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

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## DOCUMENTS A/CONF.62/L.52 AND ADD.1

Report of the President on the work of the informal plenary meeting  
of the Conference on the settlement of disputes[Original: English]  
[29 March and 1 April 1980]

## DOCUMENT A/CONF.62/L.52\*

## Preliminary report

1. The informal plenary held its first meeting on the settlement of disputes on 27 March 1980. It awaited the outcome of the negotiations in the group of legal experts on settlement of disputes relating to Part XI, the report of the Third Committee relating to the dispute settlement provision on marine scientific research and the results of the negotiations in negotiating group 7 relating to the dispute settlement provision within its mandate.

2. The other outstanding issues were the question of the number of national conciliators a State party can appoint in accordance with paragraph 2 of article 3 of annex IV and the necessary changes to co-ordinate paragraph 1 (b) of article 298 with article 296, as formulated by negotiating group 5 (A/CONF.62/WP.10/Rev.1).

## CONCILIATION

3. On the outstanding question regarding national conciliators, the position at the end of the last session was that the present text permits each party to appoint two national conciliators. The informal proposal (SD/1) suggests that this should be limited to one national. The President had suggested that consideration should be given to incorporating aspects of both provisions by permitting each party to appoint one national, unless the parties otherwise agree. Consideration of this question could not be concluded at that session, although the President had held consultations with the delegations most interested.

4. At its meeting on 27 March, the President informed the informal plenary meeting that as a result of his further consultations on that question during the current session, agreement could be reached. The proposal made by the President appeared to provide a possible compromise.

5. The President expressed his appreciation of the spirit of negotiation which permitted achievement of that result, and he accordingly suggested the following amendment to paragraph 2 of article 3 of annex IV which was accepted without objection:

"2. The party submitting the dispute to conciliation shall appoint two conciliators to be chosen preferably from the list, one of whom may be its national, unless the parties otherwise agree. Such appointments shall be included in the notification under article 1."

6. Consequent upon this, the only other outstanding item in SD/1 was the listing of the alternative fora in paragraph 1 of article 287. The delegations which had proposed the change confirmed their willingness to withdraw it. The consideration of SD/1 was therefore concluded.

## ARTICLE 298, PARAGRAPH 1 (b)

7. Regarding the co-ordinating of paragraph 1 (b) of article 298 with article 296, reference was made to the informal suggestion in documents NG5/3 and Corr. 1 and NG5/9. The President pointed out that the intention was to align the law enforcement activities that may be excluded by declaration with the exercise of the sovereign rights and jurisdiction which were excluded from the compulsory jurisdiction of a court or tribunal. He suggested that, if an acceptable drafting change could be found, it could be adopted. Alternatively, the President could effect the necessary drafting change when the text

was being revised. It was to be clearly understood that it would be a purely drafting clarification without in any way touching on the substance of the provision. There was agreement that the President should attend to the necessary drafting co-ordination.

## REFERENCES TO COMPULSORY RESORT TO CONCILIATION

8. The delegation that raised this question drew attention to the complexity of Part XV and suggested that the interrelationship between certain provisions was not sufficiently clear. There were provisions which were exceptions to principles, and there were exceptions to those exceptions. He suggested that, for the purposes of clarity, it was advisable to make certain changes. The specific suggestion was made that, for compulsory resort to conciliation, a special provision should be incorporated in the text at an appropriate place, preferably immediately following article 287. Such a conciliation procedure is contemplated in article 296, in the provision for settlement of disputes relating to marine scientific research (see A/CONF.62/L.50), and also, in the report of the Chairman of negotiating group 7 (A/CONF.62/L.47).

9. Further consideration would be given to this question by the plenary meeting. A separate provision for dealing with compulsory resort to conciliation would serve to clarify those articles of the substantive texts which refer to it. At present the substantive texts provide for compulsory resort to conciliation by reference to article 284 and annex IV, and thereafter excluding paragraph 3 of article 284. It would seem advisable to effect this clarity, thereby eliminating any possible confusion between voluntary conciliation, and the compulsory resort to conciliation. The latter is a procedure more akin to the compulsory procedures in section 2 of Part XV than the voluntary procedures in section 1 of that part. If this suggestion meets with the approval of the plenary, the necessary changes could be devised by the President. Appropriate cross-referencing will have to be included in the relevant substantive provisions.

10. This is a preliminary report, as the informal plenary meeting has yet to consider the reports and results referred to in paragraph 1. A final supplementary report will be made upon the conclusion of its work.

## DOCUMENT A/CONF.62/L.52/ADD.1

## Supplementary report

1. Subsequent to the presentation of the preliminary report, the further work of the informal plenary Conference on the subject of settlement of disputes was carried out at the meeting held on 1 April 1980. The Chairman of the group of legal experts on settlement of disputes relating to Part XI presented his report referring to the compromise formula that had widespread and substantial support. The report was under consideration by the First Committee, and it will be taken up in the plenary meeting (see A/CONF.62/C.1/L.27).

2. The report of the Chairman of the Third Committee relating to the dispute settlement provision on marine scientific research, which is incorporated in his report (A/CONF.62/L.50) has been examined by the Third Committee as part of the package within that Committee. As it has already been submitted directly to the Conference for consideration, it was not discussed by the informal plenary meeting. Similarly the results of negotiating group 7 had been submitted to the plenary meeting (A/CONF.62/L.47). It was decided that the reports should be considered in the plenary.

