

PEACEFUL SETTLEMENT OF DISPUTES

ARTICLE VIII *bis*

(Facilitator's Draft - basis for further negotiations)

1. The members of the Commission shall cooperate in order to prevent disputes and shall consult each other in order to settle disputes concerning the interpretation or application of this Convention by amicable means and as quickly as possible.
2. A member of the Commission may submit a dispute of a technical nature to an *ad hoc* expert panel established in accordance with the procedures that the Commission adopts for this purpose. The panel shall confer with the parties and shall endeavour to expeditiously resolve the dispute without recourse to binding procedures.
3. If a question arises as to whether or not a dispute is of a technical nature, the question is deemed to be of a technical nature.
4. The Parties to a dispute on the interpretation or application of the Convention may jointly decide to refer the dispute to a tribunal or to a court that is constituted under another treaty [to which each of the Parties are States Parties], in accordance with the requirements set out in that other treaty. A court or tribunal that is referred a dispute pursuant to this Article applies the relevant provisions of this Convention, generally accepted standards for the conservation and management of living resources, and other rules of international law that are not incompatible with this Convention, with a view to attaining the objective of this Convention.
5. A party to a dispute that is not resolved through a means set out in paragraph 1, 2 or 3 [shall] [may] submit the dispute to final and binding arbitration for settlement in accordance with [the procedures that the Commission adopts for this purpose] [**Annex 1** of this Convention].
6. Unless the members of the Commission jointly determine otherwise, the dispute settlement mechanisms set out in this Article are not applied to disputes that relate to any situation, act, or fact that ceases to exist prior to the entry into force of this Convention.
7. For the purposes of this Article and **Annex 1** of this Convention, the term “*party*” means a member of the Commission that is involved in a dispute relating to the interpretation or application of this Convention.

Annex 1

1. The arbitral tribunal referred to in paragraph 5 of Article VIII *bis* is composed of three arbitrators who are appointed as follows:
 - a) The member of the Commission that commences a proceeding shall communicate the name of an arbitrator to the other party to the dispute that shall, in turn, within a period of forty days following that notification, communicate the name of the second arbitrator. In disputes between more than two members of the Commission, parties that have the same interest shall jointly appoint one arbitrator. The parties to the dispute shall, within a period of sixty days following the appointment of the second arbitrator, appoint the third arbitrator, who is not a national of either member of the Commission and is not of the same nationality as either of the first two arbitrators. The third arbitrator shall preside over the tribunal;
 - b) If the second arbitrator is not appointed within the prescribed period, or if the parties are not able to concur within the prescribed period on the appointment of the third arbitrator, that arbitrator is appointed, at the request of one of those parties, by the Chair of the Commission within two months from the date of receipt of the request.
2. The arbitral tribunal shall decide the location of its headquarters and shall adopt its own rules of procedure.
3. The arbitral tribunal shall render its decisions in accordance with this Convention and international law.
4. The award of the arbitral tribunal is made by a majority of its members, which may not abstain from voting.
5. A member of the Commission that is not a party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.
6. The award of the arbitral tribunal is final and binding on the parties and on any member of the Commission that intervenes in the proceedings. The parties shall comply with the award without delay. The arbitral tribunal shall interpret the award at the request of one of the parties to the dispute or of any intervening party.
7. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the parties to the dispute shall bear in equal shares the expenses of the tribunal, including the remuneration of its members.