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A/CONF.62/L.58

Report 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 XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)

ITEMS WHICH HAVE BEEN DEFERRED

- (i) "States with special geographical characteristics"
- (ii) "land-locked and geographically disadvantaged States"
- (iii) "land-locked and other geographically disadvantaged States"
- (iv) "land-locked or otherwise geographically disadvantaged"

Articles 69 and 70 use the phrase "States with special geographical characteristics" whereas articles 148, 160, 161, 254, 266 and 272 use the phrase "geographically disadvantaged States". The Drafting Committee recommended that the Chairman of the Committee consult with the relevant Chairmen on the question of the harmonization of the use of these terms.

"State enterprises"

The co-ordinators of the language groups are continuing to consult on this matter.

"artificial islands, installations and structures and international navigation"

The co-ordinators of the language groups are continuing their consultations. In this connection a model article based on article 60 is being examined.

"due publicity of charts"

The co-ordinators of the language groups are continuing to consult on the harmonization of articles 134, 76 and 84 with a view to consultation with the relevant Chairmen.

"transfer of technology"

The Drafting Committee recommended that the suggested deletion of "all kinds of" in article 269 (a) and "skills and" in article 273 should be subject to further consultation.

"international rules and standards"

The Drafting Committee recommended that there should be further discussion on this issue and that with this in mind representatives from all language groups could participate in the small group which has been established by the English language group.

- (i) "the above provisions do not affect the right of the coastal State to take any steps"
- (ii) "nothing in this Part shall affect the right of States to take measures"
- (iii) "applies"
- (iv) "shall apply"

The co-ordinators of the language groups are continuing to consult on this question.

DOCUMENT A/CONF.62/L.58

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

[Original: English]
[22 August 1980]

1. The informal plenary Conference considered general provisions at eight meetings during the resumed ninth session.

2. At the end of the first part of the ninth session held in New York from 3 March to 4 April 1980, the outstanding items were listed in document A/CONF.62/L.53 and Add.1¹²

3. In addition, during the resumed session the documentation placed before the Conference was as follows:

(a) the informal proposal (GP/5 dated 1 August 1980) on use of terms presented by Ecuador;

(b) the informal proposals (GP/6 dated 5 August 1980) on good faith and abuse of rights; on peaceful uses of the seas; and on disclosure of information;

(c) the informal proposal (GP/7 dated 4 August 1980) on general provisions and principles presented by Turkey;

(d) the informal proposal (GP/8 dated 5 August 1980) on responsibility for damage;

(e) the informal proposal (GP/9 dated 5 August 1980) on *jus cogens* presented by Chile;

(f) the informal proposal (GP/10 dated 18 August 1980) on objects of archaeological or historical value presented by Greece; and

(g) the informal proposal (GP/11 dated 19 August 1980) on objects of archaeological or historical value.

4. The three proposals dealing with good faith and abuse of rights; peaceful uses of the seas; and disclosure of information (GP/6) were taken up together. The article on good faith and abuse of rights was a modification of the similar proposal appearing in GP/2/Rev.1 of 28 March 1980. The article on the peaceful uses of the seas was a modification of GP/1 of 21 March 1980, the informal proposal of Costa Rica *et al.* The third article on disclosure of information was a modification of GP/3 of 25 March 1980, the informal proposal of the United States of Amer-

ica. In presenting GP/6, the President indicated that the consultations held by him on these three articles indicated that they should be considered for inclusion in the next revision of the informal composite negotiating text as a package, although they did not carry the implication of co-sponsorship. A discussion followed and, subject to the following drafting changes to GP/6, all three articles were accepted by consensus in the informal plenary Conference. The articles as accepted are as follows:

*"Article . . .**"GOOD FAITH AND ABUSE OF RIGHTS*

"The States Parties to this Convention undertake to discharge in good faith the obligations entered into in conformity with this Convention, and to exercise the rights, jurisdictions and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

*"Article . . .**"PEACEFUL USES OF THE SEAS*

"In exercising their rights and performing their duties in accordance with the provisions of this Convention, all 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 principles of international law embodied in the Charter of the United Nations.

*"Article . . .**"DISCLOSURE OF INFORMATION*

"Without prejudice to the right of any State Party to resort to the procedures for the settlement of disputes provided in this Convention, nothing in this Convention shall be deemed to require a State Party, in the fulfilment of its obligations under the relevant provisions of this Convention, to supply information the disclosure of which is contrary to the essential interests of its security".

The acceptance of these articles by consensus was on the understanding that the article on good faith and abuse of rights was to be interpreted as meaning that the abuse of rights was in relation

¹² *Ibid.*, vol. XIII.

to those of other States. It was further understood that the three articles would go in as a single package. The article on disclosure of information was understood to mean that it did not detract from the obligations under the present Convention concerning the transfer of technology and marine scientific research and the obligations concerning the settlement of disputes thereon.

