

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

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Document:-

**A/CONF.62/L. 7**

**Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore  
and United States of America: working paper on the settlement of law of the sea  
disputes**

*Extract from the Official Records of the Third United Nations Conference on the Law of  
the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

We agree with that point, but we wholly fail to see why different or additional conservation measures for particular species should lead to diminishing coastal State resource rights in their economic zones.

Where a particular species of fish anywhere is endangered for any reason, it should be protected. If such protection requires agreement among a few nations, such agreement should be procured. If such protection requires an organization to fulfil the functions of conservation and allocation of the allowable catch on the high seas, such an organization should be created and empowered.

If there is a difference of opinion about whether conservation by an organization is required, an impartial and expert judgement can be used to settle the matter, such as that of the Food and Agriculture Organization of the United Nations. Some delegations have suggested that course, and it seems to us eminently sensible.

But we do not agree that in order to improve conservation the rights of coastal States should be discriminated against in the case of any species. The solution to actual or potential conservation problems in the case of highly migratory species of fish is not to reduce the rights of coastal States, but to strengthen the means of conservation, and of allocation of the allowable catch.

We accept fully the principles of conservation and of full utilization of all species of fish. But entirely consistent with those principles, we believe that coastal States, including Micronesia, should have the following rights:

1. A clear and exclusive preference to the extent of their harvesting capacity to harvest all fish in their economic zone;
2. Coastal States, including Micronesia, should have reasonable compensation for all fish harvested in their economic zone by foreign flag vessels; and
3. They should have these rights clearly spelled out in the Convention.

We believe that these rights of coastal States should be given effect without possibilities of delay or evasion. Some parts of the world urgently require regional conservation measures now, and others will require them in the future. But unless and until such regional protection is brought about, coastal States should have the right to issue conservation and allocation regulations for their own economic zones.

Once the rights of the coastal State are clearly defined, we believe that it will be much easier to bring about regional protection. In any regional system, furthermore, we believe that enforcement provisions should be strong enough to insure

compliance both in the economic zone and on the high seas, and that these should be complemented by a system of swift, effective and compulsory dispute settlements that will be sensitive to the needs of small coastal States. We believe that a system embodying such a balance of interests of coastal and distant fishing nations is perfectly feasible.

#### ARCHIPELAGO

Another subject of great concern to Micronesia is our status as an archipelagic, mid-ocean, island State. The Congress of Micronesia in January of 1974 formally adopted the archipelagic position for Micronesia. Since coming to this Conference we have heard the expressed concerns of many that archipelagic régimes may impose burdens on navigation, and that this aspect of such régimes is an obstacle to recognition of the régime for some of our neighbours, to whom the aspect of security of their waters and control of navigation is of vital interest. On the other hand, it may be possible to find ways to harmonize those archipelagic concerns with the concern for adequate international navigation and transit of archipelagic waters. The complexities of this subject, as of others at this Conference, require further consideration, from which solutions may be found. We therefore reserve comment on this subject for the next session of the Conference.

#### POLLUTION

Finally, we wish to express our great concern that adequate means be found to protect the seas from pollution of all kinds. While the dangers of pollution from vessels or sea-bed activity are well recognized, we are also deeply concerned about the great unsolved problem of disposing of radio-active atomic waste materials. The people of Micronesia have very special feelings about this matter. Years ago, one solution adopted was to dump such waste materials in the deep sea near our islands. It is now clear that the hazards of doing so were not adequately understood. Not only Micronesia but the whole world must be assured against similar potentially disastrous experimentation and practices in the future.

#### CONCLUSION

We very much hope that the Conference will take into account our views and situation. We depend upon the international community not to discriminate against islands or island States in this great endeavour to develop a new and equitable Law of the Sea. We hope for a speedy and successful conclusion of the Conference in 1975.

### DOCUMENT A/CONF.62/L.7

#### Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore and United States of America: working paper on the settlement of law of the sea disputes

[Original: English]  
[27 August 1974]

The representatives of a number of countries have held informal consultations on issues connected with the settlement of disputes which may arise under the law of the sea convention. This working paper, resulting from those discussions, is presented as a possible framework for further discussions at the next session of the Conference. It sets out various possible alternatives, together with notes indicating relevant precedents. The paper does not necessarily reflect the proposals of individual Governments, and does not in any way preclude any sponsoring delegation from presenting later its own proposals on the subject.

