United Nations Conference on the Law of the Sea

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24 February to 27 April 1958

Summary Records of the 11th Plenary Meeting

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of the sea. He did not share the Second Committee's pessimism as to the possibility of reaching agreement on the most important problem arising from the use of the high seas ; even a partial solution was preferable to inaction. His government had always resolutely opposed the use of atomic weapons, and he commended the joint proposal as a positive contribution to the codification of international law, which must deal with major issues at every stage.

46. Mr. BARTOS (Yugoslavia) said that his government was against any nuclear tests, whether on land or sea, and was prepared to support any effort to prohibit them. He did not see why adoption of the joint proposal should be incompatible with supporting the work of the Disarmament Commission.

47. Mr. KANAKARATNE (Ceylon) said that his government could not view any nuclear tests with equanimity, since their effects knew no boundaries ; it associated itself with the apprehension expressed in the draft resolution adopted by the Second Committee. He urged the sponsors of the joint resolution not to press it to a vote, because its rejection might be interpreted by world public opinion as meaning that the Conference had refused to ask States to refrain from nuclear tests on the high seas, which were an obvious infringement of international law.

48. Mr. LOUTFI (United Arab Republic) said that he had already expressed his government's opposition to all nuclear tests, both at the Conference and in the General Assembly. In its view, tests on the high seas were contrary to international law.

49. Mr. LAZAREANU (Romania), supporting the joint proposal, pointed out that the adoption of the Committee's draft resolution would not have the same effect, since one of the objectives of the Conference was to ensure that all States should benefit from the living resources of the high seas and the possibilities offered by the seas for international communication. All the rules that had been discussed would be futile unless a ban were imposed on nuclear tests, which increasingly endangered the living resources of the sea and international navigation, as well as the safety and health of present and future generations. Such a ban would assist other United Nations organs working on disarmament, and would contribute towards a general settlement.

50. Although he did not disagree with the views expressed by the representatives of India and Ceylon in defence of the Committee's draft resolution, he could not support it.

51. The PRESIDENT announced that, in accordance with rule 41 of the rules of procedure, he would put to the vote first the draft resolution submitted by the Committee (A/CONF.13/L.17, annex).

52. Mr. LOUTFI (United Arab Republic) moved that a separate vote be taken on the first two paragraphs of the resolution.

53. Mr. DEAN (United States of America) opposed the motion because the draft resolution was an integral whole and its purpose would be largely defeated if only part of it was adopted.

54. Mr. JHIRAD (India) also opposed the motion because the adoption of only part of the draft resolution would not reflect his government's attitude.

55. Mr. BARTOS (Yugoslavia) supported the motion because he would be unable to vote for the draft resolution as a whole.

The motion for a separate vote on the first two paragraphs of the draft resolution was rejected by 50 votes to 3 with 18 abstentions.

The draft resolution relating to nuclear tests submitted by the Second Committee was adopted by 58 votes to none with 13 abstentions.

56. The PRESIDENT put to the vote the Second Committee's draft resolution relating to article 48 and dealing with the disposal of radio-active waste in the sea (A/CONF.13/L.17, annex).

The draft resolution was adopted by 67 votes to 6 with 1 abstention.

57. Mr. WYNES (Australia) said that he had supported the two draft resolutions and abstained on article 35 for reasons given at the 27th meeting of the Second Committee.

The meeting rose at 1.30 p.m.

ELEVENTH PLENARY MEETING

Wednesday, 23 April 1958, at 3.15 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the report of the Second Committee (A/CONF.13/L.17) *(continued)*

1. Mr. SOLE (Union of South Africa), referring to paragraphs 74 *et seq.* of the Second Committee's report (A/CONF.13/L.17), said that the work of the International Law Commission fell into two categories. Firstly, there was the progressive development of international law for which the Commission had envisaged a convention or treaty (A/3159, paragraph 25). Secondly, there was the codification of existing rules or practice. The majority of the articles adopted by the Second Committee belonged to the second category. In addition, it was agreed that the principles underlying new articles, such as those on pollution by oil and by radioactive waste, should receive international recognition. Consequently, he thought that all the articles adopted by the Committee could be embodied in an instrument of codification. Inasmuch as a convention would be subject to reservations — probably affecting all the articles it contained — and would not be ratified by as many States as would accept a declaration, he proposed that the results of the work of the Second Committee should be embodied in a declaration with an operative paragraph in the following terms :

"The United Nations Conference on the Law of the Sea declares by a majority in no case of less than two-thirds of the members present and voting that the following are, as of the date of the adoption of

this declaration, principles of international law relating to the high seas. . . ."

