United Nations Conference on the Law of the Sea

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Summary Records of the 20th Plenary Meeting

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TWENTIETH PLENARY MEETING

Sunday, 27 April 1958, at 3.30 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the report of the First Committee (Part II: articles 1, 2, and 4 to 25) (A/CONF.13/L.28/Rev.1, L.38, L.39, L.46, L.47) *(concluded)*

Proposal by Japan and the Netherlands for an additional article

1. Mr. YOKOTA (Japan) introduced the joint proposal by Japan and the Netherlands (A/CONF.13/L.38) to add the following text as article 14 A:

"Any disputes that may arise between States concerning the implementation or application of articles 5, 7 and 12 may be submitted by any of the parties to the International Court of Justice by unilateral application, unless they agree on another method of peaceful settlement."

2. Articles 5, 7 and 12 made use of a number of vague expressions, such as: "deeply indented and cut into" "immediate vicinity", "depart to any appreciable extent", "economic interests peculiar to the region concerned", "clearly evidenced by a long usage" "well-marked identation", "more than a mere curvature of the coast", "so-called 'historic' bays", "historic title" and "by reason of special circumstances". Most States would be unlikely to accept obligations so framed unless they were accompanied by a guarantee of compulsory jurisdiction or arbitration. Since the decision of the International Court of Justice on the Anglo-Norwegian fisheries case[1] referred both to straight baselines and to historic title, disputes arising out of similar references in articles 5 and 7 could also be submitted to the court.

3. The PRESIDENT put the joint proposal to the vote.

The result of the vote was 29 in favour and 28 against, with 4 abstentions. The proposal was not adopted, having failed to obtain the required two-thirds majority.

Article 15

Article 15 was adopted by 68 votes to none, with 2 abstentions.

Article 16

Article 16 was adopted by 65 votes to 1, with 1 abstention.

Article 17

4. Mr. LOUTFI (United Arab Republic) asked that a separate vote be taken on paragraph 4 of article 17. Referring to paragraph 3 of the International Law Commission's commentary to article 17, he said that he wished to vote against paragraph 4 as adopted by the First Committee, and in favour of the International Law Commission's draft, which in no way constituted an infringement of the freedom of navigation.

[1] *I.C.J. Reports, 1951*, p. 116.

5. Mr. SÖRENSEN (Denmark) opposed the motion for a separate vote on paragraph 4. The principle of freedom of navigation was indivisible, and when vessels crossed a portion of the high seas on their way to a port, it was irrelevant whether or not they had to pass through the territorial sea of another State. The effect of a separate vote would be to discriminate between ships passing through the territorial sea of a State other than their flag State on their way from one part of the high seas to another, and ships passing through the same territorial seas on their way from a portion of the high seas to the territorial sea of a third State. The coastal State would be under an equal obligation to respect the right of innocent passage in both cases.

6. Part of the Danish coast bordered an international strait joining two parts of the high seas, and for more than one hundred years his country had maintained freedom of navigation through that strait in the interests of international trade. Such an obligation as that which his country had assumed should be counterbalanced by corresponding rights in other parts of the world, and Denmark accordingly expected that there would be free passage for its ships through straits in the territorial seas of other States.

7. Mr. SHUKAIRI (Saudi Arabia) did not agree with the representative of Denmark that to vote on article 17 in parts would have the effect of limiting freedom of navigation through a territorial sea. That freedom had been safeguarded in articles 15 and 16. The subject the Conference was now considering was passage through straits connecting two parts of the high seas, and the principle of freedom of navigation in those circumstances should be applied in accordance with established principles of international law. Such was the effect of the International Law Commission's text, and a separate vote had been requested on paragraph 4 to enable that text to be reinstated.

The United Arab Republic's motion for a separate vote on paragraph 4 of article 17 was defeated by 34 votes to 32, with 6 abstentions.

Article 17 was adopted by 62 votes to 1, with 9 abstentions.

8. Mr. SHUKAIRI (Saudi Arabia) explained that he had abstained from voting on article 17 because he considered that paragraph 4 was a mutilation of international law and had nothing to do with the principle of freedom of navigation, which had been used as a pretext to introduce ideas foreign to the principles of international law. The rules of law which the Conference was in process of adopting should deal only with general principles, whereas he believed that paragraph 4 had been drafted with one particular case in view. Saudi Arabia would take the necessary steps to protect its national interests against the interpretation and application of paragraph 4.