Where only one text appears under a particular heading, this does not necessarily imply that there are no other opinions

concerning that question or that all delegations which have participated in the informal consultations agree on the necessity for such a provision.

#### I. OBLIGATION TO SETTLE DISPUTES UNDER THE CONVENTION BY PEACEFUL MEANS

##### *Alternative A*

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.

*Alternative B*

[Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,] the Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention by peaceful means in conformity with the Charter of the United Nations.

*Note: Relevant provisions of international instruments*

United Nations Charter, Article 33:

"1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

"2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, para. 15:

"The parties to any dispute relating to activities in the area and its resources shall resolve such disputes by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established."

Vienna Convention on the Law of Treaties, 1969, article 65 (3):

"If, however, [within a period of three months after a party to a treaty notifies the other parties of its claim with respect to invalidity, termination, withdrawal from or suspension of the operation of the treaty, an] objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations."

Convention on Fishing and Conservation of Living Resources of the High Seas, 1958, article 9:

"Any dispute which may arise between States under Articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations."

Treaty between Turkey and Jordan, 1947, article 4 (Hans Blix and J.H. Emerson, *The Treaty Maker's Handbook*, Oceana, Dobbs Ferry, N.Y., 1973, p. 121):

"The High Contracting Parties shall make every effort to solve the differences which may arise between them by peaceful means in conformity with the provisions of Article 33 of the Charter of the United Nations."

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:

"Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

"States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

"The parties to a dispute have the duty, in the event of a failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

"States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

"International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

"Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes."

## 2. SETTLEMENT OF DISPUTES BY MEANS CHOSEN BY THE PARTIES

### *Alternative A*

If any dispute arises between two or more Contracting Parties relating to the interpretation or application of this Convention, those Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to special procedures provided for by an international or regional organization, or other peaceful means of their own choice.

### *Alternative B*

The parties to the dispute may agree to settle the dispute by any peaceful means of their own choice, including negotiation, mediation, inquiry, conciliation, arbitration, judicial settlement, or recourse to special procedures provided for by an international or regional organization.

*Note: Relevant provisions of international instruments*

United States draft articles for a chapter on the settlement of disputes (A/AC.138/97), article 1:

"In any dispute between the Contracting Parties relating to the interpretation or application of the present Convention, any party to the dispute may invite the other party or parties to the dispute to settle the dispute by direct negotiation, good offices, mediation, conciliation, arbitration, or through special procedures provided for by an international or regional organization."

Single Convention on Narcotic Drugs, 1961, article 48 (1):

"If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice."

Antarctic Treaty, 1959, article XI (1):

"If any dispute arises between two or more Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice."

## 3. CLAUSE RELATING TO OTHER OBLIGATIONS\*

*Alternative A*

If the parties to a dispute [agree to resort to a procedure entailing a binding decision or] have accepted, through a general, regional, or special agreement, or some other instruments, an obligation to resort to arbitration or judicial settlement, any party to the dispute shall be entitled to refer it to [such procedure or to] arbitration or judicial settlement in accordance with that agreement or instruments in place of the procedures specified in this Convention.

*Alternative B*

The provisions of this Convention relating to dispute settlement shall not apply to a dispute with respect to which the parties are bound by an agreement, or other instruments, obliging them to submit that dispute to another procedure entailing a binding decision.

*Alternative C*

Notwithstanding the provisions of any agreement or other instruments in force between them, the Contracting Parties shall, unless they otherwise agree, apply the procedures laid down in this Convention to any dispute relating to its interpretation or application.

\*A special provision may be needed when parties to a dispute are subject to the jurisdiction of the International Court of Justice as well as Parties to this Convention.

*Note: Relevant provisions of international instruments*

United Nations Charter, Article 95:

"Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

United States draft articles, article 3:

"Notwithstanding the provisions of Article 2, if the parties to a dispute have agreed in any general, regional, or special agreement to resort to arbitration, any party to the dispute shall be entitled to refer it to arbitration in accordance with that agreement in place of the procedures specified in this chapter."

European Convention for the Peaceful Settlement of Disputes, 1957, article 28 (1):

"The provisions of this Convention shall not apply to disputes which the parties have agreed or may agree to submit to another procedure of peaceful settlement. Nevertheless, in respect of disputes falling within the scope of Article 1 [i.e., legal disputes] the High Contracting Parties shall refrain from invoking as between themselves agreements which do not provide for a procedure entailing binding decisions."