5. The next item taken up was the proposal by Chile on the concept of *jus cogens* contained in document GP/9, originally appearing in document FC/14 dated 20 August 1979. A preliminary discussion on it had taken place during the first part of the ninth session in New York. During the resumed session, it appeared that the majority of delegations strongly supported the proposal but although most delegations found the concept unexceptionable, yet the proposal itself was not entirely acceptable to some. In an attempt to arrive at a compromise, the President suggested a modified formulation. As that modified formulation itself did not prove acceptable, after summing up the discussion the President suggested that consultations on it should continue and that the Conference could return to its consideration later.

6. The item was taken up again at the informal meeting of the Conference on Friday, 15 August 1980. Consultations that had been conducted during the intervening period indicated that a compromise formulation on the subject could be considered as a new paragraph 6 of article 305. It was felt that this text provided a better basis for consensus; the new text reads as follows:

“6. The States Parties to this Convention agree that there can be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.”

7. The text as presented was discussed at some length and several drafting changes were suggested. It appeared, however, that as originally formulated it constituted a compromise, and all drafting changes, therefore, met with opposition. The question of where this provision should be located was also raised. It was pointed out that the location of the provision was not crucial to the issue and that its content would be given effect to wherever it was incorporated.

8. In the form in which it was originally presented it was adopted by consensus for incorporation as a new paragraph 6 of article 305, subject to the expression by certain delegations of reservations which did not amount to objection to its acceptance by consensus.

9. The proposal in document GP/7 by the delegation of Turkey was a modification of the proposal in FC/18 of 7 March 1980. The changes effected in the new proposal were first explained and thereafter a discussion ensued. Several drafting changes were made which were accepted by the delegation of Turkey in its amended form which is as follows:

... in the application and interpretation of this Convention and without prejudice to the criteria established in special provisions of the Convention, the following principles, *inter alia*, shall be observed:

“1. the general provisions laid down in the Convention shall be applied with due regard to the special characteristics of the region concerned;

“2. the application of the provisions of this Convention shall lead to results and solutions consistent with the principles of justice and equity;

“3. the general rules and principles of international law which are not incompatible with this Convention shall be taken into consideration in interpreting the provisions of the Convention.”

10. These discussions, even on the amended article, were, however, inconclusive as some delegations considered the article unacceptable. The delegation of Turkey was urged to conduct further consultations before this matter could be further considered. It undertook to do so. At the final meeting of the informal plenary conference on 21 August 1980, the delegation of Turkey in-

formed the meeting that the consultations had not yet been concluded. The President indicated that this question could not, therefore, be considered for inclusion in the third revision of the informal composite negotiating text.

11. The proposal in document GP/8 concerning responsibility for damage was negotiated in the plenary Conference and subject to some amendments was accepted by consensus. The article as accepted would read as follows:

“The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.”

12. The proposal in document GP/5 on “Use of terms” by the delegation of Ecuador. The initial discussions indicated that some delegations were concerned about the full implications of this article. In an attempt to alleviate these concerns, the President suggested that a second paragraph be added as follows:

“The rights and obligations of any State Party, under this Convention, shall not be affected by this article”.

Subsequent to this, amendments were suggested by several delegations, and at the end of the discussion, the delegation of Ecuador indicated that they would carry out further consultations to enable the consideration of this item to be resumed. At the meeting on 20 August 1980, the delegation of Ecuador withdrew the proposal.

13. The proposal in document GP/11 concerning archaeological objects and objects of historical value was taken up for consideration along with the other proposals on that subject viz. a proposal in document GP/4 of 27 March 1980 presented by the United States of America and a proposal in document GP/10 presented by Greece. Reference was also made to the proposal in document C.2/Informal Meeting/43/Rev.3 of 27 March 1980 presented by Cape Verde *et al.* before the Second Committee. It was decided that all these documents be considered together. After a brief discussion, however, it seemed that the proposal in GP/11 was closer to a compromise than any of the others. That text, with some amendments, was eventually adopted. In that form it reads as follows:

“1. States have the duty to protect archaeological objects and objects of historical origin found at sea, and shall cooperate for this purpose.

“2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the sea-bed in the area referred to in that article without the approval of the coastal State would result in an infringement within its territory or territorial sea of the regulations of the coastal State referred to in that article.

“3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.

“4. This article is without prejudice to other international agreements and rules of international law regarding the protection of archaeological objects and objects of historical origin.”

14. It is to be noted that reference to the rights of identifiable owners was included in paragraph 3 and that the new paragraph 4 was inserted with the intention of protecting other international agreements and rules of international law. It was also decided that in translating the term “rules of admiralty” from the original English into other languages account should be taken of the fact that this was a concept peculiar to Anglo-Saxon law and the corresponding terms in other legal systems should be used to make it clear that what was meant was commercial maritime law. It was agreed that the reference in paragraph 2 to “result in an infringement” was understood to mean that it would constitute or constitutes an infringement within “its territory or territorial sea”.

15. Subject to these understandings and clarifications as appropriate in the languages, the article as amended was accepted by consensus at the informal plenary meeting.

16. The consideration of general provisions in plenary Conference was thus concluded and all items were disposed of with

the exception of the proposal by Turkey concerning general principles and provisions (GP/7).

