I. Introduction

This paper summarizes the provisions of the Law of the Sea Convention on compulsory dispute settlement with binding results by the two means of arbitration, how States have responded to the options for dispute settlement in favor of arbitration, and the cases that have been submitted by States to arbitration under Annex VII of the Convention as of March 2012.²

Of the 162 States Parties to the Law of the Sea (LOS) Convention, only nine have specifically chosen arbitration under article 287(1), while 36 have chosen one or both of the other procedures.³ On the other hand, 117 Parties have not made a declaration under article 287 and therefore have effectively chosen arbitration under the default provisions of article 287(3). Nevertheless, as is evident

¹ Captain, JAGC, USN (ret.), Office of the Legal Adviser, U.S. State Department (ret.). The views expressed herein are those of the author and do not represent the views of any department or agency of the U.S. Government. The author wishes to thank Barbara Kwiatkowska and Dr. Robert W. Smith for the information they provided on the Southern Bluefin Tuna and Bangladesh v. India arbitrations, respectively.
from Table 1, 22 Parties have chosen arbitration in specific cases, none of which had previously chosen arbitration pursuant to article 287(1).

The United States has indicated that on accession to the 1982 Law of the Sea Convention it will exercise its option under article 287(1) to settle disputes regarding the interpretation or application of the Convention with binding results by means of arbitration or special arbitration.  

The U.S. Commentary to the LOS Convention, accompanying the Secretary of State’s submittal of the Convention to the President in 1994 summarized the rules concerning the arbitration procedures in Annexes VII and VIII, as follows:

**Arbitration under Annex VII**

Annex VII sets forth detailed rules concerning the procedure governing arbitration under this Annex:

- The list of potential arbitrators is maintained by the Secretary-General of the United Nations; each Party may nominate up to four arbitrators to appear on the list.
- An arbitral panel generally consists of five members. Each party to the dispute appoints one member; the other three members are appointed by agreement between the parties. Annex VII provides a mechanism for appointments, should the parties be unable to agree on members; in general, the President of the International Tribunal for the Law of the Sea makes the necessary appointments.
- The arbitral tribunal determines its own procedure.
- Decisions of the tribunal are to be by majority vote.
- Arbitral awards are final and without appeal (unless otherwise agreed) and are to be complied with by the parties to the dispute.

**Special Arbitration under Annex VIII**

Annex VIII contains somewhat different rules concerning the procedure governing arbitration of disputes concerning the interpretation or application of articles of the Convention relating to (1) fisheries; (2) protection and preservation of the marine environment; (3) marine scientific research; and (4) navigation, including pollution from vessels and by dumping:

- States Parties may nominate two experts in each of these fields, whose names shall appear on lists of experts to be established and maintained.
- A special arbitral panel generally consists of five members, preferably appointed from the relevant list. Each party to the dispute appoints two members; the other member is appointed by agreement between the parties. Annex VIII provides a mechanism for appointments, should the parties be unable to agree on a fifth member; in general, the Secretary General of the United Nations is to make the necessary appointments.
- The provisions for arbitration under Annex VII shall otherwise apply.
- In addition, the parties to a dispute may agree to request the special arbitral tribunal to carry out an inquiry and establish the facts giving rise to the dispute and, if the parties further agree, to formulate recommendations which shall constitute a basis for review by the parties.

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