That proposal took into account the articles which related to new law.

2. In addition, he proposed that the declaration should be supplemented by a protocol open to States for signature and ratification, under the terms of which they would accept the declaration as binding. Any kind of instrument relating to whatever arbitral procedure the Drafting Committee might recommend should be taken into account in considering the supplementary protocol. In that way, the requirements of as many States as possible would be satisfied.

3. Mr. COLCLOUGH (United States of America) said that his delegation was in favour of a declaration, because the articles adopted by the Second Committee embodied rules of law founded on precedent and accepted practice. However, it would be necessary to consider the question of form before the declaration was adopted.

4. Mr. GARCIA SAYAN (Peru) said that the articles relating to the régime of the high seas were very closely linked with those dealing with the territorial sea, with fishing and the conservation of living resources, and with the continental shelf. Thus, in article 26, the high seas were defined by reference to the territorial sea and internal waters. But the Conference had been unable to reach a decision on the breadth of the territorial sea, and the limits of the high seas were in consequence only vaguely defined. Similarly, it was stated in article 27 that the freedom of the high seas comprised, *inter alia,* freedom of fishing; no limitations were placed on that freedom apart from a reference in general terms to "the conditions laid down by these articles and by the other rules of international law." Yet the provisions adopted by the Third Committee restricted the scope of the principle enunciated in article 27, as also did the measures taken by certain countries — of which Peru was one — to assert their sovereignty over specific maritime zones in matters of fishing rights.

5. His delegation therefore opposed the adoption of a separate instrument for the articles relating to the régime of the high seas.

6. Mr. GAETANO DE ROSSI (Italy) said that a convention would be the most satisfactory instrument to embody the articles adopted by the Second Committee. It might be necessary to prepare a series of interconnected separate conventions incorporating the articles on the law of the sea. Every such convention would have to be submitted for signature, accession, acceptance and ratification. It should be binding and provide for the arbitration or judicial settlement of disputes. However, the plenary Conference could not take a final decision on the work of any committee until it had examined the results of the work of all the committees.

7. Mr. JHIRAD (India) said that the majority of the articles which the Second Committee had adopted were declaratory of existing law, though some established new law. Thus a declaration might seem suitable, but, since delegations would in any case require the consent of their governments, his delegation favoured a convention with a preamble stating that it was declaratory of existing rules.

8. Mr. OLDENBURG (Denmark) said that his delegation supported the South African proposal for a declaration. A convention which was ratified by a certain number of States only, and to which many reservations might be made, was of limited value. A declaration, on the other hand, merely by formulating certain principles, would influence the law of the sea and would guide the competent authorities of all States in the drafting of provisions of municipal law. Many of the articles adopted by the Second Committee covered subjects already dealt with in existing international conventions in a more detailed form, and the best solution would be for governments which had not already done so to accede to those conventions; at the same time, the States should sign a declaration setting forth the principles of the international law of the sea.

9. The PRESIDENT, replying to a question by the representative of Canada, said that the final instrument to be recommended by the Drafting Committee would require a two-thirds majority in order to be adopted.

10. Mr. WERSHOF (Canada) said that his delegation supported the South African proposal for a declaration and for a protocol open to signature and ratification by States which wished to accept the declaration as binding. The question of reservations would not then arise. He made an informal suggestion that a preliminary vote should be taken on the adoption of a convention because if, as seemed probable, it did not obtain a two-thirds majority, some States might then be prepared to accept the South African proposal as a substitute.

11. Mr. BOCOBO (Philippines) suggested that the Conference might follow a procedure similar to that which the International Labour Organisation had found satisfactory for the last forty years. It might adopt a declaration together with a protocol, for articles which obtained a two-thirds majority, and a declaration without a protocol, for articles for which there was only a simple majority. He thought that probably most of the articles concerning the law of the sea belonged to the first category. It was possible that a simple majority might be obtained on the articles relating to the territorial sea, which could thus be included in a declaration without a protocol.

12. Mr. TUNKIN (Union of Soviet Socialist Republics) expressed support for the Italian proposal for a convention covering all the articles adopted by the Second Committee. A declaration would not be subject to reservations; it would merely be a resolution without binding force, and as such a convenient guide for national law, but it would not have much authority in international law. Public opinion and governments would not welcome such an insubstantial result to the work of the Conference.

