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

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16. The consideration of general provisions in plenary Conference was thus concluded and all items were disposed of with the exception of the proposal by Turkey concerning general principles and provisions (GP/7).

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

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[*23 August 1980*]

1. The plenary Conference held six informal meetings on the settlement of disputes during the current session.

2. The first item taken up was a note by the President contained in document SD/3 of 6 August 1980, which dealt with the questions of compulsory submission to conciliation procedure and the restructuring of Part XV for the purpose of clarity. The note had attached to it the textual changes to Part XV and annex V that were to achieve this result. After an initial consideration of the proposals in document SD/3, the President presented document SD/3/Add.1 which contained changes to the text of document SD/3.

3. The structure suggested for Part XV suggested in document SD/3 met with a favourable response, and it appeared that the division of Part XV into three sections should be made. The sections are divided as follows: the first section, providing for the voluntary procedures; the second section, providing for the compulsory dispute settlement procedures entailing a binding decision; the third section, providing limitations and optional exceptions to the compulsory procedures referred to above. This third section thus includes all the cases where there is obligatory submission to conciliation procedure.

4. In addition, a second section to annex V was proposed in document SD/3 to govern the conciliation procedures to which there is an obligation to accept submission under the new section 3 of Part XV.

5. It was pointed out by the President both in document SD/3 and in the course of the meetings that the changes were suggested in an attempt to clarify and co-ordinate all the provisions which set out the new and unique régime for the settlement of disputes arising under the proposed convention. It was made clear by the President that changes of a substantive nature were not intended and would not be considered. Changes relating to outstanding hardcore issues under negotiation elsewhere were also not to be considered at this stage. In particular, it was to be understood that all changes regarding Part XV and its related annexes were to be made without reference to the question of article 298, paragraph 1 (*a*) concerning the settlement of delimitation disputes. It was also understood that an examination of this paragraph may be required at an appropriate time. In addition, other paragraphs of article 298, specifically paragraphs 3 and 4, may have to be reconciled with any new formulation that may emerge for paragraph 1 (*a*) of that article. A footnote to this effect was appended to document SD/3/Add.1.

6. The course of the negotiations conducted in the informal plenary meetings may be summarized as follows. Informal suggestions were made by some of the participants in the course of their interventions. These included suggestions regarding both drafting and substance. In particular, two suggestions were made which touched upon the question of delimitation, which were: firstly, that a cross-reference to article 298 *bis* of document SD/3 be made in article 298.1 (*a*) (ii); secondly, the exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from the compulsory dispute settlement procedures and from compulsory submission to conciliation procedures as provided in article 298, paragraph 1 (*a*). These should be included in article 296 with the other exceptions in that article. The exclusion of future delimitation disputes by declaration would remain in article 298. Where no settlement had been reached, such disputes would be submitted to conciliation at the request of any party and the other party would be obliged to accept this procedure.

7. The President had stressed, both in document SD/3 and at the commencement of these negotiations, that changes of substance should be avoided, in particular, any changes concerning the texts of article 296, paragraphs 2 and 3. Since delicate compromises that had been very carefully negotiated are contained in that article, any attempt to raise these questions should be avoided. He pointed out that article 298, paragraph 1 (*a*), was closely linked to the delimitation issue. The President further stressed that attention should be concentrated on the structural changes alone to the exclusion of substantive changes. So far as paragraph 1 (*a*) was concerned even structural changes should be avoided.

8. The other informal suggestions made during these negotiations and accepted without objection or reservation by the informal plenary Conference were as follows:

(*a*) the suggestion to add to the title of article 282 a reference to "or other instruments". It was referred to in paragraph 1 of document SD/3/Add.1. This was found to be generally acceptable;

(*b*) the suggestion to add a reference to "Section 1 of" in paragraphs 2 and 3 of article 284, before the reference to "annex V". It was referred to in paragraph 2 of document SD/3/Add.1. This was considered a logical and necessary change, which makes paragraphs 2 and 3 consistent with paragraphs 1 and 4 of article 284 of document SD/3;

(*c*) the suggestion that article 287, paragraph 6 can be ended after the words "deposited with the Secretary-General", as the rest of its content is covered in paragraph 8 of that article. It was referred to in paragraph 3 of document SD/3/Add.1. This was also considered to be a sound suggestion and was accepted;