Article 18

Article 18 was adopted by 72 votes to none, with 2 abstentions.

Article 19

Article 19 was adopted by 72 votes to none.

Article 20

9. Mr. GUNDERSEN (Norway), supported by Mr. NIKOLAEV (Union of Soviet Socialist Republics), asked that a separate vote be taken on the word "generally" in paragraph 1. Articles 20 and 21 dealt with the same subject, and since the word "generally", originally included in article 21, had now been deleted from it, it should also be deleted from article 20 on grounds of consistency.

10. Mr. TUNCEL (Turkey) asked that a separate vote be taken on paragraph 5, to which his delegation objected.

11. The PRESIDENT put the word "generally" in paragraph 1 of article 20 to the vote.

The word "generally" was rejected by 34 votes to 21, with 10 abstentions.

12. The PRESIDENT put paragraph 5 of article 20 to the vote.

Paragraph 5 of article 20 was adopted by 68 votes to 3, with 2 abstentions.

Article 20, as a whole and as amended was adopted by 80 votes to none.

Article 21

Article 21 was adopted by 76 votes to none.

Article 22

Article 22 was adopted, by 62 votes to 9, with 4 abstentions.

13. Mr. LAZAREANU (Romania) explained that he had voted against article 22 because it took no account of the immunity from civil jurisdiction which all government ships should enjoy, regardless of the purpose for which they were used.

14. Mr. NIKOLAEV (Union of Soviet Socialist Republics), Mr. FISER (Czechoslovakia) and Mr. RADOUILSKY (Bulgaria) said that they had voted against article 22 for the same reasons as the representative of Romania.

Article 23

15. Mr. BAILEY (Australia) introduced his delegation's proposal (A/CONF.13/L.46) to add the following paragraph 2 to article 23:

"2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law."

16. The purpose of the amendment was to meet the point raised by the representative of the Philippines at the 41st meeting of the First Committee, when he had asked whether a clause could be added to make it clear that the immunities of government vessels not used for commercial purposes would not be affected by article 23.

17. Mr. STABELL (Norway) supported the Australian proposal.

The Australian proposal was adopted by 71 votes to none, with 4 abstentions.

Article 23, as amended, was adopted by 74 votes to none, with 2 abstentions.

Article 24

18. Mr. SÖRENSEN (Denmark) introduced his delegation's proposal (A/CONF.13/L.39) that, in the event of the text proposed by the First Committee for article 24 not being adopted, that article should be worded as follows:

"1. The coastal State may make the passage of warships through the territorial sea subject to previous notification. Such passage shall be subject to the provisions of articles 15 to 18.

"2. During passage warships have complete immunity from the jurisdiction of any State other than the flag State.

19. Mr. AGO (Italy) asked that a separate vote be taken on the words "authorization or" in paragraph 1 of article 24.

20. Mr. LOUTFI (United Arab Republic), supported by Mr. FISER (Czechoslovakia), opposed the motion for a separate vote on those words. He believed that the coastal State had a right to regulate the passage of warships through its territorial sea and that such passage should be subject to previous authorization or notification.

21. Mr. ULLOA SOTOMAYOR (Peru), supporting the motion for a separate vote, said that the long-established practice of allowing the innocent passage of warships through the territorial sea subject only to prior notification had by force of custom become a part of international law. He was opposed to the addition of the requirement of previous authorization.

22. Mr. NIKOLAEV (Union of Soviet Socialist Republics), speaking to a point of order, said that the Danish proposal was in fact not a proposal but an amendment, seeking the deletion of the words "authorization or" from paragraph 1. That amendment should therefore be voted upon before a decision was taken regarding a separate vote on the words "authorization or".

23. The PRESIDENT drew attention to the fact that the Danish proposal was intended as an alternative text for article 24 if the text approved by the First Committee were not adopted. The First Committee's text must therefore be voted upon first, and a motion for voting on that text in part was therefore in order.