3. The outstanding question raised by the delegation of

\*Incorporating A/CONF.62/L.52/Corr. 1 of 1 April 1980.

Argentina which merits further consideration would be the subject of consultations. This proposal regarding compulsory recourse to conciliation, along with the recommendation of the Chairman of the group of legal experts on settlement of disputes on Part XI in paragraph 15 of his report and any drafting

changes that may be needed, particularly to co-ordinate the outcome of the work in the different Committees, with the dispute settlement procedure, would have to be dealt with at the commencement of the resumed ninth session, unless they could be given further consideration intersessionally.

## DOCUMENTS A/CONF.62/L.53/AND ADD.1

### Reports of the President on the work of the informal plenary meeting of the Conference on general provisions

(Original: English)  
[29 March and 1 April 1980]

#### DOCUMENTA/CONF.62/L.53

##### Preliminary report

1. The informal plenary had before it several informal suggestions which were proposed as general provisions encompassing matters beyond the purview of any of the Committees. These proposals were: the proposal of Mexico on good faith and abuse of rights in document A/CONF.62/L.25 of 5 May 1978<sup>16</sup> and the similar proposal by the United States of America in document FC/15 of 21 August 1979, which were superseded by document GP/2 of 21 March 1980; the informal proposal of Chile on the concept of *jus cogens* in document FC/14 of 20 August 1979; the outstanding part of the informal proposal of the United States of America in document FC/15, regarding disclosure of information, which was subsequently reproduced in document GP/3 of 25 March 1980; the informal proposal of Turkey on general principles in document FC/18, of 7 March 1980; and the informal proposal of Costa Rica, *et alia*, in document GP/4 of 21 March 1980, dealing with the peaceful uses of the seas.

2. The first of these proposals in document GP/2 was discussed at length. While the first paragraph appeared to be acceptable to most delegations, a few considered it unnecessary as it embodied a general principle of international law incorporated in Article 2 of the Charter of the United Nations.

3. The second paragraph of this proposal, however, met with some criticism as it was not in accord with some legal systems, certain concepts were not sufficiently founded, and there was a problem of interpretation in some languages. Accordingly, it was decided that consultations should be carried out by interested delegations to attempt to arrive at a compromise text which has meaning and content in all languages and for all legal systems. A revised proposal was subsequently presented in document GP/2/Rev.1 which attempted to effect this result. The new text has not yet been considered by the informal plenary.

4. The second proposal in document FC/14 was taken up next and the initial discussions were inclusive. As a consequence, the President suggested that the issue of *jus cogens*, though not strictly related to Final Clauses, could appropriately be taken up at a later stage of the negotiations along with negotiations on the outstanding final clauses, and this was agreed to.

5. The discussion of document GP/3 was commenced and the initial examination indicated that though in principle the concept was unexceptionable as it protected national security, that it was a widely held view that the draft would have to be reformulated in order to avoid its having the effect of nullifying, or impairing the effectiveness of, certain provisions in Parts XI, XIII, and XIV in the revised negotiating text. The delegations concerned therefore undertook to carry out consultations in order to arrive at an acceptable text.

6. The proposal in document FC/18 had a mixed reception. A protracted discussion took place. Among those delega-

tions that had the opportunity of participating in this discussion, there was a clear division by those who supported it and those who objected to it. The list of speakers was not completed for lack of time.

7. All that can be said is that examination of this proposal has been inconclusive as there are other delegations that wish to speak on it. An occasion must be found for other delegations that wish to speak on it to do so. Further consideration of this item will continue in due course, along with the outstanding issues in GP/1.

8. This report will therefore only be of a preliminary nature.

#### DOCUMENTA/CONF.62/L.53/ADD.1

##### Supplementary report

1. Subsequent to the preliminary report in document A/CONF.62/L.53, the status of the work of the informal plenary conference on these proposals for general provisions may be reported on as follows.

2. The consideration of document GP/2/Rev.1, concerning good faith and abuse of rights, disclosed that this proposal was broadly acceptable with a slight drafting change, by the addition at the end of the final sentence of the phrase "in the light of the rights of other States". This suggestion was intended to clarify whose rights were contemplated in the proposal.

3. Notwithstanding the support this proposal appeared to have, certain delegations seemed to link any proposal on general principles with the acceptance of the other proposals under consideration, and for that reason, it was not possible to proceed further on this question.

4. As regards document GP/3 relating to the disclosure of information, its further examination could not be proceeded with for the reason that the consultations among interested delegations had not resulted in any new compromise formulation. The concerns expressed regarding the impact of this proposal on Parts XI, XIII and XIV were reiterated, and also the need to submit to dispute settlement procedure any question of failure to disclose information. Further points were made, that where there had been a refusal or failure to disclose information, the consequences of such refusal or failure should be clearly indicated in the article, and also that in its current form, the article was subjective in character and permitted unilateral decisions as to whether the information was contrary to the security interests of a State. In addition, it was pointed out that it could impair the purposes and principles of the convention. Clearly therefore, it needed further consideration.

5. The discussion of the proposal in document FC/18 on general principles continued, but once more the division among those who supported the proposal and those who opposed it was apparent. At the end of the discussion it was apparent that the proposal in its current form was not generally acceptable and that further consideration of it had to be deferred.

6. The proposal on the peaceful uses of the seas contained in document GP/1 was considered and, in order to make it more acceptable, certain drafting changes were proposed. The

<sup>16</sup>*Ibid.*, vol. IX.