

# **United Nations Conference on the Law of the Sea**

Geneva, Switzerland  
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Document:  
**A/CONF.13/L.11**

## **Report of the Fifth Committee**

Extract from the *Official Records of the United Nations Conference on the Law of the Sea, Volume II (Plenary Meetings)*

be full working days, with meetings being held both in the morning and afternoon.

(j) Each committee should consider establishing a timetable for the complete disposal of each remaining article or group of articles, and this should be strictly observed.

4. The General Committee calls the urgent attention of all delegations to the above recommendations, and feels that, if these measures can be strictly adhered to, it will prove possible for the Conference to carry out its work within the limit it has set itself.

## DOCUMENT A/CONF.13/L.10

### Periodic reconvening of the United Nations Conference on the Law of the Sea: letter dated 16 April from the Chairman of the Delegation of Peru to the President of the Conference

[Original text: Spanish]  
[16 April 1958]

On behalf of the delegation of Peru, I have the honour to submit to you and to the General Committee a proposal for the periodic reconvening of the Conference.

As you will gather from the enclosed text, the proposal is of a general nature; its object is to enable the international community to review regularly, at not too infrequent intervals, the state of the law of the sea and its problems and to adopt appropriate decisions relating thereto.

The delegation of Peru considers that, in view of the evolution of the law of the sea under the impact of new legal concepts and of scientific and economic findings and studies, one cannot hope, on any particular occasion, to elaborate immutable instruments that can remain unaffected by that evolution. It seems, therefore, that the best way in which the international community could keep abreast of that evolution would be to arrange periodic conferences, such as the present, to consider the problems of the law of the sea in the light of whatever new developments may have supervened, of reports submitted by governments, and of their experience of the operation in practice of the instrument signed or approved at this conference.

(Signed) Alberto ULLOA  
Chairman of the Delegation

#### Annex

#### PERU: PROPOPSAL

#### *The United Nations Conference on the Law of the Sea*

*Considering* that the results of this conference as embodied in the Final Act [or: in the Convention approved] should be regarded as marking but one stage in the uninterrupted evolution of the law of the sea,

*Considering* that, for this reason, it is in the interest of the international community that provision should be made for a periodic review of new developments and for the adoption of appropriate decisions relating thereto,

1. *Decides* that, on the expiry of a period of not less than five years from the signing of the Final Act [or: of the Convention] embodying the results of this Conference, another United Nations Conference on the Law of the Sea should be held to consider the problems of the law of the sea in the light of whatever new developments may have supervened, of reports submitted by governments, and of their experience of the operation in practice of the Convention approved at this Conference;

2. *Transmits* the foregoing decision to the General Assembly of the United Nations with the request that, having considered this decision, the Assembly should adopt such resolution as it thinks advisable.

## DOCUMENT A/CONF.13/L.11

### Report of the Fifth Committee

[Original text: French]  
[19 April 1958]

#### I. TERMS OF REFERENCE OF THE COMMITTEE

1. The Fifth Committee was asked to study the question of free access to the sea of land-locked countries, in conformity with General Assembly resolution 1105 (XI) of 21 February 1957. The Assembly recommended that the Conference on the Law of the Sea to be convened by virtue of that resolution should "study the question of free access to the sea of land-locked countries, as established by international practice or treaties".

#### II. OFFICERS OF THE COMMITTEE

2. At its first meeting, on 26 February 1958, the Committee elected Mr. J. Zourek (Czechoslovakia) as Chairman; at its 2nd meeting, on 28 February, it elected M. Guevara Arze (Bolivia) as Vice-Chairman and Mr. A. H. Tabibi (Afghanistan) as Rapporteur.

#### III. PREPARATORY DOCUMENTS BEFORE THE COMMITTEE

3. The following preparatory documents were before the Committee: (a) a memorandum concerning the question of free access to the sea of land-locked countries (A/CONF.13/29 and Add.1) prepared by the United Nations Secretariat; (b) a memorandum submitted by the Preliminary Conference of Land-locked States, held at Geneva from 10 to 14 February 1958 (A/CONF.13/C.5/L.1), (c) an extract from the Final Act of the Economic Conference of the Organization of American States, held at Buenos Aires from 15 August to 4 September 1957 (A/CONF.13/C.5/L.4); and (d) a document containing information concerning signatures, ratifications and accessions to certain conventions relevant to the question of free access to the sea of land-locked countries (A/CONF.13/C.5/L.5 and Corr.3).