24. Mr. LAZAREANU (Romania) supported the point of order raised by the Soviet Union representative. The effect of regarding the Danish document as a proposal and not an amendment would be that two votes would be taken on the same subject. It was a mere procedural device intended to enable the opponents of the requirement of prior authorization to secure the deletion of the words "authorization or" by simple majority. If they were not successful in the separate vote, they would have a second bite at the cherry when the Danish document was voted on.

25. The PRESIDENT said that the Danish document had been submitted as a proposal and not as an amendment, and that the text approved by the First Committee must therefore be voted on first according to the usual practice. After that vote had taken place, the Conference would be free to decide whether or not there should be a vote on the Danish proposal.

26. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) supported the views expressed by the Soviet Union and Romania.

27. The PRESIDENT put to the vote the Italian motion that a separate vote be taken on the words "authorization or" in paragraph 1 of article 24.

The Italian motion was adopted by 50 votes to 24, with 5 abstentions.

28. The PRESIDENT put to the vote the words "authorization or" in paragraph 1 of article 24.

The words "authorization or" were rejected by 45 votes to 27, with 6 abstentions.

29. Mr. NICOLAEV (Union of Soviet Socialist Republics) explained that he had voted for the retention of the words "authorization or" in article 24, paragraph 1, because he considered that in the exercise of its sovereign rights every coastal State could claim the right to subject foreign warships wishing to enter its territorial waters to the requirement of prior authorization. That principle was consecrated in international law and in State practice. His delegation would vote against article 24 as a whole because those words had been deleted.

30. Mr. SÖRENSEN (Denmark) observed that the deletion of the words "authorization or" entailed a consequential amendment to the second sentence of the paragraph. There could now be no question of granting passage, and the sentence should be amended to read "*Such passage shall be* subject to..."

31. Mr. SHUKAIRI (Saudi Arabia) said that he had voted against the deletion of the words "authorization or" and would vote against article 24 as a whole. It was a necessary prerequisite of the exercise of responsible authority under international law that the grant of passage to warships through the territorial sea should be subject to authorization. A warship could not be regarded as a vehicle of peaceful communication, and unauthorized passage was tantamous to violation of the rights of coastal States and to aggression against them.

32. Mr. TUNCEL (Turkey) explained that he had voted against the deletion of the words "authorization or" because of his country's domestic legislation. Turkey subjected the passage of all warships to authorization and it could not be said that such authorization was against customary law. He would vote against article 24 as amended and, if it were adopted, request that it be included among the articles to which reservations could be admitted.

33. Sir Claude COREA (Ceylon) said that he had voted against the deletion of the words "authorization or", which rendered the whole text nugatory. The International Law Commission had included those words after long deliberations, and the Conference must take the views of those expert jurists into account. The whole idea of the safeguards provided by the territorial sea had been extinguished by the decision; its effect was indeed to subordinate the sovereignty of the coastal State to that of the flag State of the warship effecting passage.

34. Mr. SIKRI (India) said that his delegation's position on article 24 was absolutely clear. India regarded the passage of warships through its territorial sea as a courtesy, and in practice never refused such passage. But it could not regard such passage as a right, and reserved its own right to refuse it. He would vote against article 24 and, if it were adopted, his government would enter reservations to it.

35. Mr. LOUTFI (United Arab Republic) reiterated the view he had expressed when opposing the Danish proposal, and said that he would be obliged to vote against article 24.

36. Mr. LAMANI (Albania), Mr. SUBARDJO (Indonesia), Mr. DARA (Iran) and Mr. RADOUILSKY (Bulgaria) said that, the words "authorization or" having been deleted, they would vote against article 24.

37. Mr. QUARSHIE (Ghana) said that he would vote against article 24, since a vote for that article by weaker countries would be tantamount to aiding and abetting their own extermination. He moved the reconsideration of the International Law Commission's original text of the article under rule 32 of the rules of procedure.

38. The PRESIDENT said that the motion would be considered after the vote on article 24.

39. Mr. GLASER (Romania) observed that the Conference had voted on articles defining the rights of coastal States over their territorial waters. Those articles had established the principle that a coastal State was master of its territorial sea; in order not to hamper navigation, however, the right of innocent passage had been established. In principle, a merchant or passenger ship could pass through territorial waters because it presented no threat to the security of the coastal State. The case of a warship, which carried arms, was quite different; if an armed visitor came to a house, the least he could do was to ask permission to enter. Accordingly, the International Law Commission had included in article 24 the elementary precaution that authorization or notification should be required of warships entering territorial waters, a principle which was in accordance with Romanian legislation. He would therefore vote against article 24, and announced that, if it were adopted, his government would be unable to sign the convention without making a reservation to that article.