DOCUMENT A/CONF.62/L.59*

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

[Original: English]
[23 August 1980]

1. The plenary Conference held six informal meetings on the settlement of disputes during the current session.

2. The first item taken up was a note by the President contained in document SD/3 of 6 August 1980, which dealt with the questions of compulsory submission to conciliation procedure and the restructuring of Part XV for the purpose of clarity. The note had attached to it the textual changes to Part XV and annex V that were to achieve this result. After an initial consideration of the proposals in document SD/3, the President presented document SD/3/Add.1 which contained changes to the text of document SD/3.

3. The structure suggested for Part XV suggested in document SD/3 met with a favourable response, and it appeared that the division of Part XV into three sections should be made. The sections are divided as follows: the first section, providing for the voluntary procedures; the second section, providing for the compulsory dispute settlement procedures entailing a binding decision; the third section, providing limitations and optional exceptions to the compulsory procedures referred to above. This third section thus includes all the cases where there is obligatory submission to conciliation procedure.

4. In addition, a second section to annex V was proposed in document SD/3 to govern the conciliation procedures to which there is an obligation to accept submission under the new section 3 of Part XV.

5. It was pointed out by the President both in document SD/3 and in the course of the meetings that the changes were suggested in an attempt to clarify and co-ordinate all the provisions which set out the new and unique régime for the settlement of disputes arising under the proposed convention. It was made clear by the President that changes of a substantive nature were not intended and would not be considered. Changes relating to outstanding hardcore issues under negotiation elsewhere were also not to be considered at this stage. In particular, it was to be understood that all changes regarding Part XV and its related annexes were to be made without reference to the question of article 298, paragraph 1 (a) concerning the settlement of delimitation disputes. It was also understood that an examination of this paragraph may be required at an appropriate time. In addition, other paragraphs of article 298, specifically paragraphs 3 and 4, may have to be reconciled with any new formulation that may emerge for paragraph 1 (a) of that article. A footnote to this effect was appended to document SD/3/Add.1.

6. The course of the negotiations conducted in the informal plenary meetings may be summarized as follows. Informal suggestions were made by some of the participants in the course of their interventions. These included suggestions regarding both drafting and substance. In particular, two suggestions were made which touched upon the question of delimitation, which were: firstly, that a cross-reference to article 298 *bis* of document SD/3 be made in article 298.1 (a) (ii); secondly, the exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from the compul-

sory dispute settlement procedures and from compulsory submission to conciliation procedures as provided in article 298, paragraph 1 (a). These should be included in article 296 with the other exceptions in that article. The exclusion of future delimitation disputes by declaration would remain in article 298. Where no settlement had been reached, such disputes would be submitted to conciliation at the request of any party and the other party would be obliged to accept this procedure.

7. The President had stressed, both in document SD/3 and at the commencement of these negotiations, that changes of substance should be avoided, in particular, any changes concerning the texts of article 296, paragraphs 2 and 3. Since delicate compromises that had been very carefully negotiated are contained in that article, any attempt to raise these questions should be avoided. He pointed out that article 298, paragraph 1 (a), was closely linked to the delimitation issue. The President further stressed that attention should be concentrated on the structural changes alone to the exclusion of substantive changes. So far as paragraph 1 (a) was concerned even structural changes should be avoided.

8. The other informal suggestions made during these negotiations and accepted without objection or reservation by the informal plenary Conference were as follows:

(a) the suggestion to add to the title of article 282 a reference to "or other instruments". It was referred to in paragraph 1 of document SD/3/Add.1. This was found to be generally acceptable;

(b) the suggestion to add a reference to "Section 1 of" in paragraphs 2 and 3 of article 284, before the reference to "annex V". It was referred to in paragraph 2 of document SD/3/Add.1. This was considered a logical and necessary change, which makes paragraphs 2 and 3 consistent with paragraphs 1 and 4 of article 284 of document SD/3;

(c) the suggestion that article 287, paragraph 6 can be ended after the words "deposited with the Secretary-General", as the rest of its content is covered in paragraph 8 of that article. It was referred to in paragraph 3 of document SD/3/Add.1. This was also considered to be a sound suggestion and was accepted;

(d) the suggestion to reinstate article 296, paragraph 3 (d) as it appears in A/CONF.62/WP.10/Rev.2, and to delete article 15 of annex V in document SD/3 which was intended to replace it. This was referred to in paragraph 4 of document SD/3/Add.1. The suggestion was accepted without objection;

(e) the suggestion to give article 298 *bis* a title as follows: "Right of the parties to agree upon procedure". This was referred to in paragraph 5 of SD/3/Add.1, and it was accepted;

(f) the suggestion concerning the inadequacy of the scope of article 298 *bis*, which did not fully reflect, and cannot be a complete substitute for, the phrase "unless otherwise agreed on or decided by the parties concerned" in article 296, paragraphs 2 (a) and 3 (a), which it was intended to replace. As a minor addition to article 298 *bis* could alleviate this concern the following change to article 298 *bis* was suggested by the President: in paragraph 2, after the words "right of the parties to the dispute to agree to" insert "or decide upon" and continue the sentence as

* Incorporating document A/CONF.62/L.59/Corr.1 dated 23 September 1980.