4. The memorandum submitted by the Preliminary Conference of Land-locked States set forth in an annex the following principles as adopted by that conference :

"The delegates of the States which have no direct territorial access to the sea, gathered at Geneva from 10 to 14 February 1958, for a preliminary consultation, desirous to obtain the reaffirmation, during the Conference on the Law of the Sea convened by the United Nations, of their rights of free access to the sea, taking into consideration the fact that other States which are not placed in the same geographic situation should not be requested to apply the most favoured nations clause, hold that access to the sea of land-locked countries is governed specifically by the following general principles which are part of existing international law :

*" Principle I*

*" Right of free access to the sea*

"The right of each land-locked State of free access to the sea derives from the fundamental principle of freedom of the high seas.

*" Principle II*

*" Right to fly a maritime flag*

"Each land-locked State enjoys, while on a footing of complete equal treatment with the maritime State, the right to fly its flag on its vessels which are duly registered in a specific place on its territory.

*" Principle III*

*" Right of navigation*

"The vessels flying the flag of a land-locked State enjoy, on the high seas, a régime which is identical to the one that is enjoyed by vessels of maritime countries ; in territorial and on internal waters, they enjoy a régime which is identical to the one that is enjoyed by the vessels flying the flag of maritime States, other than the territorial State.

*" Principle IV*

*" Régime to be applied in ports*

"Each land-locked State is entitled to the most favoured treatment and should under no circumstances receive a treatment less favourable than the one accorded to the vessels of the maritime State as regards access to the latter's maritime ports, use of these ports and facilities of any kind that are usually accorded.

*" Principle V*

*" Right of free transit*

"The transit of persons and goods from a land-locked country towards the sea and *vice versa* by all means of transportation and communication must be freely accorded, subject to existing special agreements and conventions.

"The transit shall not be subject to any customs duty or specific charges or taxes except for charges levied for specific services rendered.

"*Note.* — The Austrian delegation presumes that principle V does not have a further scope than the obligations resulting from the Statute of Barcelona of which Austria is a signatory.

*" Principle VI*

*" Rights of States of transit*

"The State of transit, while maintaining full jurisdiction over the means of communication and everything related to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the right of free access to the sea shall in no way infringe on its legitimate interests of any kind, especially with regard to security and public health.

*" Principle VII*

*" Existing and future agreements*

"The provisions codifying the principles which govern the right of free access to the sea of the land-locked State shall in no way abrogate existing agreements between two or more contracting parties concerning the problems which will be the object of the codification envisaged, nor shall they raise an obstacle as regards the conclusion of such agreements in the future, provided that the latter do not establish a régime which is less favourable than or opposed to the above-mentioned provisions."

IV. ORGANIZATION OF THE WORK OF THE COMMITTEE

5. At its 3rd meeting, on 5 March 1958, the Committee decided first to hold a general discussion concerning the question referred to it. The views expressed during this general discussion are set forth in the summary records of the 3rd to 10th meetings of the Committee.

6. The Committee then considered the proposals and amendments which had been submitted.

V. PROPOSALS AND AMENDMENTS SUBMITTED TO THE COMMITTEE

7. The following proposals and amendments were successively laid before the Committee, and all these proposals contributed to the final decisions of the Committee :

(a) A joint proposal by Afghanistan, Albania, Austria, Bolivia, Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxembourg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia and the United Arab Republic (A/CONF.13/C.5/L.6) ;

(b) A joint proposal by Italy, the Netherlands and the United Kingdom of Great Britain and Northern Ireland (A/CONF.13/C.5/L.7) ;

(c) An amendment by Chile to the nineteen-power proposal (A/CONF.13/C.5/L.8) ;

(d) A proposal by Bolivia submitted in the First Committee and referred to the Fifth Committee (A/CONF.13/C.5/L.9) ;

(e) An amendment by the United States of America to the three-power proposal (A/CONF.13/C.5/L.10) ;

(f) A proposal by Switzerland (A/CONF.13/C.5/L.15).

The following amendments to the Swiss proposal were submitted :

(g) By the Federal Republic of Germany (A/CONF.13/C.5/L.17)

(h) By France (A/CONF.13/C.5/L.18)

(i) By the United States (A/CONF.13/C.5/L.20)

(j) By the Netherlands (A/CONF.13/C.5/L.21)

(k) By Bolivia (A/CONF.13/C.5/L.23)

(l) By Ghana (A/CONF.13/C.5/L.24)

(m) By Pakistan (A/CONF.13/C.5/L.25)

(n) By Bolivia, France, the Federal Republic of

Germany, the Netherlands and the United States (A/CONF.13/C.5/L.26).