13. A convention, on the other hand, would be a definite reflection of the development of international law. A multilateral convention was generally regarded as superior to bilateral agreements, of which there were vast numbers. Moreover, a convention, being an expression of the opinion of the Conference, would also

fulful the function of a declaration, whilst at the same time it would make clear the position of each State, by means of the procedure of signature, accession and ratification. A convention would produce effects even outside the group of States parties, for it would come to be regarded as a source of international law. In addition, the fact that the Conference had adopted a separate convention for the articles adopted by the Fourth Committee established a precedent for such a convention. For those reasons, his delegation was in favour of a separate convention for the articles adopted by the Second Committee.

14. Mr. CAICEDO CASTILLA (Colombia) expressed agreement with the statements made by the representatives of Italy and the USSR.

15. Sir Alec RANDALL (United Kingdom) said that his delegation agreed with those in favour of a declaration. What had been decided with regard to the articles adopted by the Fourth Committee was not a precedent for the articles adopted by the Second Committee, since there were reservations to the former, but none to the latter. His delegation also supported the suggestion by the Canadian representative for a preliminary vote on the adoption of a convention.

16. The PRESIDENT, replying to a question by the Soviet Union representative, said that it was not necessary for the Conference to take a final decision as to the kind of instrument to be adopted until the Drafting Committee had completed its work, though it could do so if it wished. The Conference might ask the Drafting Committee to prepare a draft declaration and a draft convention for purposes of comparison.

17. Mr. TAYLHARDAT (Venezuela) said that the decisive majorities by which the Conference had adopted the Second Committee's articles indicated an overwhelming desire for their codification. Obviously, therefore, they should be embodied in a convention and not in a declaration.

18. Mr. TABIBI (Afghanistan) said that the interests of international law in the matter would be better promoted by a convention than by a declaration. The task of the Conference was to codify the law of the sea and make it universally applicable; a declaration, far from laying down precise rules, would merely lead to confusion and difficulties. He pointed out that the Fifth Committee had adopted the Swiss proposal (A/CONF.13/C.5/L.15) on the understanding that the results of the Second Committee's work would be embodied in a convention.

19. Mr. BARROS FRANCO (Chile) agreed with the Peruvian representative that the idea of preparing separate conventions for the work of each committee was most unsatisfactory. The high seas articles must not be embodied in a separate convention, but in a convention on the law of the sea in general.

20. Mr. GLASER (Romania) pointed out to the South African and United Kingdom representatives that their views were at variance with those reached by the International Law Commission after eight years of work (A/3159, paragraphs 26-28). The task of the Conference was not merely to codify existing rules of international law relating to the sea, but also to promote the "progressive development of international law". In fact, the South African representative had admitted as much since his proposal stated ". . . the following are, as of the date of adoption of this declaration, principles of international law relating to the high seas." The implication was that the principles in question had not previously existed, and that the Conference was really creating law and not merely codifying existing law.

21. In those circumstances he agreed with the Italian, USSR and Colombian representatives that the results of the work of the Second Committee should be embodied in a convention, and not in a declaration.

22. Mr. GROS (France) agreed wholeheartedly. The task of the Conference was to codify the entire body of the international law relating to the sea, and the necessary unity of the subject could not be preserved if the Conference agreed to a proliferation of instruments. The International Law Commission had submitted its draft as an interrelated whole and it had been subdivided among committees simply for the sake of convenience. Clearly, then, that unity should be preserved and only one instrument adopted. He agreed, however, that the problem could be referred to the Drafting Committee.

23. Mr. PANHUYS (Netherlands) said that, in adition to the choice between a declaration and a convention, a third possibility was open to the Conference; it could adopt an instrument which would be signed and ratified but which would nevertheless be of a declaratory nature. He suggested a preamble for such an instrument in the following terms:

> "*Considering* that the following provisions are to a great extent a faithful reflection of the existing rules of customary international law and that, furthermore, they represent a correct balance between certain divergent national conceptions of the precise content of such customary law;
>
> "*Considering,* therefore, that these provisions should, by means of codification, be accepted as the common expression of the positive, generally recognized law of the sea,"

24. Mr. TRUJILLO (Ecuador) said he shared the view of the Romanian representative. He referred to the twofold nature of the International Law Commission's work described in paragraph 25 of its report, and summarized the events leading up to the Conference. He pointed out that, had the General Assembly considered that international law on the subject simply had to be endorsed, the Assembly would not have convened a conference. Yet a conference had been called and asked to study all the various aspects of the law of the sea as a whole. In view of the unity of the subject it would be extremely difficult to single out any one particular aspect for treatment in a separate instrument. A declaration would not serve the intended purpose, since experience had shown declarations to be of limited value. He therefore agreed with the Peruvian representative that a single convention should be prepared covering all the work of the Conference.