(*d*) the suggestion to reinstate article 296, paragraph 3 (*d*) as it appears in A/CONF.62/WP.10/Rev.2, and to delete article 15 of annex V in document SD/3 which was intended to replace it. This was referred to in paragraph 4 of document SD/3/Add.1. The suggestion was accepted without objection;

(*e*) the suggestion to give article 298 *bis* a title as follows: "Right of the parties to agree upon procedure". This was referred to in paragraph 5 of SD/3/Add.1, and it was accepted;

(*f*) the suggestion concerning the inadequacy of the scope of article 298 *bis*, which did not fully reflect, and cannot be a complete substitute for, the phrase "unless otherwise agreed on or decided by the parties concerned" in article 296, paragraphs 2 (*a*) and 3 (*a*), which it was intended to replace. As a minor addition to article 298 *bis* could alleviate this concern the following change to article 298 *bis* was suggested by the President: in paragraph 2, after the words "right of the parties to the dispute to agree to" insert "or decide upon" and continue the sentence as

* Incorporating document A/CONF.62/L.59/Corr.1 dated 23 September 1980.

it appears in document SD/3. This was referred to in paragraph 6 of document SD/3/Add.1, and was accepted;

(*g*) the suggestion that in the substantive text in Part XV and in annex V reference should be made to "Compulsory Submission to Conciliation". It seemed unnecessary to do so in the provisions of Part XV which merely express the obligation to submit to that procedure. But, as it did seem desirable to change the title, it was dealt with as follows: in section 2 of annex V, the title was changed to read "Compulsory Submission to Conciliation Procedure in accordance with section 3 of Part XV". This was referred to in paragraph 7 of document SD/3/Add.1. It was accepted subject to a drafting change. The title would thus read "Obligatory submission to conciliation procedure in accordance with Section 3 of Part XV at the request of any party";

(*h*) the suggestion to delete the words "*mutatis mutandis*" in annex V, article 12, and to substitute "subject to the provisions of this section". This was similar to the concern expressed over, and the suggestion to delete, the reference to *mutatis mutandis* in article 285 for the reason that it may not completely express the real intent. They were both considered questions of drafting. The change to annex V, article 12, was referred to in paragraph 8 of document SD/3/Add.1, and was accepted;

(*i*) the suggestion that article 297 be moved to section 2 of Part XV and located between articles 293 and 294. This was referred to in paragraph 10 of document SD/3/Add.1. It was explained that article 297 deals with compulsory procedures entailing a binding decision under section 2, whereas the other articles in new section 3 provide limitations and exceptions to the applicability of section 2. To maintain the purpose of each section in a coherent form, it was felt that article 297 would be more appropriately placed in section 2. It was suggested that it appear between articles 293 and 294. This suggestion was also accepted. The subsequent articles would have to be renumbered accordingly.

(*j*) the suggestion to change the title of Part XV, section 1, to read "General Provisions" rather than "General Obligations", which was the title suggested in document SD/3. The President suggested that the two concepts could be combined so that the title would read "General Provisions and General Obligations". There was no opposition to this suggestion, and it was accepted;

(*k*) the suggestion by the President to replace in article 282, line 4, the phrase "final and binding procedure" with the phrase "procedure entailing a binding decision". The intent of article 282 is that the procedure should be compulsory and that it should entail a binding result. Having regard to the emergency of obligatory submission to conciliation at the request of any party, article 282 could be confusing. In order to clarify it, reference has to be made to "a procedure entailing a binding decision". This suggestion was accepted.

9. The other suggestions made but which were found not to be essential or which did not receive sufficient support were as follows:

(*a*) that the annexes and in particular the annex dealing with conciliation (annex V) should have the same status as the convention itself. It was explained that the annex provides not only for technical matters, but several substantive matters of consequence. In the consideration of the final clauses, attention should, therefore, be paid to the need for safeguarding the status of the annexes in the same manner as the rest of the convention. This was particularly important in regard to the question of amendment. The President stated that he would take note of this in the negotiations regarding the final clauses. Further consideration of this issue was, therefore, not required;