40. Mr. CAABASI (Libya) said that he would vote against article 24 as amended, because his delegation regarded the principle of the passage of warships through territorial waters as a courtesy and not a right. Furthermore, unauthorized passage was prejudicial to the sovereignty of the coastal State.

41. Mr. DEAN (United States of America) said that it was generally recognized, and laid down in many

authoritative legal texts, that innocent passage for warships through the territorial waters of other States was admissible in time of peace.

42. He drew the Romanian representative's attention to article 25, under which warships were called upon to comply with coastal regulations. The rights of coastal States were fully protected by that article in accordance with the customary provisions of international law. The United States of America had never required prior authorization for warships entering its territorial waters, and that practice was followed by many other countries.

43. Mr. GLASER (Romania) could not agree with the United States representative that the right of a coastal State to security and to the exercise of its sovereign rights was adequately safeguarded by the observance of coastal regulations by a warship which had already entered its territorial waters. The United States representative had cited eminent authorities; but such outstanding jurists as the members of the International Law Commission had seen fit to include article 24 in their draft rules. The meaning of articles 24 and 25 taken together was that a warship required authorization to pass into territorial waters and could not thereafter disregard the appropriate regulations of the coastal State.

44. Mr. TUNKIN (Union of Soviet Socialist Republics) was surprised that the United States representative now considered that the passage of warships through territorial waters was a right. The position of the United States delegation to the Conference for the Codification of International Law held at The Hague in 1930 had been that such passage was based on international courtesy and was not a right. He (Mr. Tunkin), too, was unable to agree that article 25 adequately protected the rights of coastal States.

45. Mr. AGO (Italy) said that the right of innocent passage by warships through territorial waters was one of the oldest rights in international law, and was not a simple matter of international courtesy.

46. The PRESIDENT put article 24, as amended, to the vote.

At the request of the representative of Saudi Arabia, *a vote was taken by roll-call.*

Australia, having been drawn by lot by the President, was called upon to vote first.

In favour: Australia, Belgium, Brazil, Cambodia, Canada, Chile, China, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, France, Federal Republic of Germany, Guatemala, Haiti, Honduras, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Spain, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam.

Against: Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Ghana, Hungary, India, Indonesia, Iran, Iraq, Republic of Korea, Libya, Federation of Malaya, Poland, Romania, Saudi Arabia, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Albania.

Abstaining: Austria, Finland, Greece, Holy See, Laos, Liberia, Mexico, Nepal, Switzerland, Uruguay, Afghanistan, Argentina.

The result of the vote was 43 in favour and 24 against, with 12 abstentions.

Article 24, as amended, was not adopted, having failed to obtain the required two-thirds majority.

Article 25

Article 25 was adopted by 76 votes to none, with 1 abstention.

Resolution on the Régime of Historic Waters

The resolution on the régime of historic waters was approved by 77 votes to none, with 3 abstentions.

47. Mr. COMAY (Israel) said he had voted for the resolution, but was not sure whether there was in fact such a single and unified concept as "historic waters" or "historic bays" and whether it could be subject to a single legal régime. His delegation therefore reserved its judgement on that question.

48. Mr. TRUJILLO (Ecuador) explained that he had voted for articles 4, 5 and 10 on the understanding that their provisions did not conflict with Ecuadorian national legislation on the subjects at issue. The same consideration applied to all the articles for which Ecuador had voted.

Motions for re-consideration

49. The PRESIDENT called upon the Portuguese representative to introduce his motion for reconsideration of article 13, paragraph 2. Only two speakers opposing the motion would be called upon.

50. Mr. BOAVIDA (Portugal) observed that paragraph 2 of article 13 had failed to secure adoption by the Conference by a single vote, whereas there had been 17 abstentions. The debate at the 65th meeting of the First Committee had clearly shown the need for a provision to cover estuaries. He hoped that those delegations which had abstained would on reflection provide the two-thirds majority required for the reconsideration of a provision which the International Law Commission had not regarded as redundant.

