

United Nations Conference on the Law of the Sea

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Document:

A/CONF.13/L.25

Convening of a second international conference of plenipotentiaries: letter dated 24 April 1958 from the Chairman of the Delegation of Cuba to the President of the Conference

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume II (Plenary Meetings)*

Annex III

Inclusion in the convention of an article on the settlement of disputes: note verbale addressed by the Chairman of the Delegation of the Netherlands to the President of the Conference (A/CONF.13/BUR/L.6)

[Original text: English and French]
[14 April 1958]

The Netherlands delegation has the honour, upon instructions of their government, to submit the enclosed amendment to the Conference.

The Netherlands delegation are not in a position to propose this amendment to one of the committees since it has a bearing upon subject-matters which are being considered by at least three committees. They must, therefore, leave it to your discretion to decide how to lay this amendment before the Conference.

The Netherlands delegation attach great importance to this amendment because the fate to be allotted to it might in the event prove to have a decisive influence upon the final voting on matters of substance. They foresee the possibility that the eventual adoption or rejection of particular substantive provisions, even though acceptable in themselves, will depend upon the question as to whether, in case of dispute about their real scope, ways and means will be available for invoking an impartial judicial or arbitral decision on the construction to be put upon them.

The Netherlands delegation understand that this proposal is not intended to prejudice the special provision concerning the settlement of disputes in fishing matters (article 57) but that, in case of the above amendment being adopted, article 73 of the draft of the International Law Commission might become redundant.

The Netherlands delegation, moreover, consider this proposal as a proposal of principle which might need further elaboration, with a view, for example, to cases in which not two, but three or more parties are involved. For the moment, the proposal is drafted in order to cover the normal case of two opposing parties.

PROPOSAL

Insert a new article as follows:

"1. If a dispute arises between two contracting parties concerning the interpretation or application of this convention which cannot be settled through the diplomatic channel, either of them may either refer the dispute to the International Court of Justice by unilateral request in conformity with the Statute of the Court, or submit it to arbitral settlement by a tribunal composed of five members, only two of which may be appointed by the parties.

"2. If a contracting party proposing to appear as plaintiff prefers recourse to arbitration, it shall be bound to designate

its arbitrator when notifying the other party of such preference. In this case, the other party shall be bound to accept arbitration and to designate its arbitrator within a period of one month.

"3. If a contracting party intends to apply to the International Court of Justice, it shall give the other party one month's advance notice of that intention in order that the latter may have an opportunity of expressing its preference for recourse to arbitration. Should that other party prefer recourse to arbitration, it shall be bound to designate its arbitrator when indicating such preference. If the defending party does not designate the arbitrator within the specified time, the plaintiff party may submit the dispute to the International Court of Justice by unilateral request. Should, however, the defending party duly designate its arbitrator, then the plaintiff party shall be bound, within a further period of one month, likewise to designate an arbitrator.

"4. If the second arbitrator is not designated within the specified time, the party concerned may request the President of the International Court of Justice to make the designation at his discretion.

"5. Within a period of two months from the date of the designation of the second arbitrator, the two arbitrators designated as aforesaid shall agree on the designation of the other three members of the tribunal. If no agreement is reached within the specified time, either of the parties to the dispute may request the president of the International Court of Justice to designate a person or persons to fill any remaining vacancy or vacancies. The arbitrators designated as aforesaid shall elect one of their number to act as chairman of the tribunal.

"6. Any vacancy that may occur shall be filled by the procedure set forth in the foregoing paragraphs.

"7. As soon as the arbitral tribunal is constituted, the party which took the initiative may submit the dispute to the tribunal by unilateral request.

"8. If the normal course of the arbitral proceedings should be hampered by one of the arbitrators, then the other members of the tribunal may continue without him and their award shall be valid.

"9. In so far as the parties have not themselves, before the final constitution of the tribunal, settled the procedure to be observed, the tribunal may of its own authority establish such rules of procedure as it may consider necessary, in conformity with the provisions of the relevant articles of the Convention of The Hague of 18 October 1907 for the Pacific Settlement of International Disputes.

"10. In the absence of any stipulations agreed between the parties concerning such matters, the tribunal shall be free to determine the costs of the proceedings, including the emoluments of its members, and the apportionment of the costs among the parties."

DOCUMENT A/CONF.13/L.25

Convening of a second international conference of plenipotentiaries: letter dated 24 April 1958 from the Chairman of the Delegation of Cuba to the President of the Conference

[Original text: Spanish]
[24 April 1958]

I have the honour to submit for your consideration and through your good offices to the Conference, a draft resolution that envisages the convening of a second international conference of plenipotentiaries with a view to further consideration of any questions left unsettled.

