

# **Third United Nations Conference on the Law of the Sea**

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## **Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes**

*Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Eighth Session)*

4. It was agreed that the informal plenary meetings should first take up consideration of the non-controversial items, on the understanding that such items, as noted in document FC/1, are not non-controversial *per se*, since they may have a bearing also on controversial issues or some issues regarded by some delegations as being of paramount importance.

5. After a preliminary discussion on the non-controversial items during the 2nd informal plenary meeting, it was agreed to refer the items to the group of legal experts with the mandate to examine the technical aspect of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved. The group was constituted under the chairmanship of Mr. Evensen, as I explained in informal document FC/2.

6. Having finished consideration of the non-controversial items, which were then transmitted to the group of legal experts for its consideration, the informal plenary meetings of the Conference took up consideration of the controversial items for the purposes of preliminary discussions and then submission to the group of legal experts.

7. The controversial items were taken up in the informal plenary meetings in the order in which they appear in paragraph 5 of document FC/1 and as enumerated in paragraph 3 above. The discussion on these items and the major ideas that emerged have been summarized in informal documents FC/3, FC/4, FC/6, FC/7, FC/9, FC/11, FC/13 and FC/17. I need not repeat them here.

8. Two items, however, remained unfinished: the question of participation in the convention and the establishment of the preparatory commission, both of which will be taken up at the next session.

9. The group of legal experts also attempted to carry out its mandate and, as explained by the Chairman in his report (FC/16), more work is necessary to produce draft articles for consideration in informal plenary meetings of the Conference at the next session.

10. I would like to thank the Chairman of the group of legal experts for the work he and the group have done so far, which has been most useful.

#### DOCUMENT A/CONF.62/L.45

##### Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

[Original: English]  
[29 August 1979]

1. At the resumed eighth session, the Conference held one informal plenary meeting, on 20 August 1979, for the purpose of considering the informal proposal of 11 May 1978 of the delegations of the Netherlands and Switzerland (SD/1). This proposal dealt with the conciliation procedure (art. 284 and annex IV); the listing of the alternative dispute settlement procedures, namely the Court and tribunals (art. 287, para. 1); and *ad hoc* chambers of the International Court of Justice.

2. At its informal plenary meeting, the Conference first considered the conciliation procedure and dealt with the ambiguity in paragraphs 1, 2 and 3 of article 284 caused by the use of the word "procedure" in different senses. Drafting clarifications were suggested by the President, and it was decided that changes should be made to article 284 as follows:

#### Article 284

"1. Any State Party which is a party to a dispute relating to the interpretation or application of the present Con-

vention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with the procedure in annex IV, or with some other conciliation procedure.

"2. If the other party accepts this invitation and if the parties agree upon the procedure in annex IV or such other conciliation procedure, any party to the dispute may submit it to the agreed procedure.

"3. If the other party does not accept the invitation or the parties do not agree upon the procedure in annex IV or such other conciliation procedure, the conciliation proceedings shall be deemed to be terminated.

"4. When a dispute has been submitted to conciliation, such conciliation proceedings may only be terminated in accordance with the provisions of annex IV or other agreed conciliation procedure, as the case may be."

3. The next item dealt with was the right of any party to the conciliation to terminate the proceedings where the conciliators appointed by the parties had failed to appoint the chairman of the commission (annex IV, art. 3, para. 4). It was agreed that if the conciliation proceedings had reached the stage where the parties had appointed their conciliators, it was preferable to avoid the procedure being terminated at the request of either party to the dispute. This would also derogate from the compulsory resort to conciliation provided for in article 296, paragraph 3 (b), of the revised negotiating text, as formulated by negotiating group 5. The informal proposal of the Netherlands and Switzerland on this question was accepted for changing the existing text of the revised negotiating text. The new text reads as follows:

"Within 30 days following the date of the last of their own appointments, the four conciliators shall appoint a fifth conciliator chosen from the list, who shall be chairman. If the appointment is not made within the prescribed period, either party may, within one week of the expiration of the prescribed period, request the Secretary-General to make the appointment in accordance with paragraph 5."

4. The next issue considered was the number of national conciliators that a party can appoint (annex IV, art. 3, para. 2). The present text permits each party to appoint two national conciliators. The informal proposal suggests that this should be limited to one national. One reason adduced for the proposed change was that a heavy burden would be imposed on the Chairman of the Commission who would have a greater responsibility, acting as the sole arbiter amongst four other members representing the interests of the parties. The counter argument was that the parties should have the flexibility to appoint two national conciliators if they felt that it was in their interests. The President suggested that consideration be given to incorporating aspects of both provisions by permitting each party to appoint one national unless the parties agreed otherwise. Consideration of this question could not be concluded. The President held consultations with the delegations most interested and it would appear that further consultations were needed.