25. Mr. KANAKARATNE (Ceylon) said that, in view of the terms of reference of the Conference, he was surprised at the South African representative's proposal that the Second Committee's articles should be embodied in a mere declaration. Had it been the intention to adopt a declaration, the International Law Commission's articles could simply have been endorsed and it would have been unnecessary to convene a conference for the purpose of preparing a legally binding instrument. If representatives were being asked to depart from the recommendations of the International Law Commission and of the General Assembly and to adopt a simple declaration, they should be given compelling reasons for doing so.

26. The Netherlands representative had suggested a preamble implying that the instrument embodying the articles was a declaration of existing principles of international law and disregarding the fact that those articles covered much that was new. The Conference could not adopt a declaration which, like so many other declarations, would merely pay lip-service to certain principles.

27. His delegation was therefore unable to accept the South African proposal or the preamble suggested by the Netherlands representative. The high seas articles should be embodied in a specific legal instrument such as a convention.

28. Mr. PANHUYS (Netherlands) explained that the preamble he had suggested implied not only that the instrument would be the expression of existing law but also that the real content of customary law was in dispute and that therefore the ensuing rules were a common expression of the generally recognized law of the sea.

29. He emphasized that he was not in favour of a declaration as such, but of an instrument in the form of a declaration relating only to the high seas articles.

30. Mr. CARBAJAL (Uruguay) said that a declaration would not have the binding force of a convention nor could it state the law so precisely as a convention. He considered that the majorities by which the high seas articles had been adopted implied acceptance of an instrument in the form of a convention. Furthermore, in view of the interrelation of the articles on the law of the sea, it would be unwise to place the high seas articles in a separate convention.

31. Mr. ROSENNE (Israel) said that the phrase "one or more conventions" in paragraph 28 of the International Law Commission's report should be interpreted in the context of General Assembly resolution 899 (IX), as a result of which the Commission had incorporated all its articles on the law of the sea in a single draft. The fact that the Conference had decided to deal with the continental shelf in a separate convention should not create a precedent applicable to the work of other committees. If the same procedure were followed in the case of the high seas articles some very complicated problems of pure law, such as that referred to in paragraph 9 of the Second Committee's report (A/CONF.13/L.17) would arise. The whole question would have to be examined very carefully, and should therefore be referred to the Drafting Committee. The Conference could then reach a decision in the light of the Drafting Committee's recommendations.

32. Mr. TUNKIN (Union of Soviet Socialist Republics) said that it would be extremely difficult for the Drafting Committee to decide what kind of instrument should be adopted for the high seas articles. In any event, the Drafting Committee was not competent to take decisions on questions of substance.

33. Mr. CARBAJAL (Uruguay) agreed that the Drafting Committee was not competent to reach a decision on so important a question.

34. Mr. JHIRAD (India) suggested the suspension of the meeting in order that representatives might work out a compromise solution.

It was so agreed.

The meeting was supended at 5.15 p.m., and resumed at 5.40 p.m.

35. Mr. JHIRAD (India) said that during the recess the delegations which had put forward proposals had arrived at a compromise proposal that there should be a convention with a suitable preambular clause to be drawn up by the Drafting Committee, stating that the majority of the articles were generally declaratory of existing international law. A decision on the question of a separate convention would be deferred.

36. Mr. ROSENNE (Israel) proposed that the decision adopted by the Second Committee and recorded in paragraph 9 of its report should be added to the compromise proposal and that its final wording should be settled by the Drafting Committee.

Is was so agreed.

37. Mr. GARCIA SAYAN (Peru) said that, in recommending the Drafting Committee to prepare a preamble to the articles on the high seas, the Conference would, in practice, be deciding in favour of a separate convention. He therefore proposed that the decision of the Conference as to the kind of instrument required for the articles on the high seas should be deferred until it had voted on the articles adopted by the First, Third and Fifth Committees.

38. Mr. MÜFTÜGIL (Turkey) said that his delegation agreed with the statement of the representative of Peru.

39. Mr. BARROS FRANCO (Chile) said that his delegation agreed with the statement of the representative of Peru. The adoption of a preamble referring exclusively to the articles adopted by the Second Committee would prejudge the question of a separate convention. If, on the other hand, the preamble referred to all the articles considered by the Conference, it would be premature to take a decision on it.

40. Mr. BOCOBO (Philippines) said that his delegation favoured the compromise proposal because there was only a tenuous distinction between a convention and a declaration, with or without protocol. The authority of the instrument adopted by the Conference did not depend on the name given to it, but on whether it was based on principles of justice and answered the needs of the international community.