General Act for the Pacific Settlement of International Disputes, (1949) article 29 (1):

"Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions."

Treaty establishing the European Economic Community, article 219:

"Member States undertake not to submit a dispute concerning the interpretation or the carrying out of this Treaty to any method of settlement other than those provided for therein."

## 4. CLAUSE RELATING TO SETTLEMENT PROCEDURES NOT ENTAILING A BINDING DECISION

*Alternative A*

Where a Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention has submitted that dispute to a dispute settlement procedure not entailing a binding decision, the other party or parties to the dispute may at any time refer it to a dispute settlement procedure provided for by this Convention, unless the parties have agreed otherwise.

*Alternative B*

Notwithstanding any agreement to refer a dispute to a procedure not entailing a binding decision, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to that procedure.

*Alternative C*

The right to refer a dispute to the settlement procedure provided for by this Convention for obtaining a binding decision may be exercised only after the expiration of the time-limit established by the parties in an agreement to resort to a dispute settlement procedure which does not entail a binding decision, or, in the absence of such a time-limit, if, [within a period of . . . months] [within a reasonable time, taking into account all the relevant circumstances] that procedure has not been applied or has not resulted in a settlement of the dispute.

*Note: Relevant provisions of international instruments*

United States draft articles for a chapter on the settlement of disputes, article 2:

"Notwithstanding the provisions of Article 1, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention which is required by this Convention to be submitted to compulsory dispute settlement procedures on the application of one of the parties, may refer the dispute at any time to the Law of the Sea Tribunal (the Tribunal)."

Convention on Transit Trade of Land-Locked Countries, 1965, article 16 (1):

"Any dispute which may arise with respect to the interpretation or application of the provisions of this Convention which is not settled by negotiation or by other peaceful means of settlement within a period of nine months shall, at the request of either party, be settled by arbitration . . .".

OBLIGATION TO RESORT TO A MEANS OF SETTLEMENT  
RESULTING IN A BINDING DECISION*Alternative A.1*

Any dispute which may arise between two or more Contracting Parties regarding the interpretation or application of this Convention shall be submitted to arbitration at the request of one of the Parties to the dispute.

*Alternative A.2*

Any dispute between two or more Parties to this Convention concerning the interpretation or application of this Convention shall, if settlement by negotiation between the Parties involved has not been possible, and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in annex . . . to this Convention.

*Note: Relevant provisions of international instruments*

Belgium-Yugoslavia, Agreement on Social Security, 1954, article 41:

"All difficulties relating to the carrying out of the present Agreement shall be resolved by agreement between the competent authorities of the contracting Governments.

"In cases where it may have been impossible to arrive at a solution by this means, the disagreement is to be submitted to arbitration, in accordance with a procedure to be arranged between the Governments. The arbitral body shall settle the dispute according to the fundamental principles and in the spirit of the present Agreement."

United Kingdom-Belgium General Agreement on the Establishment of a British Military Base in Belgium, 1952, article 7:

"Disputes which may arise between the two Governments regarding the interpretation or application of the present Agreement or of any other separate agreement concluded pursuant to the present Agreement shall be submitted to arbitration at the request of either Government.

"The arbitrator shall be selected by agreement between the two Governments. If after two months from the date of the request of either Government to submit the dispute to arbitration the two Governments have not agreed on the choice of the arbitrator, he shall be chosen by the Secretary-General of the North Atlantic Treaty Organization."

International Convention for the Prevention of Pollution from Ships, 1973, article 10:

"Any dispute between two or more Parties to the Convention concerning the interpretation or application of the present Convention shall, if settlement by negotiation between the Parties involved has not been possible, and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in Protocol II to the present Convention."

European Interim Agreement on Social Security, 1953, article 11:

"1. Arrangements where necessary between the competent authorities of the Contracting Parties shall determine the methods of implementation of this Agreement.

"2. The competent authorities of the Contracting Parties concerned shall endeavour to resolve by negotiation any dispute relating to the interpretation or application of this Agreement.

"3. If any such dispute has not been resolved by negotiation within a period of three months, the dispute shall be submitted to arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting Parties concerned, or, in default of such agreement, within a further period of three months, by an arbitrator chosen at the request of any of the Contracting Parties concerned by the President of the International Court of Justice".

#### *Alternative B.1*

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention shall be submitted, at the request of any of the parties to the dispute, to the Law of the Sea Tribunal to be established in accordance with the annexed statute.

