposals, cited above *lit. e* and note 8, pp. 89—90, paras. 24—25.

³⁴) This is the solution adopted in the Danzig Draft Treaty, cited above *lit. p* and note 19, Article XIV (B).

³⁵) As proposed in the Pell Draft Declaration, cited above *lit. m* and note 16, Section III (12).

³⁶) According to the US Draft Convention, the Tribunal would be elected by the Council of the Sea-Bed Authority. US Draft Convention, cited above *lit. a* and note 4, Article 48 (1). The Borgese Draft Statute provides for the election of the members of the

tribunal to the authority, it would seem most appropriate for the tribunal to be appointed by the authority itself.

The main purpose of the tribunal will be to decide all questions relating to the interpretation of the Convention establishing the sea-bed régime³⁷). Its decisions would apply the special law of the sea-bed treaty, but in appropriate cases the tribunal would also apply relevant principles of international law³⁸). To ensure that in applying these principles, the tribunal does not depart from the generally accepted interpretation of international law, it would seem desirable to arrange, under Article 96 of the Charter of the United Nations, for an authorization enabling the tribunal to request the International Court of Justice to give an advisory opinion on any question of international law arising in the proceedings before the tribunal³⁹).

The jurisdiction of the tribunal should extend, in the first place, to disputes between the States parties to the sea-bed régime, especially those in which one party alleges that another party has failed to fulfill any of its obligations under the sea-bed treaty⁴⁰). Before bringing such a dispute before the tribunal, it might be desirable to see whether it cannot be settled by administrative procedures, which would also help to establish in an impartial manner the facts of the case. But if the competent international administrative body does not act in time or one of the parties refuses to comply with its opinion in a specified period, the matter may be brought before the tribunal for a final decision⁴¹).

Another important group of cases involves disputes between a State and the international sea-bed authority. Two types of cases are involved here: those involving a complaint by the authority against a State; and those involving a complaint by a State against the authority. In the first case, the authority should be able to submit a complaint to the tri-

Tribunal by the Maritime Assembly. Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV (3).

³⁷) US Draft Convention, cited above *lit. a* and note 4, Article 46 (1); Maltese Draft Treaty, cited above *lit. h* and note 11, p. 150, Article 85; Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV (1); Danzig Draft Treaty, cited above *lit. p* and note 19, Article XIV (A) (i).

³⁸) US Draft Convention, cited above *lit. a* and note 4, Article 46 (1).

³⁹) *Idem*, Article 42 (2). See also Canadian Working Paper, cited above *lit. j* and note 13, p. 222.

⁴⁰) US Draft Convention, cited above *lit. a* and note 4, Article 50 (1). See also Polish Working Paper, cited above *lit. d* and note 7, p. 81, para. 24; Maltese Draft Treaty, cited above *lit. h* and note 11, p. 174, Article 152 (2); Canadian Working Paper, cited above *lit. j* and note 13, p. 222.

⁴¹) US Draft Convention, cited above *lit. a* and note 4, Article 50 (2)—(5). See also the Maltese Draft Treaty, cited above *lit. h* and note 11, p. 174, Article 152 (1).

bunal, if a State refuses to comply with a request by the authority that it fulfill its obligations under the régime⁴²). The authority may bring such a complaint either on its own initiative or at the request of a private or public person licensed under the sea-bed treaty, thus providing an indirect channel for the adjudication of complaints by such persons against States⁴³). In the second category of cases, if a State questions the validity of any measures taken by the authority, it should be entitled to bring the matter before the tribunal which may declare the measure concerned to be null and void⁴⁴).

The tribunal might be given similar jurisdiction over complaints by the authority against persons, public or private, licensed under the sea-bed treaty to explore or exploit sea-bed resources; and over complaints by such persons against certain decisions of the authority directed to them⁴⁵).

Some drafts provide also for international jurisdiction, of the tribunal or of the authority, in disputes between private or public persons, other than the States and the authority⁴⁶). This would broaden the jurisdiction of the tribunal beyond generally acceptable bounds, and should be allowed only in case of a special agreement by the parties providing for recourse to the tribunal⁴⁷).

It seems more appropriate to have disputes between two private parties submitted to national courts⁴⁸). Nevertheless, to ensure uniformity in the interpretation and application of the sea-bed treaty, it might be desirable to allow a national court, or national administrative tri-

⁴²) US Draft Convention, cited above *lit. a* and note 4, Article 51. See also the Maltese Draft Treaty, cited above *lit. h* and note 11, p. 174, Article 154; Polish Working Paper, cited above *lit. d* and note 7, p. 81, para. 24; UK Proposals, cited above *lit. e* and note 8, p. 89, para. 24; Canadian Working Paper, cited above *lit. j* and note 13, p. 222; Tanzanian Draft Statute, cited above *lit. b* and note 5, p. 62, Article 36; Japanese Convention Outline, cited above *lit. k* and note 14, para. 37 (2).

⁴³) US Draft Convention, cited above *lit. a* and note 4, Article 51 (1).

⁴⁴) See the provisions cited in note 42 above. See also the Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV, which contains detailed provisions on this subject, based on the Treaty Establishing the European Economic Community.

⁴⁵) US Draft Convention, cited above *lit. a* and note 4, Articles 51 and 54 (2). See also the Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV (5)–(6); Pell Draft Declaration, cited above *lit. m* and note 16, Section III (10)–(16); Danzig Draft Treaty cited above *lit. p* and note 19, Article XIV (A) (ii).

⁴⁶) Pell Draft Declaration, cited above *lit. m* and note 16, Section III (10)–(11); Danzig Draft Treaty, cited above *lit. p* and note 19, Article XIV (A) (i). See also the French Proposals, cited above *lit. f* and note 9, para. II (B) (b) (3); ILA Draft Declaration, cited in note 3 above, Comment to Article XV.