51. Mr. GARCIA ROBLES (Mexico) said that the First Committee and its drafting committee had spent considerable time on the subject and that the paragraph had been adopted at a late stage, in the absence of many delegations. The régime of estuaries was by no means clear and the majority of the First Committee had seemed to favour the United States proposal that paragraph 2 be deleted. He would vote against the Portuguese motion, and, if it were carried, would vote against article 13, paragraph 2.

52. Mr. TRUJILLO (Ecuador) also opposed the Portuguese motion. Many delegations had been absent when the paragraph had been adopted in the First Committee and the representatives of the International

Law Commission themselves had shown little enthusiasm for its inclusion.

The Portuguese motion was rejected by 36 votes to 17, with 17 abstentions.

53. Mr. QUARSHIE (Ghana), moving the reconsideration of the original text of article 24, including the words "authorization or", said that the original article provided protection for the coastal rights of small States in particular. He could not agree with the United States representative that article 25 provided adequate protection.

The Ghanian motion was rejected by 37 votes to 26, with 8 abstentions.

ADOPTION OF THE CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

54. Mr. SIKRI (India) observed that since almost all the articles adopted by the Second Committee had been approved by an overwhelming majority, a separate convention embodying them was perfectly feasible. Although some articles considered by the First Committee remained in dispute and it was still possible that several of them might have to be reconsidered after a short interval, he proposed that each of the two sets of articles should be embodied in a separate convention, one covering the results of the work of the First Committee.

55. Mr. KRISPIS (Greece) said that article 66 (contiguous zone) was closely linked to the subject matter dealt with by the Second Committee and should more properly be placed in the convention embodying the articles adopted by that committee.

56. Mr. NIKOLAEV (Union of Soviet Socialist Republics) and Mr. LOUTFI (United Arab Republic) supported the Indian representative's proposal. The Second Committee had dealt with all articles relating exclusively to the high seas, which should be embodied in a single convention, whereas the First Committee had dealt with the territorial sea and contiguous zone.

57. Mr. QUADROS (Uruguay) and Mr. TRUJILLO (Ecuador) suggested that convenience rather than strict legal consideration should govern the arrangement of articles in separate conventions; to embody them all in a single convention would give rise to confusion.

58. Mr. DREW (Canada) said that article 66 should be embodied in the convention dealing with the articles dealt with by the First Committee. If the more controversial articles were embodied in a separate convention, it would be easier to reconsider, in due course, the principles of maritime law involved.

59. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) observed that, in the light of the debate preceding the adoption of the articles, it would be preferable to incorporate article 66 in the convention containing the articles dealing with the territorial sea. The two subjects (territorial sea and contiguous zone) had always been linked, even in the proposals put forward by Canada and the United States.

60. Replying to the PRESIDENT, Mr. KRISPIS (Greece) said that he would not press for the transfer of article 66 to the convention dealing with the high seas.

61. Sir Gerald FITZMAURICE (United Kingdom) said that, while he had no wish to oppose the idea of separate conventions, he felt very strongly that article 66 should be in the convention dealing with the régime of the high seas. To include it in a convention dealing with the territorial sea would be bound to create the mistaken impression that the contiguous zone was an extension of the territorial sea, whereas in fact it was part of the high seas, as was clear from the opening phrase of article 66, paragraph 1: "In a zone of the high seas contiguous to its territorial sea..." The provision on the contiguous zone dealt only with customs, fiscal, immigration or sanitary regulations, and did not involve the concept of sovereignty, inherent in the concept of the territorial sea.

62. Mr. DEAN (United States of America) endorsed the United Kingdom representative's position with regard to article 66.

63. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that he was surprised at the apparent reversal of their position by the United Kingdom and United States representatives; in the past, they had treated article 66 as being related to article 3.

64. Sir Gerald FITZMAURICE (United Kingdom) observed that article 66 had been dealt with by the International Law Commission in the part of their report concerning the régime of the high seas. He moved that a separate vote should be taken on the Indian proposal for the inclusion of article 66 in the convention embodying the decisions of the First Committee.