#### *Alternative B.2*

Notwithstanding the submission of a dispute to a procedure not entailing a binding decision, any Contracting Party which is party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute

settlement procedure entailing a binding decision, may refer the dispute at any time to the Law of the Sea Tribunal.

*Note: Relevant provisions of international instruments.*

United States draft articles for a chapter on the settlement of disputes, article 2:

"Notwithstanding the provisions of Article 1, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention which is required by this Convention to be submitted to compulsory dispute settlement procedures on the application of one of the parties, may refer the dispute at any time to the Law of the Sea Tribunal (the Tribunal)."

#### *Alternative C.1*

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to the dispute.

#### *Alternative C.2*

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention shall be referred by application of any party to the dispute to a chamber to be established in accordance with the Statute of the International Court of Justice to deal with the law of the sea disputes.

*Note: Relevant provisions of international instruments*

Convention on the Prevention and Punishment of the Crime of Genocide, 1948, article IX:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Convention on the Settlement of Investment Disputes between States and nationals of other States, 1965, article 64:

"Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement."

Statute of the International Court of Justice:

#### *Article 26*

"1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

"2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

"3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

#### *Article 27*

"A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

#### *Article 28*

"The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

“Article 29

“With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.”

International Court of Justice, Rules of Court, 1972:

“Article 24

“1. The Chamber of Summary Procedure to be formed annually under Article 29 of the Statute shall be composed of five members of the Court, comprising the President and Vice-President of the Court, acting *ex officio*, and three other members elected in accordance with Article 27, paragraph 1, of these Rules. In addition, two members of the Court shall also be elected annually to act as substitutes.

“2. The election referred to in paragraph 1 of this Rule shall be held within three months after 6 February. The members of the Chamber shall enter upon their functions on election and continue to serve until the next election; they may be re-elected.

“3. If a member of the Chamber is unable, for whatever reason, to sit in a given case, he shall be replaced for the purposes of that case by the senior in rank of the two substitutes.

“4. If a member of the Chamber ceases to be a member of it otherwise than by replacement under paragraph 1, his place shall be taken by the senior in rank of the two substitutes, who shall thereupon become a full member of the Chamber and be replaced as substitute by the election of another one. Should vacancies exceed the number of available substitutes, elections shall be held as soon as feasible in respect of the vacancies still existing after the substitutes have assumed full membership and in respect of the vacancies in the substitutes.

“Article 25

“1. When the Court decides to form one or more of the Chambers provided for in Article 26, paragraph 1, of the Statute, it shall determine the particular category of cases for which each Chamber is formed, the number of its members, the period for which they will serve, and the date at which they will enter upon their duties.

“2. The members of the Chamber shall be elected in accordance with Article 27, paragraph 1, of these Rules, from among the members of the Court having regard to any special knowledge, expertise or previous experience which any of the members of the Court may have in relation to the category of case the Chamber is being formed to deal with.

“3. The Court may decide upon the dissolution of a Chamber, but without prejudice to the duty of the Chamber concerned to finish any cases pending before it.

“Article 26

“1. When the Court, acting under Article 26, paragraph 2, of the Statute decides, at the request of the parties, to form a Chamber to deal with a particular case, the President shall consult the agents of the parties regarding the composition of the Chamber, and shall report to the Court accordingly.

“2. When the Court has determined, with the approval of the parties, the number of its members who are to constitute the Chamber, it will proceed to their election, in accordance with the provisions of Article 27, paragraph 1, of these Rules. The same procedure shall be followed as regards the filling of any vacancy that may occur on the Chamber.

“3. Any member of a Chamber formed under this Rule who ceases to be a member of the Court by reason of the

expiry of his term of office shall continue to sit in the case, whatever the stage reached when his term of office expires.

“Article 27

“1. Elections to all Chambers shall take place by secret ballot. The members of the Court obtaining the largest number of votes constituting a majority of the members of the Court composing it at the time shall be declared elected. If necessary to fill vacancies, more than one ballot shall take place, such ballot being limited to the number of vacancies that remain to be filled.

“2. Subject to Article 13, paragraph 1, of these Rules, the President of the Court shall preside over any Chamber of which he is a member, and the same shall apply to the Vice-President of the Court in respect of any Chamber of which he, but not the President, is a member. Subject to the same provision, if neither the President nor the Vice-President is a member, the Chamber shall elect its own President by secret ballot and an absolute majority vote of its members.

