

26. PRINCIPLES AND GUIDELINES FOR INTERNATIONAL NEGOTIATIONS

General Assembly resolution 53/101 of 8 December 1998

The General Assembly,

Recalling the purposes and principles of the Charter of the United Nations,

Reaffirming the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and of the Manila Declaration on the Peaceful Settlement of International Disputes,

Taking into account the objectives of the United Nations Decade of International Law,

Considering that international negotiations constitute a flexible and effective means for, among other things, the peaceful settlement of disputes among States and for the creation of new international norms of conduct,

Bearing in mind that in their negotiations States should be guided by the relevant principles and rules of international law,

Conscious of the existence of different means of peaceful settlement of disputes, as enshrined in the Charter and recognized by international law, and reaffirming, in this context, the right of free choice of those means,

Bearing in mind the important role that constructive and effective negotiations can play in attaining the purposes of the Charter by contributing to the management of international relations, the peaceful settlement of disputes and the creation of new international norms of conduct of States,

Noting that the identification of principles and guidelines of relevance to international negotiations could contribute to enhancing the predictability of negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations,

Recognizing that the following could offer a general, non-exhaustive frame of reference for negotiations,

1. *Reaffirms* the following principles of international law which are of relevance to international negotiations:

(a) Sovereign equality of all States, notwithstanding differences of an economic, social, political or other nature;

(b) States have the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations;

(c) States have the duty to fulfil in good faith their obligations under international law;

(d) States have the duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(e) Any agreement is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter;

(f) States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences;

(g) States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

2. *Affirms* the importance of conducting negotiations in accordance with international law in a manner compatible with and conducive to the achievement of the stated objective of negotiations and in line with the following guidelines:

- (a) Negotiations should be conducted in good faith;
- (b) States should take due account of the importance of engaging, in an appropriate manner, in international negotiations the States whose vital interests are directly affected by the matters in question;
- (c) The purpose and object of all negotiations must be fully compatible with the principles and norms of international law, including the provisions of the Charter;
- (d) States should adhere to the mutually agreed framework for conducting negotiations;
- (e) States should endeavour to maintain a constructive atmosphere during negotiations and to refrain from any conduct which might undermine the negotiations and their progress;
- (f) States should facilitate the pursuit or conclusion of negotiations by remaining focused throughout on the main objectives of the negotiations;
- (g) States should use their best endeavours to continue to work towards a mutually acceptable and just solution in the event of an impasse in negotiations.

Institutional and procedural rules

27. MODEL RULES ON ARBITRAL PROCEDURE

Yearbook of the International Law Commission, 1958, vol. II

Preamble

The undertaking to arbitrate is based on the following fundamental rules:

1. Any undertaking to have recourse to arbitration in order to settle a dispute between States constitutes a legal obligation which must be carried out in good faith.
2. Such an undertaking results from agreement between the parties and may relate to existing disputes or to disputes arising subsequently.
3. The undertaking must be embodied in a written instrument, whatever the form of the instrument may be.
4. The procedures suggested to States Parties to a dispute by these model rules shall not be compulsory unless the States concerned have agreed, either in the *compromis* or in some other undertaking, to have recourse thereto.
5. The parties shall be equal in all proceedings before the arbitral tribunal.

THE EXISTENCE OF A DISPUTE AND THE SCOPE OF THE UNDERTAKING TO ARBITRATE

Article 1

1. If, before the constitution of the arbitral tribunal, the parties to an undertaking to arbitrate disagree as to the existence of a dispute, or as to whether the existing dispute is wholly or partly within the scope of the obligation to go to arbitration, such preliminary question shall, at the request of any of the parties and failing agreement between them upon the adoption of another procedure, be brought before the International Court of Justice for decision by means of its summary procedure.
2. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
3. If the arbitral tribunal has already been constituted, any dispute concerning arbitrability shall be referred to it.