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A/CONF.62/L.60

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

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)

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 inter-

governmental 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

[Original: English]
[23 August 1980]

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

* Incorporating document A/CONF.62/L.60/Corr.1 dated 23 August 1981.

the interpretative declarations contemplated in article 304. They are of a different character and nature and are not prejudiced by article 304.

Article 305—Relation to other conventions and international agreements

This article, as appearing in document FC/21/Rev.1 and as modified by the corrections in document FC/21/Rev.1/Add.1, was accepted by the informal plenary meeting of the Conference.

Article 305 will contain a new paragraph 6 the text of which was adopted by the Conference when it dealt with the question of general provisions as reported in document A/CONF.62/L.58.

Paragraph 5 of this article was considered redundant by some delegations as its provisions were governed by the Vienna Convention on the Law of Treaties.¹³ The provision was, however, maintained as it was found preferable to duplicate the content of the relevant provision of the Vienna Convention on the Law of Treaties rather than to eliminate this paragraph.

Article 306—Amendment

The text of this article as appearing in document FC/21/Rev.1 and as changed in document FC/21/Rev.1/Add.1 was accepted. As referred to in that document, paragraphs 1 and 2 would remain as article 306, while paragraphs 3 and 4 would constitute a new article to appear after article 307.

As this new article had no title the President has appended a title to it to read "Amendments to the provisions of the Convention relating exclusively to activities in the Area".

It is to be noted that the reference to paragraph 3 in the fourth paragraph will have to be changed accordingly and the subsequent articles will have to be re-numbered.

The question was raised as to whether the articles on amendments to the convention and its annexes were exhaustive of all types of amendments and whether there was a lacuna which had to be filled. It was understood that this matter required careful examination.

As special emphasis was being placed on consensus, it was considered desirable that the term be defined having regard to the statement made on the subject by the President at the 17th meeting of the Conference on 26 June 1974,¹⁴ and the meaning given to that term in the report of the co-ordinators of the working group of 21 in the context of paragraph 7 (e) of article 161 (see A/CONF.62/C.1/L.28/Add.1).

¹³ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference*, (United Nations publication, Sales No. E.70.V.5).

¹⁴ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. I (United Nations publication, Sales No. E.75.V.3).

Article 307—Amendment by simplified procedure

The article as appearing in document FC/21/Rev.1 was accepted subject to the changes referred to in document FC/21/Rev.1/Add.1.

Article 308—Signature, ratification of, accession to and authentic texts of amendments

This article as appearing in document FC/21/Rev.1 was accepted without change.

Article 309—Entry into force of amendments.

This article as appearing in document FC/21/Rev.1 together with the addition of paragraph 1 *bis* as referred to in document FC/21/Rev.1/Add.1 was accepted by the Conference.

The following minor drafting changes which do not touch upon the substance, will have to be effected for the purpose of clarity: in paragraph 1, after "following the" insert "deposit of instruments of"; in paragraph 4, after "one year following" insert "the deposit of the instruments of"; in paragraph 5, "paragraph 3" should read "paragraph 4".

Article 310—Denunciation

This article as appearing in document FC/21/Rev.1 together with the change referred to in document FC/21/Rev.1/Add.1 was also accepted.

Article 311—Status of annexes; Article 312—Depositary; Article 313—Authentic texts

These three articles were accepted by the Conference as they appear in document FC/21/Rev.1.

As regards subparagraph (d) of article 312, it was considered by some delegations to be covered by the Vienna Convention on the Law of Treaties, in that the circulation of amendments was part of the functions of a depositary. It was found desirable, however, to retain this paragraph as the provision for adoption of amendments by simplified procedure could not have been contemplated by the Vienna Convention on the Law of Treaties. The simplified procedure provided under article 307 would seem to impose an additional function on the depositary.

Annex VI, article 42—Amendments to the statute of the International Tribunal for the Law of the Sea

The text as appearing in document FC/21/Rev.1/Add.1 for article 42 of annex VI was accepted by the Conference. This would replace the text as appearing in A/CONF.62/WP.10/Rev.2. This item was considered in the course of the discussion on the subject of settlement of disputes and is referred to in the report on that subject—document A/CONF.62/L.59

The President recommends that these decisions of the informal plenary Conference be included in the next revision of the informal composite negotiating text.

The President also recommends that the general provisions accepted by the Conference together with these articles on Final Clauses be included in a separate part of the informal composite negotiating text entitled "Final Provisions".

DOCUMENT A/CONF.62/L.61

Report of the Chairman of the Third Committee

[Original: English]
[25 August 1980]

I. I have the honour to inform the Conference of the developments that have taken place in the Third Committee. You may recall that the programme of work adopted by the Conference at the 130th plenary meeting on the recommendation of the General Committee set aside the initial weeks of this resumed session to enable different constituent bodies of the Conference at this ninth

resumed session to complete negotiations on the outstanding issues. This particular procedure did not apply to the Third Committee since, as had been pointed out in my last two reports to the Conference contained in documents A/CONF.62/L.34,¹⁵ and

¹⁵ *Ibid.*, vol. IX.