“3. The member of the Chamber who, not being its President, is senior in rank shall act as Vice-President. The provisions of Article 10 shall be applicable, *mutatis mutandis*, in respect of all the Chambers and their presidencies.

“4. If in any particular case the President of the Chamber concerned is prevented from sitting, or from acting as President, the functions of the presidency shall be assumed by the Vice-President of the Chamber or, failing him, by the next ranking member of the Chamber in a position to act.

“5. Without prejudice to Article 26, paragraph 3, of these Rules the duty of a member of a Chamber who ceases to be a member of the Court, to finish a case already begun by him, arises only if he ceases to be a member of the Court after the date on which the Chamber convenes for the oral proceedings. When judgment has been pronounced, such a duty does not extend to sitting in future phases of the same case. If the member of the Chamber concerned is also its President, he shall continue to act as such.”

*Alternative D*

Subject to the provisions of this Chapter, any party to a dispute relating to the interpretation or application of this Convention shall be entitled to refer such dispute at any time to [the dispute settlement procedures entailing a binding decision which are provided for in this Convention][arbitration][the tribunal established under this Convention][the International Court of Justice].

6. THE RELATIONSHIP BETWEEN GENERAL AND FUNCTIONAL APPROACHES

*Alternative A.1*

When a party to a dispute objects to a decision arrived at through a specialized dispute settlement procedure\* provided for in this Convention, that party may have recourse to the dispute settlement procedure entailing a binding decision provided for in this chapter on any of the following grounds:

- (a) Lack of jurisdiction;
- (b) Infringement of basic procedural rules;
- (c) Misuse of powers; or
- (d) Violation of the Convention.

*Alternative A.2*

Whenever this Convention provides for a specialized procedure, without allowing further recourse to the dispute settlement procedure entailing a binding decision, this chapter shall not apply.

*Alternative B.1*

1. Before resorting to the dispute settlement procedure entailing a binding decision provided for in this chapter, the

parties to any dispute relating to chapters . . . of this Convention [e.g., those relating to fishing, pollution, or scientific research] may agree to refer it to a special fact-finding procedure in accordance with the provisions of annex . . .

2. In any procedure entailing a binding decision under this chapter, the findings of fact made by the fact-finding machinery shall be considered conclusive [unless one of the parties presents positive proof that a gross error has been committed].

*or*

2. Should the findings of fact made by the fact-finding machinery be challenged by a recourse to the dispute settlement procedure provided for in this chapter, the party challenging such facts shall bear the burden of proof.

#### *Alternative B.2*

1. At the request of any party to a dispute relating to chapters . . . of this Convention [e.g., those relating to fishing, pollution or scientific research], the dispute shall be referred to a special fact-finding procedure in accordance with the provisions in annex . . .

2. If any party to the dispute considers that the fact-finding decision is not in accordance with the provisions of this Convention, it may appeal to the dispute settlement procedure provided for in this chapter.

#### *Alternative C.1*

1. The Law of the Sea Tribunal, to be established in accordance with the annexed statute shall establish special chambers to deal with disputes relating to chapters . . . of this Convention. Each chamber of the Tribunal shall be assisted in the consideration of a dispute by four technical assessors sitting with it throughout all the stages of the proceedings, but without the right to vote. These assessors shall be chosen by each chamber from the list of qualified persons prepared pursuant to the statute of the Tribunal. [Their opinion on scientific and technical questions shall be considered by the chamber as conclusive.]

2. Each chamber shall deal with the dispute in accordance with the special procedure prescribed for that chamber by the statute of the Tribunal, taking into account the special requirements of each category of cases.

#### *Alternative C.2*

1. When a dispute submitted to the Law of the Sea Tribunal involves scientific or technical questions, the Tribunal shall refer such matters to a special committee of experts chosen from the list of qualified persons prepared in accordance with the statute of the Tribunal.

2. If the dispute is not settled on the basis of the committee's opinion, either party to the dispute may request that the Tribunal proceed to consider the other aspects of the dispute, taking into consideration the findings of the committee and all other pertinent information.

\*It is envisaged that provisions relating to special procedures which may be required in such functional fields as fishing, sea-bed, marine pollution, scientific research, will be set out either in a separate part of the dispute settlement chapter or within the chapter to which they relate.

