

AUDIENCE RESPONSE

SIXTH SESSION

MR. CHITTY: I am Grita Kumar Chitty, and I am with the Secretariat of the Law of the Sea. It is really a question addressed to Professor Sohn, who touched on the possibility of disputes between states which are parties to the treaty and states which are not parties to the treaty. What might transpire? I really would like to ask Professor Sohn whether he could go one step further, that is, to deal with what could possibly happen when there is a dispute regarding exploitation of the International Area beyond the limits of national jurisdiction and where the dispute could possibly involve parties of differing status. For instance, a state on the one hand, and a corporation or the International Seabed Authority or the Enterprise on the other, or disputes between corporations of two different states, one of which is a party to the treaty and one of which is not? My question really is: is there a possible forum for such disputes? Is there any kind of practice that may be contemplated? And could there possibly be an assurance of compliance with the award, even if there was a forum and a practice?

PROFESSOR SOHN: I think it is quite clear on the basis of what I tried to say that as far as nonparties are concerned, they are in trouble. Unless there is a special agreement which binds them to go somewhere, there is no place to go. Of course, we have seen and it was mentioned yesterday that there is an agreement relating to settlement of disputes about overlapping areas. And as far as those states are concerned, or those companies or consortia are concerned, there is under those agreements a method of settlement. I have to admit I did not think those agreements were too well drafted, but that is another issue; and whether they really provide an effective arbitration is another question. Apart from that, of course, there might be by chance a possibility of one state going to the International Court against other states. For instance, if Japan is involved with The Netherlands, they always can go under their optional clauses because they do not have reservations of any importance that would stop it. And there might be other treaties between them that might permit a reference to the Court, such as a treaty of commerce and navigation that deals with all disputes between them relating to the treaty; they can perhaps be stretched to include a dispute between two of their enterprises fighting each other on the seabed. But certainly there is no place to which the Authority could go against a state or an outside state could go against the Authority. The Authority would give, say, a contract to the Area that the United States has given. It would be very difficult for the United States or the particular consortium to have any place to go against the Authority, and vice versa. Therefore, it would be one of those cases that I mentioned in the beginning that may very quickly get into a stalemate and lead to a real trouble and that can escalate very easily into something big and dangerous. And, therefore, in a way this treaty

was based on the assumption that it is going to be universal, that everybody is going to accept it. Once somebody important is not in, there is going to be a lot of trouble, not only for the Authority and the world community, but as much, perhaps, if not more, for the people who are outside. Of course, as President Koh has mentioned previously, the United Nations can always ask for an advisory opinion on any one of those questions from the International Court, but such an opinion might not have the same weight as a binding decision in a case in which a state can defend itself properly. The opinions very often do not involve more than an answer to the question exactly as it was given on the basis of the materials that were submitted to the United Nations, especially if the other side is not ready to cooperate. We had at least two cases like that, one involving the Soviet Union, the Eastern Carelia case in the 1920's, where the International Court simply said that without the other state, without the documents and data and evidence it would present, there was no use going ahead. We had a second case under the United Nations relating to the peace treaties between Hungary, Rumania, and Bulgaria. The court gave the advisory opinion despite objections; it simply said that it was ready to give the opinion because it dealt only with the periphery of the case, namely whether a certain arbitral tribunal should be set up; it did not deal with the merits. Even the new court has reserved the question whether it should give an opinion about somebody that refuses to accept the International Court's jurisdiction, so we are certainly in a very uncertain area, and the further the United States gets away from the Treaty, the worse it might get.