(*b*) the suggestion that a provision should be added at the end of section 2 of annex V to provide for an amendment procedure regarding that annex which could be drafted on the lines of annex VI, article 42, paragraph 1. It was pointed out that while such a provision was appropriate and necessary in the case of a preconstituted tribunal such as the Law of the Sea Tribunal, especially due to the need to permit the Tribunal to make proposals concerning amendments to its Statute under paragraph 2 of article 42, such a power to initiate would not be appropriate for an *ad hoc* conciliation commission. No such provision exists as regards the other *ad hoc* procedures, such as arbitration under annex VII and the special arbitration procedures under annex VIII. The President suggested that the issue could be resolved by making clear in the final clauses provisions that the annexes have the same status as the convention for the purpose of making amendments to them.

(*c*) the suggestion to insert a special section on conciliation between the present sections 1 and 2. While this was one possible way of structuring Part XV, the structure presented in document SD/3 was another alternative. There seemed to be a preference for the structure presented in document SD/3 as it reflected correctly the evolution of the system of dispute settlement in the Conference;

(*d*) the suggestion that article 284, paragraph 4 should make specific reference to article 8 of annex V rather than a general reference. This was not considered to be appropriate as there are other articles which provide for termination of the conciliation procedure, and it was not practical to list all;

(*e*) the suggestion to delete several articles in section 1 of Part XV, particularly those that repeated obligations under the United Nations Charter or those generally accepted under international law. This appeared to be a major change at this late stage of the negotiations, especially since those articles have been present from the very outset in document A/CONF.62/WP.9 and are considered important by many delegations. It was pointed out by the President that although several of the articles in section 1 were hortatory and not essential, it is not unusual for this convention to reiterate other obligations under the Charter. Furthermore, these provisions are not in conflict with the Charter and they should be left since they strengthen the régime under Part XV. It was also pointed out that the intention was to provide a comprehensive system for settlement of disputes and that end would be served by maintaining Section 1 as it is. This suggestion was not pursued;

(*f*) the suggestion to delete articles 13 and 14 of annex V in document SD/3 was opposed by several delegations on the grounds that article 13 was necessary to clarify the compulsory nature of the conciliation procedure, and that article 14 was necessary as it is customary for bodies having compulsory jurisdiction to determine their own competence, as well as because it is consistent with the other settlement of disputes procedures in Part XV. For these reasons, the suggestion was not accepted;

(*g*) the suggestion that the conciliation commission constituted under annex V should give reasons for its decision. A proposed formulation for such a provision was referred to in paragraph 9 of document SD/3/Add.1 for a new article 15 to appear in section 2 of annex V. Several delegations were of the view that the inclusion of such an article would constitute a substantive change and was, therefore, outside the scope of the examination by the plenary Conference at that stage. The proposal for a new article 15 of annex V was rejected. Annex V as found in document SD/3 would, therefore, only contain 14 articles;

(*h*) the suggestion to add a reference to "assessors" in article 289. The question was raised regarding the compatibility of article 289 with article 30.2 of the Statute of the International Court of Justice. Article 289 provides for "experts" to sit with the court or tribunal without the right to vote, whereas the Statute of the International Court of Justice provides for "assessors" who would perform essentially the same functions. It was suggested that these two provisions could be reconciled by the addition after the words ". . . to sit with such Court or Tribunal" of the words "as assessors" in article 289. After some discussion, it was decided that such an addition was not necessary as the International Court of Justice, when exercising jurisdiction under article 289, was not precluded from applying the provisions of its

statute concerning assessors in a manner compatible with the provisions of article 289;

(*i*) the suggestion to add to article 42 of annex VI a reference to the amendment procedures contained in the final clauses provisions. This appeared to be an unnecessary addition, as the procedures established for amendment of the convention as a whole would also apply to amendment of the annexes. Annex VI, article 42, paragraph 1 of document A/CONF.62/WP.10/Rev.2 makes it clear that the statute of the Law of the Sea Tribunal may be amended by the same procedure as provided for amendments to this convention. The suggestion was not pursued. It has been dealt with in relation to the final clauses;

(*j*) the suggestion by the President to add a paragraph to article 15 of annex VI in order to provide jurisdiction for a special chamber of the Law of the Sea Tribunal acting in accordance with article 188, paragraph 1 (*a*). This suggestion was contained in document SD/4 dated 15 August 1980. It was found unnecessary to include an additional provision to cover such jurisdiction as it was felt to be already covered by other provisions.