*Note: Relevant provisions of international instruments*

Treaty establishing the European Economic Community, article 173:

"The Court of Justice shall review the lawfulness of acts other than recommendations or opinions of the Council and the Commission. For this purpose, it shall be competent to give judgment on appeals by a Member State, the Council or the Commission on grounds of incompetence, of errors of

substantial form, of infringement of this Treaty or of any legal provision relating to its application, or of abuse of power."

Statute of the United Nations Administrative Tribunal, article 11 (1):

"If a Member State, the Secretary-General or the person in respect of whom a judgment has been rendered by the Tribunal (including any one who has succeeded to that person's rights on his death) objects to the judgment on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgment, make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter."

Agreement for the Establishment of the Indo-Pacific Fisheries Council, 1961, article XIII, and Agreement for the Establishment of the General Fisheries Council for the Mediterranean, 1963, article XIII:

"Any dispute regarding the interpretation or application of this Agreement, if not settled by the Council, shall be referred to a committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the committee. The recommendations of such a committee, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If, as a result of this procedure, the dispute is not settled, it shall be referred to the International Court of Justice in accordance with the Statute of the Court, unless the parties to the dispute agree to another method of settlement."

Australia and New Zealand, draft articles on Highly Migratory Species, A/CONF.62/C.2/L.57/Rev.1):

"In disputes involving scientific and technical matters the Disputes Tribunal shall request the opinion of experts from FAO and from any other appropriate source."

International Olive Oil Agreement, 1963, article 35:

"1. Any dispute, other than [those relating to appellations of origin and indications of source], concerning the interpretation or implementation of this Agreement, which has not been settled by negotiation shall, at the request of a participating Government which is a party to the dispute, be referred to the Council for decision after consulting, if necessary, an advisory commission, the composition of which shall be fixed by the Council's rules of procedure.

2. The advisory commission's opinion, with reasons stated, shall be submitted to the Council which shall settle the dispute after due consideration of all pertinent information."

## 7. PARTIES TO A DISPUTE

### *Alternative A*

1. The dispute settlement machinery shall be open to the States parties to this Convention.

2. The conditions under which the machinery shall be open to other States, international intergovernmental organizations, [non-governmental international organizations having a consultative relationship with the United Nations or a specialized agency of the United Nations or any other international organization], and natural and juridical persons shall be laid down [by . . .] [in an annex to this Convention], but in no case shall such conditions place the parties in position of inequality.

*Alternative B*

The dispute settlement machinery shall be open to the States parties to this Convention [and to the Authority, subject to the provisions of article . . . ].

*Note: Relevant provisions of international instruments*

Statute of the International Court of Justice:

*“Article 34*

“1. Only States may be parties in cases before the Court.

“2. The Court, subject to and in conformity with its Rules may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

“3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

*“Article 35*

“1. The Court shall be open to the States parties to the present Statute.

“2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

“3. When a State which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.”

Treaty establishing the European Economic Community, article 173:

“The Court of Justice shall review the lawfulness of acts other than recommendations or opinions of the Council and the Commission. For this purpose, it shall be competent to give judgment on appeals by a Member State, the Council or the Commission on grounds of incompetence, of errors of substantial form, of infringement of this Treaty or of any legal provision relating to its application, or of abuse of power.

“Any natural or legal person may, subject to the same conditions, have recourse against a decision directed to him or it or against a decision which, although in the form of a regulation or a decision directed to another person, is of direct and individual concern to him or to it.”

## 8. LOCAL REMEDIES

*Alternative A*

A Contracting Party which has taken measures alleged to be contrary to this Convention shall not be entitled to object to a request for submission of dispute to the dispute settlement procedure under this chapter solely on the ground that any remedies under its domestic law have not been exhausted.

*Alternative B.1*

The Contracting Parties shall not be entitled to submit a dispute to the dispute settlement procedure under this chapter, if local remedies have not been previously exhausted, as required by international law.

*Alternative B.2*

1. In the case of a dispute relating to the exercise by the coastal State of its enforcement jurisdiction in accordance with

this Convention, the occasion [subject matter] of which, according to the domestic law of the coastal State, falls within the competence of its judicial or administrative authorities, the coastal State shall be entitled to request that the submission of the dispute to the means of dispute settlement provided for in this chapter be delayed until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party to the dispute which desires to resort to the procedure for dispute settlement provided for in this chapter may not submit the dispute to such procedure after the expiration of a period of one year from the date of the aforementioned decision.

[3. When the case has been submitted to the settlement procedure under this chapter, the party challenging the findings of fact by the judicial authorities of the coastal States shall bear the burden of proof.]