5. The proposal to change the order in which the alternative dispute settlement forums are listed (art. 287, para. 1) would place the International Court of Justice first in that list. While the rationale for listing in first place the principal judicial organ of the United Nations was explained, this was met by the reasoning that the creation of a new judicial organ with comprehensive jurisdiction over all aspects of the law of the sea would necessitate its being listed as the first alternative. The delegations of the Netherlands and Switzerland indicated a willingness to consider withdrawing this proposal, which was, however, conditional upon the outcome of the outstanding proposal regarding national conciliators referred to above. Consequently, this item too is outstanding.

6. The President expressed appreciation for the spirit of compromise and for the co-operation shown by the delegations of the Netherlands and Switzerland which had indicated that they would not pursue the other suggestions in their informal proposal.

7. At the conclusion of the informal plenary meeting on the settlement of disputes, the President identified the other outstanding issues, which were as follows:

(i) The necessary changes to co-ordinate article 298, paragraph 1 (b), with article 296 as formulated by negotiating group 5;

(ii) The report by the Chairman of the group of legal experts on the settlement of disputes relating to part XI;

(iii) The report of the Third Committee relating to the dispute settlement provision on marine scientific research;

(iv) The report relating to the dispute settlement provisions within the mandate of negotiating group 7.

8. Regarding the first item, as a consequence of the re-drafting of article 296 by negotiating group 5, it has become necessary to bring article 298, paragraph 1 (b), in line with the new structure of article 296. Article 298, paragraph 1 (b), therefore needs to be reformulated to maintain its original intent.

9. Regarding the second item, the Chairman of the group of legal experts on the settlement of disputes relating to part XI has presented his report (A/CONF.62/C.1/L.26, appendix B) to the formal plenary Conference. The report has been

presented to the working group of 21 of the First Committee, and to the Committee itself, where it has been considered. The changes suggested in that report relate to annex V, the statute of the Law of the Sea Tribunal, and in particular to the provisions concerning the Sea-Bed Disputes Chamber. This report could be accepted by the Conference without the need for a separate consideration of its content. The outstanding issues referred to by the Chairman would need to be dealt with at the first stage of the ninth session, and this has already been included in the decision of the Conference in the programme of work for that session. The Chairman is to be complimented on the excellent work done by the group which has been appreciated all around.

10. Regarding the third item, the Chairman of the Third Committee has presented his report to the plenary Conference and that included a new formulation of article 264 dealing with dispute settlement. There has been a discussion of that report and it is only necessary for the plenary Conference, therefore, to take note of the dispute settlement provision on the question of marine scientific research.

11. Regarding the fourth item, the Chairman of negotiating group 7 has also presented his report to the Conference. As all matters falling within the competence of that negotiating group are closely interrelated, including the dispute settlement provision, and as the Chairman had not presented any new formulations which would satisfy the conditions laid down by the Conference in document A/CONF.62/62, there is no need for the report to be discussed at the present stage.

#### DOCUMENT A/CONF.62/92

Statement by the representative of the United States of America in response to the statement by the Vice-Chairman of the group of coastal States contained in document A/CONF.62/90\*

[Original: English]  
[1 October 1979]

It is both surprising and distressing that distorted press reports should have caused such a stir at the Third United Nations Conference on the Law of the Sea, where the views of the United States with respect to navigation and overflight have long been well known to all participants. Press reports notwithstanding, those views have not changed. Activities in the oceans by the United States are fully in keeping with its long-standing policy and with international law, which recognizes that rights which are not consistently maintained will ultimately be lost. At the same time, it remains the firm position of the United States that a comprehensive convention on the law of the sea offers by far the best, and perhaps the last, opportunity to establish a universally agreed and conflict-free régime governing all uses of the world's oceans and their resources. We have indicated that, as part of such an agreement, we could accept a 12-mile territorial sea coupled with transit passage of straits used for international navigation, all within the context of the over-all package deal. In this regard, we note that the group of coastal States reaffirms its determination to continue working towards the early adoption of a generally accepted comprehensive convention on the law of the sea.

Let us not be diverted from our shared goal by debate over the very differences in national régimes that compelled our Governments to enter into negotiations in the first place.

\*Circulated at the request of the representative of the United States of America.

#### DOCUMENT A/CONF.62/93

Statement by the representative of the United States of America in response to the statement by the Chairman of the Group of 77 contained in document A/CONF.62/89

[Original: English]  
[1 October 1979]

It is regrettable that controversy has been introduced once again into the deliberations of this Conference, which can ill afford distraction from its goal of forging consensus on a

comprehensive legal régime for the use and management of the oceans and their resources. In light of the full and repeated explanations of views and positions to which the Con-