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A/CONF.62/L.53/Add.1

Supplementary report

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5 May 1978¹⁴ and the similar proposal by the United States of America in document FC/15 of 21 August 1979, which were superseded by document GP/2 of 21 March 1980; the informal proposal of Chile on the concept of *jus cogens* in document FC/14 of 20 August 1979; the outstanding part of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

first change was to replace the words "the different zones of the ocean space" by the words "maritime space". The other suggestion was to delete all references to different zones of ocean space. The acceptance of this latter amendment would result in the draft proposal reading as follows:

"In exercising their rights and performing their duties under the present Convention all States [States Parties] shall refrain from any threat or use of force against the territorial integrity or political independence of any State or, in any other manner inconsistent with the purposes of the United Nations".

Although in this amended form the proposal appeared to have wide support, it did not completely dispose of the reservations of certain delegations as they feared that it had an impact on the package within the Second Committee, specifically with regard to article 19, paragraph 1 (a) on innocent passage and article 39 paragraph 1 (b) on transit passage, which were very

similar formulations. It was agreed, therefore, that further time should be given to interested delegations to carry out consultations so as to arrive at a compromise formulation.

7. In conclusion, although some of the proposals for general provisions before the informal plenary attracted widespread support, certain delegations seemed to consider that there was a link between all these general provisions and that none of them could be considered in isolation from the rest. It was therefore necessary to defer them all for later consideration. In these circumstances it is not possible to state that any provision, however widespread the support, could be submitted to the plenary for inclusion in a revision.

8. It would appear necessary for interested delegations to continue their consultations in an attempt to arrive at a compromise on all these general provisions. The informal plenary would have to take them up at a suitable time, either at inter-sessional meetings, if that was feasible, or failing that, at the very outset of the resumed ninth session.

DOCUMENT A/CONF.62/L.54

Report of the Chairman of the First Committee

[Original: English]
[1 April 1980]

1. Considering the crucial stage that the Conference has reached in an effort to conclude these historic negotiations, it is important that the report I submit to the plenary should have as a central objective the production of guidelines based on the result of the endeavours at the level of the First Committee. It is generally agreed that the final decisions which nations must make will be based on political considerations, having regard to the needs and interests of each and, in some cases, the collective aspirations of various communities of interest. It is the opinion of this Chairman that this Conference cannot at this stage afford the luxury of illusion and that, especially in the First Committee, every avenue should be explored for ensuring the adoption of ideas that are born of understanding and compromise. To preserve "widespread support" in isolation from this reality is to reserve shocks for the concluding stages when a formal document will be submitted for final consideration by Governments.

2. The machinery for negotiations on matters within the mandate of the First Committee was set in motion from the very beginning of the first part of the ninth session held in New York. In fact, the work was carried out mainly through negotiations and subsequent consultations held in the working group of 21. The First Committee itself held two meetings at the end of this session to review its work, assess the scope of advancement towards consensus and provide guidelines regarding the second revision of the informal composite negotiating text.

3. The term "guidelines" is chosen merely to describe the indications that the statements of delegations gave on the question whether or not there were reasonable grounds to contemplate the revision of any provisions in a second revision of the negotiating text, also underlining in the process specific areas in which further negotiations and/or consultations may be necessary. The idea in this approach to review is to avoid, in the future, undesirable repetition of effort or the reopening of issues over which understanding appears to have been reached.

4. Although I have had a previous occasion in which to do this, I wish once again to express deep appreciation to my fraternal friends, Mr. Njenga of Kenya, who co-ordinated the negotiations on matters relating to the system of exploration and exploitation; Mr. Koh of Singapore, who co-ordinated those concerning the financial matters; Mr. Wuensche of the German Democratic Republic continued consultations with the group of legal experts on settlement of disputes relating to Part XI. These men continued to enhance our difficult nego-

tiating efforts with unceasing persistence. I also cannot fail to record similar gratitude to the team of dedicated men and women, assigned to our various endeavours by the special representative of the Secretary-General, for their assistance and expertise. The bulk of the credit must, however, be shared by the delegations represented in the First Committee who brought to the negotiations a growing and productive sense of mutual understanding and accommodation.

5. The Committee heard statements made by 28 representatives. The representative of Peru spoke on behalf of the contact group of the Group of 77 on First Committee matters, and commented on the reports of the co-ordinators. Other delegations representing various interests also spoke. Statements were also made by the representatives of Jamaica, Nigeria, Peru, Fiji, Malta, Cuba and the United Arab Emirates on the question of the seat of the Authority. The views and positions of all these delegations are reflected in the summary records of the First Committee.

6. The discussions in the First Committee addressed themselves mainly to the issues dealt with in the reports submitted by the co-ordinators (see A/CONF.62/C.1/L.27) and particularly on such issues as: the review conference (article 155, para. 5); transfer of technology (article 5, annex II); production policies (article 151); the fiscal status of the Enterprise (annex III, particularly articles 9 and 12); decision-making process of the Council (article 161, para. 7); anti-monopoly provisions (article 6, para. 3 (d), annex II); financial terms of contracts (article 12, annex II).

7. The explanatory notes contained in the reports of the Co-ordinators proved to be very helpful for the delegations. There appeared to be widespread feeling that important progress had been made in many areas during this part of the session, and that, on the whole, more of the suggestions submitted by the co-ordinators provided a better basis for further negotiations than those embodied in the revised informal negotiating text. Deep regret was expressed that the degree of substantial improvement was not reflected in other areas. Responding to appeals of delegations that I should cause the holding of more consultations before reporting here, I enlisted the usual co-operation of Mr. Njenga and Mr. Koh to conduct further consultations. New suggestions made by Mr. Njenga (A/CONF.62/C.1/L.27/Add.1) have now been issued as an addendum to his previous report. They reflect the best partial result that could be attained in the short interval.

8. A summary of the present situation is that some of the