*Note: Relevant provisions of other agreements*

Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, article VIII (2):

“The Party which took the measures shall not be entitled to refuse a request for conciliation or arbitration under provisions of the preceding paragraph solely on the grounds that any remedies under municipal law in its own court have not been exhausted.”

Geneva General Act for the Pacific Settlement of Disputes of 1928 and Revised General Act of 1949, articles 31 and 32:

*“Article 31*

“1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present General Act until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

“2. In such a case, the party which desires to resort to the procedures laid down in the present General Act must notify the other party of its intention within a period of one year from the date of the aforementioned decision.

*“Article 32*

“If, in a juridical sentence or arbitral award, it is declared that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial sentence or arbitral award shall grant the injured party equitable satisfaction.”

## 9. ADVISORY JURISDICTION

If a court of a Contracting Party has been authorized by the domestic law of that Party to request the Law of the Sea Tribunal to give an advisory opinion [a ruling] on any question relating to the interpretation or application of this Convention, the Law of the Sea Tribunal may [shall] give such an opinion [ruling].

*Note: Relevant provisions of international instruments*

Treaty establishing the European Economic Community, article 177:

“The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

“(a) The interpretation of this Treaty;



“(b) The validity and interpretation of measures taken by the institutions of the Community;

“(c) The interpretation of the statutes of bodies set up by a formal measure of the Council, where those statutes so provide.

“Where such a question is raised before any court or tribunal of one of the Member States, that Court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

“Where such a question is raised in a case pending before a court or tribunal of a Member State, from whose decisions there is no possibility of appeal under internal law, that court or tribunal shall be bound to bring the matter before the Court of Justice.”

#### 10. LAW APPLICABLE

##### *Alternative A*

In any dispute submitted to it the dispute settlement machinery shall apply the law of this Convention, and shall ensure that this law is observed in the interpretation and application of this Convention.

##### *Alternative B*

In any dispute submitted to it, the dispute settlement machinery shall apply, in the first place, the law of this Convention. If, however, the dispute relates to the interpretation or application of a regional arrangement or public or private agreement concluded pursuant to this Convention, or to regulations adopted by a competent international organization, the dispute settlement machinery shall apply, in addition to the Convention, the rules contained in such arrangements, agreements, or regulations, provided the regulations are not inconsistent with this Convention.

##### *Alternative C*

Any dispute submitted to the dispute settlement procedure established by this Convention shall be decided in accordance with applicable international law.

##### *Alternative D*

In any dispute submitted to it, the dispute settlement machinery shall apply:

- (a) The provisions of this Convention;
- (b) The rules and regulations laid down by the competent international authority;
- (c) The terms and conditions of the relevant contracts or other legal arrangements entered into by the competent international authority.

#### 10A. EQUITY JURISDICTION

The provisions of this chapter shall not prejudice the right of the parties to a dispute to agree that the dispute be settled *ex aequo et bono*.

*Note: Relevant provisions of international instruments*

Statute of the International Court of Justice, Article 38:

“1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- “(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- “(b) International custom, as evidence of a general practice accepted as law;
- “(c) The general principles of law recognized by civilized nations;

“(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

“2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.”

Treaty Establishing the European Economic Community, article 164:

“The Court of Justice shall ensure that the law is observed in the interpretation and implementation of this Treaty.”

#### 11. EXCEPTIONS AND RESERVATIONS TO THE DISPUTE SETTLEMENT PROVISIONS

##### *Alternative A*

The provisions of this chapter shall apply to all disputes relating to the interpretation and application of this Convention.

##### *Alternative B.1*

The dispute settlement machinery shall have no jurisdiction to render binding decisions with respect to the following categories of disputes:

- (a) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged;\*
- (b) Disputes concerning sea boundary delimitations between States;
- (c) Disputes involving historic bays or limits of territorial sea;
- (d) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law;
- (e) Disputes concerning military activities [, unless the State conducting such activities gives its express consent].
- (f) . . .
- (g) . . .

##### *Alternative B.2*

The dispute settlement machinery shall have no jurisdiction with respect to the following categories of disputes:

- (a) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power;\*
- (b) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea;
- (c) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law;
- (d) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]
- (e) . . . ;
- (f) . . . .

##### *Alternative C.1*

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery to render binding decisions with respect to one or more of the following categories of disputes:

- (a) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged;\*