As you will note, the attached draft resolution begins by stressing the substantial results achieved by the Conference as the outcome of its deliberations. Having been convened to examine the whole of international maritime law, it has undeniably fulfilled the greater part of its task

by approving agreements and other instruments on the régimes applicable to fishing and the conservation of the living resources of the high seas, the exploration and exploitation of the natural resources of the continental shelf and other matters concerning the general régime of the high seas and the access of land-locked States to the sea. Unfortunately, it does not seem possible at the present conference to reach agreement on the breadth of the territorial sea and other matters pertaining to the régime applicable thereto. This fact must therefore be recognized,

unless the various criteria and points of view expressed during the Conference can be reconciled before we finish our work.

In view of the latter consideration, my delegation does not wish the Conference to take cognizance of the draft resolution until all efforts to reach an agreement on the breadth of the territorial sea and the other matters pertaining thereto have been exhausted.

For the rest, the draft resolution simply requests the United Nations General Assembly to study at its fourteenth session in 1959, the advisability of convening a second international conference of plenipotentiaries for further consideration of the questions left unsettled by the present conference. My delegation considers that the importance of these questions for the development and codification of international maritime law fully justifies further efforts at such time as the General Assembly may consider appropriate, to solve the problems to which I have referred.

(Signed) F. V. GARCIA AMADOR
Chairman of the Delegation of Cuba

Annex

CUBA : DRAFT RESOLUTION

The United Nations Conference on the Law of the Sea,

Considering that on the basis of the report prepared by the International Law Commission it has approved agreements and other instruments on the régime applicable to fishing and the conservation of the living resources of the high seas, the exploration and exploitation of the natural resources of the continental shelf and other matters pertaining to the general régime of the high seas and to the free access of land-locked States to the sea :

Considering that it has not been possible to reach agreement on the breadth of the territorial sea and other matters pertaining to the legal régime applicable thereto ;

Recognizing the desirability of making further efforts at an appropriate time to reach agreement on questions of international maritime law which have been left unsettled,

Resolves to request the United Nations General Assembly to study at its fourteenth session, in 1959, the advisability of convening a second international conference of plenipotentiaries for further consideration of the questions left unsettled by the present conference.

DOCUMENT A/CONF.13/L.26 *

**Fifth report of the Drafting Committee of the Conference:
articles and draft resolutions adopted by the Third Committee**

[Original text : English]
[24 April 1958]

1. The Drafting Committee of the Conference met on 24 April and considered the texts of articles and draft resolutions adopted by the Third Committee (A/CONF.13/L.21, annex).¹

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2. The Drafting Committee recommends the following changes of a drafting nature to the texts of the articles :

A. CHANGES AFFECTING THE ENGLISH, FRENCH
AND SPANISH TEXTS

Article 50

Replace the words "in the present articles" by the words "in this Convention".

Article 54, paragraph 2

Replace the words "for conservation purposes in that area" by the words "for purposes of conservation of the living resources of the high seas in that area".

Article 56, paragraph 1

After the words "living resources" add the words "of the high seas".

Article 58

Paragraph 1 : Replace the words "under the remaining fishery articles" by the words "under articles 52, 53, 54 and 56".

* Incorporating A/CONF.13/L.26/Corr.1.

¹ Changes proposed by the Drafting Committee which only affect the French and Spanish texts have not been reproduced in the present document.

Paragraph 1 (a)(iii) : Add the words "in form or in fact" after the word "discriminate".

B. CHANGES AFFECTING THE ENGLISH TEXT ONLY

Article 50

Replace the words "the present articles" by the words "this Convention".

Article 55, paragraph 3

Replace the word "pertinent" by the word "relevant".

Article 57

Paragraph 1 : Replace the words "Any disagreement arising between" by the words "Any dispute which may arise between".

Paragraph 2 : After the words "Food and Agriculture Organization" add the words "of the United Nations".

Replace the word "countries" by the word "States".

Paragraph 3 : Replace the words "a proceeding" by the word "proceedings".

Paragraph 4 : Replace the word "proceeding" by the word "proceedings".

Put a full stop after the word "case", and begin the second sentence with the words "It shall...".

Replace the words "on these questions" by the words "on this matter".

Paragraph 5 : Replace the words "to extend that time limit not to exceed three months" by the words "to extend the time limit for a period not exceeding three months".

Paragraph 6 : Replace the word "sides" by the word "parties".