10. The President informed the plenary Conference that the Secretary-General of the Inter-Governmental Maritime Consultative Organization had brought to his attention the need for clarification with regard to the references to pollution from vessels in articles 1 and 2 of Annex VIII of document A/CONF.62/WP.10/Rev.2 on Special Arbitration Procedures. It seemed necessary to add appropriate references to "dumping" with regard to the kinds of disputes listed in article 1, and the fields of expertise and the lists of experts to be maintained by the appropriate intergovernmental organizations in article 2. The President, having consulted the Chairman of the Third Committee, suggested the following changes, which were approved by the plenary Conference: in article 1, and at the end of the first sentence in article 2, after "vessels" add "and by dumping"; in line 8 of article 2, after "navigation" add "including pollution from vessels and by dumping."

11. There were minor drafting changes to document A/CONF.62/WP.10/Rev.2 which were brought before the plenary Conference by the President and were approved. They are as follows: in annex VI, article 4, paragraph 1, replace "a list" by "the list"; in article 17, paragraph 6, replace "required by article 2, article 8, paragraph 1, and article 11" by "required by articles 2, 8 and 11"; in article 29, line 5, replace "the decision" by "the claim"; in article 37, paragraph 2, line 3, replace "members" by "member" and in line 5 after "promptly make such" add "appointment or"; in annex VII, article 9, line 6, replace "the award" by "the claim".

12. The plenary Conference in informal meeting also considered the President's proposal that the title of the Law of the Sea Tribunal be changed. The President explained that the title was pedestrian and did not adequately describe the international status and the dignity of the tribunal to be established under this convention. The President, therefore, suggested that the name be changed to "International Tribunal for the Law of the Sea". This was accepted without objection. The change will have to be effected in all provisions of the informal composite negotiating text where there are references to the Tribunal.

DOCUMENT A/CONF.62/L.60*

Preliminary report of the President on the work of the informal plenary meeting of the Conference on final clauses

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Consideration of the final clauses by the informal plenary Conference was taken up during the resumed session at fifteen meetings.

A full report on the negotiations relating to this subject will be submitted in due course.

The results may be summarized as follows:

Article 299—Signature; Article 300—Ratification; Article 301—Accession

These three articles as they appeared in document FC/21/Rev.1 were found acceptable except that the final form of articles 299 and 301 will depend on the decisions as to who may sign and who may accede to the convention. The appropriate dates will also have to be inserted in article 299.

Article 302—Entry into force

This article as appearing in document FC/21/Rev.1 was also found acceptable subject to the foot-notes appended to paragraphs 3 and 4.

The foot-note to paragraph 4 is intended to indicate that the question of the preparatory commission including its decision-making procedure must be considered in conjunction with the results of the negotiations on the related provisions in the First Committee.

It was agreed that from the very date of entry into force of the convention there must be a set of rules, regulations and procedures to enable the Authority to function. The question of the period of applicability of these rules, regulations and procedures and as to what will replace them on the expiry of that period has to be considered.

It was also decided that the number of instruments of ratification or accession required for entry into force of the convention under paragraph 1 should be 60 as specified in that paragraph.

Article 303—Reservations and exceptions

The text of article 303 as appearing in document FC/21/Rev.1/Add.1 was found acceptable together with the foot-note referred to in that document on the understanding that the articles referred to in the text must be interpreted to mean that a reservation would be permitted only where the substantive article specifically uses the term "reservation". An exception would be permitted only where the substantive articles specifically use the term "exception". It must be clearly understood that article 303 does not permit exceptions by any State Party to optional exceptions made by any other State Party under paragraph 1 (*a*) of article 298. It is also to be understood that the formulation of article 303 in document FC/21/Rev.1/Add.1 does not permit either of reservations to exceptions or of exceptions to reservations.

Some of the delegations that found difficulty, as a matter of principle, in renouncing the right to enter reservations were prepared to acquiesce in the text of the article provided the foot-note was retained.

Article 304—Declarations and statements

This article was found acceptable together with the foot-note appended to it in document FC/21/Rev.1. Declarations under article 287 are to be understood as being separate and distinct from

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