65. Mr. DREW (Canada) pointed out that article 66 had, with the support of the United Kingdom and United States delegations, been dealt with by the First Committee. That procedure could have been adopted only in the belief that article 66 formed part of the subject matter to be dealt with by the Committee considering the régime of the territorial sea.

66. Mr. GARCIA ROBLES (Mexico) supported the Indian proposal for practical reasons. Except for the opening phrase, the whole of article 66 dealt with matters pertaining to the territorial sea.

67. Mr. DEAN (United States of America) maintained that the United States delegation had entered the Conference strongly believing in the validity of the three-mile limit for the territorial sea, a belief it still held. It had also believed that no exclusive fishing rights outside that limit would be canvassed. In order to bring the Conference to a successful conclusion, it had submitted a proposal for the extension of the territorial sea to six miles, with a contiguous zone of a further six miles (A/CONF.13/L.29). As that attempted compromise had been rejected, the United States delegation had reverted to its belief that the three-mile limit was the correct one and that everything beyond that limit was part of the high seas.

68. Mr. BOAVIDA (Portugal) believed that article 66 should be connected with the régime of the high seas,

in accordance with the arrangement adopted in the International Law Commission's report.

69. Mr. SHUKAIRI (Saudi Arabia) remarked that the question whether the contiguous zone was part of the high seas was not at issue at all; the real issue at that stage was whether there should be separate conventions. Although full sovereignty was not exercisable in the contiguous zone, the zone was certainly in some respects subject to the coastal State's authority. The point raised by the United States representative about the breadth of the territorial sea was entirely irrelevant, because, in any case, the territorial sea would have to be measured from the baseline. The questions of the territorial sea and the contiguous zone had always been dealt with together by the First Committee, and when the Ecuadorian delegation had proposed that the consideration of articles 1, 2, 3 and 66 be deferred, even the United Kingdom and United States delegations had agreed that those articles formed a unit. It was on that assumption that the articles in question had been discussed, and it was too late now to go back on the assumption.

70. Mr. DARA (Iran) said that the fact that the United States proposal for a six-mile limit for the territorial sea had failed to obtain the requisite majority did not in any way imply that the opposition to a return to the three-mile limit had been dropped. A great many delegations would not accept servitude to the large maritime Powers which wished to fish in the waters of other States. The Conference had buried the notion of the three-mile limit. Its failure to delimit the territorial sea did not mean that the article on the contiguous zone had to be transferred to the convention dealing with the régime of the high seas.

71. Mr. GROS (France) said that he fully concurred in the United States position. Concessions were made for the sake of compromise in all negotiations, but if the negotiations failed, such concessions became void. He did not agree for a moment with the Iranian representative that the three-mile limit had been discarded; all proposals to alter it had simply been dropped. In positive law the position remained precisely what it had been before the Conference had opened, and the opinion of all authorities that the contiguous zone was part of the high seas remained intact. It was true that articles 1, 2, 3 and 66 had been dealt with as a group, but that had been simply a convenient arrangement for the purposes of discussion.

72. Mr. AGO (Italy) deprecated the reintroduction of matters exhaustively discussed on previous occasions. Article 66 had been dealt with in conjunction with article 3 by the First Committee for the simple reason that there had been some hope of successful negotiation on both articles by means of reciprocal concessions. There were no grounds for altering the position of article 66.

73. Mr. SIKRI (India) explained that his proposal was simply that all articles dealt with by the First Committee — including article 66 — be embodied in a separate convention.

74. Mr. TRUJILLO (Ecuador) opposed the United Kingdom motion for a separate vote on the question of the proper context of article 66.

75. Sir Gerald FITZMAURICE (United Kingdom) said that he was perfectly within his rights to ask for a separate vote on the inclusion of article 66 in the convention which would embody the decisions reached by the First Committee. In the contiguous zone the coastal State exercised police authority only; the subject of that zone was not connected with that of exclusive fishery zones, which might certainly be a subject for further negotiation. That was precisely why it would be undesirable for a provision on the contiguous zone to be merged with provisions relating to the territorial sea. By reason of its provisions, article 66 should be automatically included in a convention dealing with the régime of the high seas.

76. The PRESIDENT put the United Kingdom motion to the vote.

The United Kingdom motion was rejected by 38 votes to 29, with 6 abstentions.