VI. CONSIDERATION OF THE NINETEEN-POWER AND THREE-POWER PROPOSALS (A/CONF.13/C.5/L.6, L.7)

8. After the end of the general discussion, the Committee considered, at its 12th to 16th meetings, the nineteen-power proposal (A/CONF.13/C.5/L.6) and the corresponding paragraphs of the three-power proposal (A/CONF.13/C.5/L.7), item by item.

VII. APPOINTMENT OF A WORKING PARTY; TERMS OF REFERENCE AND REPORT OF THE WORKING PARTY

9. The Committee decided, in the course of its 17th and 18th meetings (10 and 11 April 1958) to appoint a working party consisting of the representatives of (a) Bolivia, Czechoslovakia, Nepal and Switzerland (as land-locked States); (b) Chile, the Federal Republic of Germany, Italy and Thailand (as States of transit); and (c) Ceylon, Mexico, Tunisia and the United Kingdom (as States not included in the two preceding categories). On the proposal of Sweden (A/CONF.13/C.5/L.11), the working party was directed to report to the Committee with recommendations concerning the form or forms in which the results of the Committee's work should be expressed.

10. Under the chairmanship of Mr. A. B. Perera (Ceylon), the working party held two meetings on 11 and 12 April. The report of the working party to the Fifth Committee was circulated as document A/CONF.13/C.5/L.16.

11. In its report, in regard to which reservations had been entered by some delegations, the working party recommended that the work of the Fifth Committee should be embodied partly in a convention and partly in a resolution and a declaration.

12. The Fifth Committee considered the report at its 19th, 21st and 24th meetings (14, 15 and 24 April). The representative of Ghana proposed (A/CONF.13/C.5/L.19) that the Committee should take note of the report of the working party and accept the latter's finding that the recommendations of the Fifth Committee to the Conference should be in the form partly of a convention and partly of a resolution and declaration.

13. At its 20th meeting on 15 April, the Committee decided to defer consideration of the working party's report until after the Swiss proposal and the amendments relating thereto had been studied.

VIII. CONSIDERATION OF AND VOTING ON THE SWISS PROPOSAL (A/CONF.13/C.5/L.15) AND AMENDMENTS THERETO

14. The Committee devoted its 20th to 23rd meetings on 15 and 16 April to consideration of the Swiss proposal (A/CONF.13/C.5/L.15) and amendments thereto (A/CONF.13/C.5/L.17, L.18, L.20, L.21, L.23 to L.25). During the discussion, the three-power proposal (A/CONF.13/C.5/L.7) was withdrawn.

15. The Swiss proposal was worded as follows:

"I

"The Swiss delegation proposes that article 15, paragraph 1, article 27 and article 28 in the International Law Commission's draft be amended as follows: (The additions proposed are in italics.) Should articles 15, 27 and 28 of the draft be modified by the committees concerned, these amendments should be adapted to the final wording.

"Article 15, paragraph 1

"Subject to the provisions of the present rules, ships of all States, *whether coastal or not*, shall enjoy the right of innocent passage through the territorial sea.

"Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia*, both for coastal and non-coastal States:

"(1) Freedom of navigation;

"(2) ...

"(3) ...

"(4) ...

"Article 28

"Every State, *whether coastal or not*, has the right to sail ships under its flag on the high seas.'

"II

"In order to codify the right of free access to the sea for States having no sea-coast, the Swiss delegation proposes an additional article, to be inserted in the International Law Commission's draft in the appropriate place, worded as follows:

"Access to the sea for States having no sea-coast

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast shall have free access to the sea. To this end, States situated between the sea and a State having no sea-coast shall:

"(a) Accord the land-locked State, on a basis of reciprocity, free transit through their territory;

"(b) Guarantee to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the land-locked State, all matters relating to equal treatment in ports and freedom of transit."

16. The representatives of Bolivia, the Federal Republic of Germany, France, the Netherlands and the United States submitted a joint amendment (A/CONF.13/C.5/L.26) to the Swiss proposal. The representatives of Ghana and Pakistan withdrew their amendments (A/CONF.13/C.5/L.24, L.25).