41. The PRESIDENT, in reply to questions from Mr. TUNKIN (Union of Soviet Socialist Republics) and Mr. COLCLOUGH (United States of America), said that the purpose of the compromise proposal was to ask the Drafting Committee to prepare a text which delegations could then decide whether to accept. That text would be a convention together with a declaratory preambular clause. If the clause were not applicable, the question of the kind of instrument would be reopened. The compromise proposal did not pre-judge the question of a separate convention. On that understanding, he proposed that the Conference should adopt the compromise proposal together with the proposal of Israel.

It was so agreed.

The meeting rose at 6.5 p.m.

TWELFTH PLENARY MEETING

Thursday, 24 April 1958, at 3 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the report of the Fifth Committee (A/CONF.13/L.11, L.20)

1. Mr. TABIBI (Afghanistan), Rapporteur of the Fifth Committee, presented the Committee's report (A/CONF.13/L.11).

2. Mr. SZITA (Hungary) said that the incorporation of the Fifth Committee's recommendations in one of the conventions to be adopted by the Conference was important to the land-locked countries and to the international community alike.

3. His delegation had supported the Fifth Committee's report as a whole, but had voted for part II of its recommendations (A/CONF.13/L.11, para. 26) reluctantly. The Preliminary Conference of Land-locked States had accepted certain principles, the most important being the right of free access to the sea which derived from the fundamental principle of the freedom of the high seas. The principle of the freedom of the high seas would sound hollow indeed to the land-locked countries if the right of free access were not regarded as an inalienable right. Unfortunately, that right had not been expressly recognized in the Swiss proposal adopted by the Fifth Committee.

4. He pointed out in that connexion that neither the memorandum of the Preliminary Conference (A/CONF.13/C.5/L.1) nor the nineteen-power proposal (A/CONF.13/C.5/L.6) had sought to infringe the sovereignty of the States of transit. On the contrary, both documents explicitly safeguarded the rights of those States, and emphasized that they would retain full sovereignty over their territory and further provided that the form in which a land-locked country would exercise its right of access should in each individual case be decided by agreement between the States concerned.

5. In the opinion of his delegation, therefore, the right of the land-locked countries to free access to the sea was something much more positive than the vague recommendations of the Fifth Committee and, although it would vote for those recommendations, it maintained that the principles adopted at the Preliminary Conference did not go beyond the rules of existing international law.

6. Mr. BHUTTO (Pakistan) pointed out that although, under operative paragraph 3 of General Assembly resolution 1105 (XI), the Fifth Committee should have confined itself to a study of the question of free access to the sea of land-locked countries, it had gone much further and made recommendations.

7. He emphasized that the document prepared by the Secretariat had failed to mention the "rights" claimed by the land-locked countries and, as he had already stated in the Fifth Committee, one eminent jurist had gone so far as to deny that States were under a duty to accord land-locked countries the right of transit. In his delegation's view, the seven principles so strongly defended by the land-locked States, at the Preliminary Conference and subsequently, would tend to destroy completely the concept of national sovereignty, and he thought it strange that the land-locked countries should have regarded as unreasonable the attempts made by the coastal States to protect that sovereignty. Despite those considerations, however, the coastal States had magnanimously displayed a spirit of understanding and compromise and had gone more than half-way to meet the claims of the land-locked countries in the interests of agreement.

8. The seven principles adopted by the Preliminary Conference went too far and failed to take account of the realities of international law and relations; any further attempt to extend the rights of the land-locked countries would jeopardize the compromise reached in the Fifth Committee.

9. Mr. TABIBI (Afghanistan) observed that the seven principles contained in the nineteen-power proposal submitted to the Fifth Committee had been supported not only by the land-locked countries but also by other States, on the understanding that they represented basic elements of the freedom of the high seas. In his view, the freedom of the high seas would be undermined if the right of free access to the sea were ignored.

10. He pointed out that operative paragraph 3 of General Assembly resolution 1105 (XI) should be read in conjunction with General Assembly resolution 1028 (XI); clearly, the Assembly's intention had been that the Conference should not only study the question, but should also take decisions. Moreover, the compromise to which the Pakistani representative had referred had certainly not been one-sided, since the land-locked countries had not pressed the nineteen-power proposal to a vote.

11. In conclusion, he said it was generally agreed that the national sovereignty of a State of transit should not be infringed, and in that connexion he pointed out that all the proposals submitted in the Fifth Committee had contained provisions that safeguarded that sovereignty.

12. Mr. SHAHA (Nepal), referring to the Pakistani representative's view that the Fifth Committee had been competent only to study the question of free access, pointed out that an examination of the secretariat