

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/L.53

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

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

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]

DOCUMENT A/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5 May 1978¹⁴ and the similar proposal by the United States of America in document FC/15 of 21 August 1979, which were superseded by document GP/2 of 21 March 1980; the informal proposal of Chile on the concept of *jus cogens* in document FC/14 of 20 August 1979; the outstanding part of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/1 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.

DOCUMENT A/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

¹⁴*Ibid.*, vol. IX.