1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 [compulsory dispute settlement] with respect to one or more of the following categories of disputes:
WEB OF PEACEFUL DISPUTE SETTLEMENT
UNCLOS Part XV

- Compulsory Third-party Adjudication
- Compulsory Conciliation
- Optional Conciliation
- Exclusion from dispute settlement
SEA BOUNDARY DELIMITATIONS

Exclusion of interim obligations?
(a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that …
QUESTION 1

Whether Obligations of Restraint and Cooperation under Articles 74(3) and 83(3) of UNCLOS may be excluded from compulsory dispute settlement by an Article 298 declaration
1. The delimitation of the EEZ / CS between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. **Pending agreement** as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, **shall make every effort to enter into provisional arrangements** of a practical nature and, during this transitional period, **not to jeopardize or hamper the reaching of the final agreement**. Such arrangements shall be without prejudice to the final delimitation.
Negotiating “package”:
- delimitation methodology,
- dispute settlement and
- interim arrangements pending delimitation.

1958 Convention on the Territorial Sea and Contiguous Zone, Article 12(1):
“1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line”.
“disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitation”

1980
ARTICLES 74 & 83
Delimitation of the EEZ / CS

- delimitation of the exclusive economic zone and continental shelf “shall be effected by agreement on the basis of international law, as referred to in article 38 of the Statute of the International Court of Justice”

- 1982
Article 286

Any dispute concerning the interpretation or application of this Convention shall... be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

A dispute on the interpretation of Article 298:

Does Article 298’s reference to Articles 74 and 83 exclude compulsory dispute settlement for breaches of interim obligations under Articles 74(3) and 8(3)?
COMPULSORY CONCILIATION

When does a dispute arise?
... provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2;
QUESTION 2

For compulsory conciliation, what criteria should be used to decide if the dispute arose subsequent to the entry into force of UNCLOS
COMPULSORY CONCILIATION
Entry into Force

Timor Leste / Australia Conciliation

- entry into force of the Convention as a whole on 16 November 1994 or
- entry into force of the Convention as between Australia and Timor-Leste on 7 February 2013.
Large discretionary element about the critical date when a dispute is deemed to have arisen

*Mavrommatis*

‘it must be shown that the claim of one party is positively opposed by the other”

*South West Africa*

a purely theoretical disagreement on a point of law or fact are alone not conclusive of the existence of a dispute
Can a conciliation commission deal with “mixed disputes”?
... and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
QUESTION 3

Whether the court, arbitral tribunal or conciliation commission has jurisdiction to consider “mixed disputes” involving land sovereignty or other rights
necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory
What does “shall, by mutual consent” mean?
(ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report;

if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2 [compulsory dispute settlement], unless the parties otherwise agree;
Whether when conciliation fails to reach an agreement, parties are bound to refer their dispute back to compulsory third party dispute settlement
SHALL, BY MUTUAL CONSENT,

- Failure to settle the dispute by conciliation
  - Compulsory dispute settlement procedures
    UNCLOS Part XV, Section 2
  - Interpretation of “shall, by mutual consent”
    UNCLOS Article 286