⁴⁷) See US Draft Convention, cited above *lit. a* and note 4, Article 57.

⁴⁸) See Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV (13).

bunal, dealing with a case raising a question of interpretation of the sea-bed treaty or of the validity or interpretation of any measure taken thereunder by the sea-bed authority, to request the sea-bed tribunal to give its advice on such a question ⁴⁹⁾.

The judgment of the sea-bed tribunal may simply state that a violation has occurred, and the party concerned, whether it is the sea-bed authority, or a State, or other public or private person, would have the duty to comply with such a judgment ⁵⁰⁾. In some cases, the sea-bed tribunal might go beyond a declaratory judgment and might require a violator of the sea-bed treaty to pay damages to the other party and even might order the payment of a fine ⁵¹⁾. If the sea-bed authority, or one of its officials acting in the performance of his duties, should cause damage to a State or a public or private person, the sea-bed tribunal may require the authority to repair the damage or to pay for it ⁵²⁾.

In some cases, it may be necessary to go further. If the sea-bed tribunal should determine that a licensee has committed a gross and persistent violation of the sea-bed treaty, has refused to bring his operations into compliance with it, and was not acting on orders by the State which was responsible for his license, the matter should be referred to the sea-bed authority for further action. That authority, if it should deem it appropriate, might revoke the license or request the State concerned to revoke it ⁵³⁾.

It might be more difficult to take action if the violator is a State. If a State not only has committed a violation of the sea-bed treaty but also has refused to comply with a judgment of the sea-bed tribunal, the matter would be referred to the principal political organ of the authority. That organ would then decide what measures might be usefully taken to give effect to the judgment. For instance, if that organ should deem it appropriate, it might decide even to suspend temporarily in whole or in part, the treaty rights of the State failing to comply, the

⁴⁹⁾ US Draft Convention, cited above *lit.* a and note 4, Article 56. The Borgese Draft Statute, cited above *lit.* n and note 17, goes further in making it obligatory for a national tribunal to certify such an issue to the Maritime Court, Article XIV (13).

⁵⁰⁾ US Draft Convention, cited above *lit.* a and note 4, Articles 52 (1) and 55 (1). The Danzig Draft Treaty, cited above *lit.* p and note 19, Article XIV (A) (ii), goes further as it imposes on States parties to the sea-bed treaty two additional obligations: to give full faith and credit to judicial proceedings before the sea-bed tribunal; and to take all necessary steps, within their power, to effectuate the same. It seems that these obligations would apply even in cases to which the State in question is not a party.

⁵¹⁾ US Draft Convention, cited above *lit.* a and note 4, Article 52 (2).

⁵²⁾ *Idem*, Article 55 (2). See also Borgese Draft Statute, cited above *lit.* n and note 17, Article XIV (11).

⁵³⁾ US Draft Convention, cited above *lit.* a and note 4, Article 52 (3). See also Maltese Draft Treaty, cited above *lit.* h and note 11, Articles 149 (c) and 162 (4).

extent of such a suspension depending on the extent and seriousness of the violation. In no case, however, should such suspension affect innocent parties; it should not impair the rights of any of that State's licensees who have not themselves contributed to the failure to perform the treaty obligations⁵⁴).

Finally, it should be noted that the obligation to comply with a decision applies only to binding judgments of the sea-bed tribunal. As is the case with respect to the International Court of Justice, the sea-bed tribunal might be also authorized to give non-binding advisory opinions on any legal question relating to the sea-bed, if so requested by any organ of the sea-bed authority⁵⁵). There are many situations in which the authority might prefer to obtain non-binding advice rather than a decision which would force it to take certain steps. This procedure might be also useful in cases in which there is no real dispute, but a clarification of a provision in the sea-bed treaty is needed to enable the authority to decide on a future course of action.

3. Conclusions

Assuming that the future international machinery for the sea-bed will be built on the lines envisaged in some of the present drafts, it is quite clear that most of the issues discussed above would have to be resolved in order to provide an effective procedure for the settlement of disputes which might arise under a treaty establishing a sea-bed régime. While the provisions suggested in the various drafts and studies might seem quite complex, their adoption might be crucial to making that régime workable.

In any case, it seems quite obvious that, without drastic changes in its procedure, functions and jurisdiction, the International Court of Justice cannot deal with most of the problems envisaged in this paper, and that a special tribunal is needed for that purpose.

Nevertheless, in order to preserve the universality of the general principles of international law, and to ensure their uniform application in all

⁵⁴) US Draft Convention, cited above *lit. a* and note 4, Article 58. The Maltese Draft Treaty, cited above *lit. h* and note 11, also contains detailed provisions on this subject, as well as with respect to measures to be taken against the international authority itself, should it fail to comply with a judgment, Articles 149 and 162, especially 162 (3).

⁵⁵) US Draft Convention, cited above *lit. a* and note 4, Article 60; Maltese Draft Treaty, cited above *lit. h* and note 11, Article 163. Other drafts envisage instead advisory opinions of the International Court of Justice; see, for instance, Tanzanian Draft Statute, cited above *lit. b* and note 5, Article 39 (3); Japanese Convention Outline, cited above *lit. k* and note 14, Article 17 (2).

fields of international law, including the rules relating to the sea-bed, it would seem desirable — as it has been already noted in connection with the applicable law — to authorize the sea-bed tribunal, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice to give an advisory opinion on any question of international law⁵⁰). Such a link between the two tribunals would help to maintain the integrity of the international legal system.

⁵⁰) US Draft Convention, cited above *lit. a* and note 4, Article 46 (2); Canadian Working Paper, cited above *lit. j* and note 13, p. 222. See also Borgese Draft Statute, cited above *lit. n* and note 17, Article XIV (17).