



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.05.1999
COM(1999)233 final

Proposal for a

COUNCIL DECISION

**CONCERNING
THE COMMUNITY'S CHOICE OF DISPUTE SETTLEMENT PROCEDURES
UNDER THE UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA
OF DECEMBER 1982**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Community became a contracting party to the United Nations Convention on the Law of the Sea of 10 December 1982 by Council Decision of 23 March 1998.¹ The Convention came into force for the Community on 1 May 1998.

The Convention requires State Parties to settle any dispute by peaceful means and offers a choice of procedure between the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal and a special arbitral tribunal for disputes involving fisheries, protection and conservation of the marine environment, marine scientific research and navigation.

Article 287 of the Convention states that "*when signing, ratifying or acceding to the Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the [following] means for the settlement of disputes concerning the interpretation or application of this Convention*". It also adds that where a State Party fails to make a written declaration it will be deemed to have accepted the arbitration procedure.

Article 7 of Annex IX to the Convention rules that Article 287 shall apply, *mutatis mutandis*, to international organisations. In view of the rules of the International Court of Justice, to which only States may apply, the European Community has a choice of procedures: the International Tribunal for the Law of the Sea, the arbitral tribunal or the special arbitral tribunal.

In the proposal for a Council Decision concerning the conclusion of the Convention,² the Commission suggested that at that stage the Community should decline to choose a particular dispute settlement procedure and that it should review the matter at a later date. This approach was endorsed by the Council.

It was therefore agreed that a declaration of the Council and the Commission be annexed to the minutes of the Council meeting at which the Decision concluding the Convention on behalf of the Community was discussed. This stated that "*without prejudice to positions already adopted by some Member States of the Community when depositing instruments ratifying the Convention, the Council undertakes to reexamine on the basis of a proposal from the Commission and within a reasonable period of time, once the dispute settlement procedures provided for in the Convention have been in operation for long enough and in any case no later than 31 December 1998, whether it is in the Community's interest to opt for a dispute settlement procedure other than arbitration. The Commission undertakes to present in good time a proposal enabling the Council to reexamine the matter*".

By adopting this declaration the Council and the Commission wished to demonstrate their interest in the dispute settlement procedures provided for in the Convention while reserving the right to see how they would work in practice.

¹ Decision 98/392/EC, OJ L 179, 23 June 1998, p.1.

² COM (97)37, 26 February 1997, published nr OJ C 155, 23 May 1997.

As the deadline is the 31st December 1998, the matter was discussed by the Council working party on the Law of the Sea on 25 September 1998. It would appear from these discussions and the Commission's analysis that the time is not yet ripe for the Community to opt for a procedure other than that currently applying as the Tribunal's initial decisions are as yet inconclusive.

The Commission therefore proposes that the Council adopt the attached proposal for a decision concerning the Community's choice of dispute settlement procedures under the United Nations Convention on the Law of the Sea of December 1982.

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It has been decided as follows:

- Not to express a preference for the time being on the Community's behalf for any of the dispute settlement procedures provided for in the United Nations Convention on the Law of the Sea;
- To instruct the Commission to continue monitoring developments in jurisdictional practice under the procedures applied and to submit an analysis of the situation at least once a year to the Council working party on the Law of the Sea.

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DOCUMENTS

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