17. The joint amendment proposed the replacement of paragraphs 1 and 2 of part II of the Swiss proposal by the following text:

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast may have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

"(a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory, and

"(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and the State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions."

18. At its 23rd meeting on 16 April, the Committee voted on the Swiss proposal and the joint amendment.

19. The representative of Nepal proposed orally to substitute the word "shall" for the word "may" in the first sentence of paragraph 1 of the joint amendment. This proposal was rejected by 28 votes to 19, with 8 abstentions.

20. By 31 votes to 2, with 19 abstentions, the Committee adopted an oral amendment by the representative of Afghanistan to replace the word "may" by the word "should" in the first sentence of paragraph 1 of the joint amendment.

21. The joint amendment, as amended, was adopted by 37 votes to none, with 15 abstentions.

22. The Swiss proposal, as amended, was adopted by a roll-call vote of 51 to none, with 6 abstentions. The result of the voting was as follows:

*In favour:* Afghanistan, Argentina, Australia, Austria, Bolivia, Brazil, Canada, Ceylon, Chile, China, Colombia, Czechoslovakia, Denmark, Ecuador, France, Federal Republic of Germany, Ghana, Greece, Holy See, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Republic of Korea, Laos, Liberia, Mexico, Nepal, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Spain, Switzerland, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Yugoslavia.

*Abstaining:* Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Iran, Turkey, Venezuela.

#### IX. DECISION TAKEN BY THE FIFTH COMMITTEE ON THE REPORT AND RECOMMENDATIONS OF THE WORKING PARTY

23. At its 24th meeting, on 17 April, the Fifth Committee adopted, by 41 votes to none, with 8 abstentions, the following proposal submitted by Ghana (A/CONF.13/C.5/L.19: see para. 12 above), as amended by the representatives of Nepal, Hungary and Canada:

"The Fifth Committee takes note with deep appreciation of the report of the working party to the Fifth Committee (A/CONF.13/C.5/L.16) and accepts its finding that the recommendations of the Fifth Committee to the Conference should be in the form of a convention, without prejudice to the consideration of the nineteen-power proposal (A/CONF.13/C.5/L.6)."

#### X. COMPLETION OF THE WORK OF THE FIFTH COMMITTEE

24. In view of the adoption of the Swiss proposal (A/CONF.13/C.5/L.15) and amendments thereto, and the withdrawal of the three-power proposal (A/CONF.13/C.5/L.7), some delegations expressed the view that the Committee could not discuss the recommendations of the report of the working party as it stood. Certain delegations proposed that the working party should be asked to prepare a declaration on the points of the nineteen-power proposal which were not covered by the Swiss proposal; others, however, were of the opinion that there was no need to ask the working party to embark on such a discussion, but that the Rapporteur of the Committee should be asked to explain in the report to the Conference the usefulness of all the proposals and amendments submitted to the Committee.

25. By 45 votes to 1, with 6 abstentions, the Committee adopted the following text, proposed by the representative of the Holy See:

"The Fifth Committee, having concluded its discussion of all documents submitted to it, considers that it has completed its work with voting on the Swiss proposal (A/CONF.13/C.5/L.15), and invites the Rapporteur to acknowledge, in his report, the contribution made to the success of its discussions by the nineteen-power proposal (A/CONF.13/C.5/L.6), the three-power proposal (A/CONF.13/C.5/L.7), the Swiss proposal (A/CONF.13/C.5/L.15) and the amendments thereto."

#### XI. RECOMMENDATIONS OF THE COMMITTEE

26. The Fifth Committee therefore recommends that the Conference should:

##### I

Draft the articles to be adopted by the Conference on the basis of the International Law Commission text, articles 15, 27 and 28, to read as follows (the proposed additions are in italics):

##### "Article 15, paragraph 1

"Subject to the provisions of the present rules, ships of all States, *whether coastal or not*, shall enjoy the right of innocent passage through the territorial sea.

##### "Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia*, both for coastal and non-coastal States:

"(1) Freedom of navigation;

"(2) ...

"(3) ...

"(4) ...

##### "Article 28

"Every State, *whether coastal or not*, has the right to sail ships under its flag on the high seas."

##### II

Insert the following new article at an appropriate place in one of the conventions to be adopted by the Conference:

##### "Access to the sea for States having no sea-coast

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

"(a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and

"(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and the State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions."