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Report of the President on the work of the informal plenary meeting of the Conference on final clauses

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DOCUMENT FC/16

Report of the Chairman of the group of legal experts on final clauses

[Original: English]
[23 August 1979]

1. The group of legal experts on final clauses was constituted as explained by the President in his statement of 27 July 1979 (FC/2). According to paragraph 2 of the statement, the mandate of the group of legal experts on final clauses was to examine the technical aspects of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved.

2. The group has so far held 10 meetings, the first on 31 July 1979 and the last on 20 August 1979.

3. The group considered the first six items on the final clauses identified as non-controversial. On the basis of a draft text suggested by the Chairman in informal document GLE/FC/1, the group considered draft texts on those items as follows: signature (art. 298 *bis*), ratification (art. 299), accession (art. 300), status of annexes (art. 302), depositary (art. 303), authentic texts (art. 304) and a testimonium clause (art. 304). Based on the discussions in the group, the Chairman has prepared a draft text which is annexed to the report.

4. After the consideration of the texts of the non-controversial items, the group commenced its consideration of the first controversial item on final clauses, namely, amendment or revision. In the course of the discussion of this question, several draft proposals were submitted: documents GLE/FC/2 and GLE/FC/2/Amend.1 proposed by the delegations of Peru and Portugal; an informal proposal by the delegations of Austria and Singapore (GLE/FC/3); a working paper (GLE/FC/4) by a member of the group; another working paper (GLE/FC/5) proposed by a member; a draft text suggested by the Chairman (GLE/FC/6); an informal proposal by Ecuador (GLE/FC/7); an informal proposal by the delegations of Peru and Portugal (GLE/FC/8); and an informal working paper (GLE/FC/10).

5. The group has not completed its consideration of the item. It would require additional meetings to continue the study of the existing proposals mentioned above and additional suggestions that may be made for the purposes of preparing a text on the item. In this context, it should be noted that the final clauses are now being discussed in a substantive way for the first time at the Conference. Many of the issues have a bearing on the different subject-matters of the convention and hence on the package deal. It is, therefore, of the utmost importance to have an exhaustive discussion on various aspects of these clauses.

6. In order to complete its mandate, apart from the need to conclude the discussion on the item, the group must take up for discussion the following controversial issues which have already been discussed by the conference in informal plenary meetings, namely: reservations, relation to other conventions, entry into force, including the establishment of a preparatory committee, transitional provision, and denunciation.

7. In concluding, the Chairman would thank the members of the group for their co-operation and constructive contribution to the work during this first stage. He also wishes to express his gratitude and appreciation to the members of the secretariat for their dedication, competence and untiring efforts to assist the group in carrying out its task.

ANNEX

Draft text suggested by the Chairman of the group of legal experts on final clauses*Article 298 bis. Signature*

The present Convention shall be open for signature by . . . until . . . (the last day of the twenty-fourth month after the opening date of signature) at the Ministry of Foreign Affairs of the Republic of Venezuela and also, from . . . (first day of the seventh month after the opening date of signature) until . . . (last day of the twenty-fourth month after the opening date of signature), at United Nations Headquarters in New York.

Article 299. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 300. Accession

The present Convention shall remain open for accession by . . . The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 302. Status of annexes

The annexes form an integral part of the present Convention and, unless expressly provided for otherwise, a reference to the Convention includes a reference to its annexes.

Article 303. Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 304. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto . . . , have signed the present Convention.

DONE at Caracas, this . . . day of . . . , one thousand nine hundred and eighty

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Report of the President on the work of the informal plenary meeting of the Conference on final clauses

[Original: English]
[27 August 1979]

1. At the 117th plenary meeting, on 19 July 1979, it was decided that the discussion of the final clauses of the new convention would be undertaken in informal plenary meetings, to be assisted by a group of legal experts established to consider the technical aspects of the clauses.

2. The first informal plenary meeting on final clauses was held on 23 July 1979 and the 11th and last one on 23 August 1979.

3. At the first meeting, I presented a suggested programme of work in a statement distributed as informal document FC/1. In paragraph 5 of that document, I suggested that the final clauses be examined by placing the relevant subjects and issues in two categories, namely, the subjects and issues that, for various reasons, are likely to prove controversial; and the subjects and issues that may be considered non-controversial, as they follow a traditional pattern irrespective of the substance of the convention. The first category was constituted as follows: (i) amendment or revision, (ii) reservations, (iii) relations to other conventions, (iv) entry into force (including consideration of a preparatory commission), (v) transitional provision, (vi) denunciation and (vii) participation in the convention. In the second category, the following items were placed: (i) signature, (ii) ratification, (iii) status of annexes, (iv) authentic texts and (v) testimonium clause.

4. It was agreed that the informal plenary meetings should first take up consideration of the non-controversial items, on the understanding that such items, as noted in document FC/1, are not non-controversial *per se*, since they may have a bearing also on controversial issues or some issues regarded by some delegations as being of paramount importance.

5. After a preliminary discussion on the non-controversial items during the 2nd informal plenary meeting, it was agreed to refer the items to the group of legal experts with the mandate to examine the technical aspect of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved. The group was constituted under the chairmanship of Mr. Evensen, as I explained in informal document FC/2.

6. Having finished consideration of the non-controversial items, which were then transmitted to the group of legal experts for its consideration, the informal plenary meetings of the Conference took up consideration of the controversial items for the purposes of preliminary discussions and then submission to the group of legal experts.

7. The controversial items were taken up in the informal plenary meetings in the order in which they appear in paragraph 5 of document FC/1 and as enumerated in paragraph 3 above. The discussion on these items and the major ideas that emerged have been summarized in informal documents FC/3, FC/4, FC/6, FC/7, FC/9, FC/11, FC/13 and FC/17. I need not repeat them here.

8. Two items, however, remained unfinished: the question of participation in the convention and the establishment of the preparatory commission, both of which will be taken up at the next session.

9. The group of legal experts also attempted to carry out its mandate and, as explained by the Chairman in his report (FC/16), more work is necessary to produce draft articles for consideration in informal plenary meetings of the Conference at the next session.

10. I would like to thank the Chairman of the group of legal experts for the work he and the group have done so far, which has been most useful.

DOCUMENT A/CONF.62/L.45

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

[Original: English]
[29 August 1979]

1. At the resumed eighth session, the Conference held one informal plenary meeting, on 20 August 1979, for the purpose of considering the informal proposal of 11 May 1978 of the delegations of the Netherlands and Switzerland (SD/1). This proposal dealt with the conciliation procedure (art. 284 and annex IV); the listing of the alternative dispute settlement procedures, namely the Court and tribunals (art. 287, para. 1); and *ad hoc* chambers of the International Court of Justice.

2. At its informal plenary meeting, the Conference first considered the conciliation procedure and dealt with the ambiguity in paragraphs 1, 2 and 3 of article 284 caused by the use of the word "procedure" in different senses. Drafting clarifications were suggested by the President, and it was decided that changes should be made to article 284 as follows:

Article 284

"1. Any State Party which is a party to a dispute relating to the interpretation or application of the present Con-

vention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with the procedure in annex IV, or with some other conciliation procedure.

"2. If the other party accepts this invitation and if the parties agree upon the procedure in annex IV or such other conciliation procedure, any party to the dispute may submit it to the agreed procedure.

"3. If the other party does not accept the invitation or the parties do not agree upon the procedure in annex IV or such other conciliation procedure, the conciliation proceedings shall be deemed to be terminated.

"4. When a dispute has been submitted to conciliation, such conciliation proceedings may only be terminated in accordance with the provisions of annex IV or other agreed conciliation procedure, as the case may be."

3. The next item dealt with was the right of any party to the conciliation to terminate the proceedings where the conciliators appointed by the parties had failed to appoint the chairman of the commission (annex IV, art. 3, para. 4). It was agreed that if the conciliation proceedings had reached the stage where the parties had appointed their conciliators, it was preferable to avoid the procedure being terminated at the request of either party to the dispute. This would also derogate from the compulsory resort to conciliation provided for in article 296, paragraph 3 (b), of the revised negotiating text, as formulated by negotiating group 5. The informal proposal of the Netherlands and Switzerland on this question was accepted for changing the existing text of the revised negotiating text. The new text reads as follows:

"Within 30 days following the date of the last of their own appointments, the four conciliators shall appoint a fifth conciliator chosen from the list, who shall be chairman. If the appointment is not made within the prescribed period, either party may, within one week of the expiration of the prescribed period, request the Secretary-General to make the appointment in accordance with paragraph 5."

4. The next issue considered was the number of national conciliators that a party can appoint (annex IV, art. 3, para. 2). The present text permits each party to appoint two national conciliators. The informal proposal suggests that this should be limited to one national. One reason adduced for the proposed change was that a heavy burden would be imposed on the Chairman of the Commission who would have a greater responsibility, acting as the sole arbiter amongst four other members representing the interests of the parties. The counter argument was that the parties should have the flexibility to appoint two national conciliators if they felt that it was in their interests. The President suggested that consideration be given to incorporating aspects of both provisions by permitting each party to appoint one national unless the parties agreed otherwise. Consideration of this question could not be concluded. The President held consultations with the delegations most interested and it would appear that further consultations were needed.

5. The proposal to change the order in which the alternative dispute settlement forums are listed (art. 287, para. 1) would place the International Court of Justice first in that list. While the rationale for listing in first place the principal judicial organ of the United Nations was explained, this was met by the reasoning that the creation of a new judicial organ with comprehensive jurisdiction over all aspects of the law of the sea would necessitate its being listed as the first alternative. The delegations of the Netherlands and Switzerland indicated a willingness to consider withdrawing this proposal, which was, however, conditional upon the outcome of the outstanding proposal regarding national conciliators referred to above. Consequently, this item too is outstanding.