The Indian proposal that the results of the work of the First Committee relating to the territorial sea and the contiguous zone be embodied in a separate convention was adopted by 51 votes to 14, with 14 abstentions.

Entry into force

77. The PRESIDENT invited the Conference to consider the question of the number of ratifications or accessions required to bring the convention into force. The Drafting Committee in its report on final clauses to be included in the conventions (A/CONF.13/L.32) recommended twenty-two.

78. Sir Gerald FITZMAURICE (United Kingdom) proposed that the number should be higher, at least twenty-five, and if possible thirty, in view of the increase in the membership of the United Nations. The States whose ratification or accession brought the convention into force should include a reasonable proportion of maritime Powers; but if the required number of ratifications or accessions were set as low as twenty-two, a majority of the States whose ratifications brought the convention into force might be landlocked countries; and that would be unfortunate, desirable though it was that landlocked countries should ratify or accede to the convention.

79. The PRESIDENT called for a vote on the proposal that the number of ratifications or accessions required to bring the convention into force should be thirty.

The result of the vote was 32 in favour and 24 against, with 15 abstentions. The proposal was not adopted, having failed to obtain the required two-thirds majority.

80. The PRESIDENT then put to the vote the proposal that the required number should be twenty-two.

The proposal was adopted by 50 votes to 4, with 11 abstentions.

Reservations

81. Mr. KRISPIS (Greece) said that if reservations were to be allowed, he would propose that article 7 should be included amongst the articles to which reservations were permissible.

82. Mr. TUNCEL (Turkey) said that the Conference should make a choice between the two alternative reservations clauses proposed by the Drafting Committee (A/CONF.13/L.32).

83. Mr. DEAN (United States of America) proposed that a clause should be included in the convention stating that no reservations would be admissible.

84. Mr. DREW (Canada) supported the proposal.

85. Mr. LOUTFI (United Arab Republic) was of the opinion that reservations should be allowed.

86. Mr. SHUKAIRI (Saudi Arabia) said that, owing to the importance of the rules which the articles contained and to the fact that the question of the breadth of the territorial sea had been left to be decided at a future conference, reservations should be allowed, at least until the question of the breadth of the territorial sea had been decided.

87. Mr. NIKOLAEV (Union of Soviet Socialist Republics) expressed the opinion that, if the convention did not contain a clause debarring reservations, reservations were permissible under the accepted rules of international law.

88. Mr. QUADROS (Uruguay) supported that view. Alternatively, reservations should be permissible to all articles except those in respect of which it was expressly stated in the convention that reservations would not be allowed.

89. Mr. MELO LECAROS (Chile) said that to disallow reservations would be to make the convention practically useless. As the discussions in the First Committee had shown, some countries had specific objections to certain provisions, and if reservations were excluded altogether those countries would not sign the convention. Thus, all the useful work done on other articles would have been in vain.

90. Mr. BARTOS (Yugoslavia) supported the view expressed by the representative of the United States of America. Many of the articles in section I of the convention as approved were concerned with questions of delimitation, and if reservations were allowed the whole system would be unstable. The articles in section II were concerned with the duties and power of States; but there was no need for reservations to those provisions, since they were so devised as to preclude undue rigidity of application.

91. Mr. BOAVIDA (Portugal) supported the United States proposal.

92. Mr. BOCOBO (Philippines) said that to prohibit reservations would be vainglorious, since such a prohibition would imply that the Conference had produced a perfect instrument.

93. Mr. AGO (Italy) supported the views expressed by the representative of Yugoslavia. Even though, in the form in which they had finally been approved, many of the articles did not represent what his delegation had wanted, he was of the opinion that the convention would be a much more useful instrument if it debarred reservations. If, on the other hand, the Conference decided that reservations to all or some of the articles should be permissible, his delegation would have reservations to make.

94. Mr. SIKRI (India) proposed that there should be no reservations clause at all in the convention.

95. Mr. CARMONA (Venezuela) and Mr. GARCIA ROBLES (Mexico) supported the Indian representative's proposal.

96. Mr. GUNDERSEN (Norway) asked what assurance his delegation would have, if it supported the second of the two alternatives submitted by the Drafting Committee, that the articles to which reservations were permissible would include those to which his delegation wished to make reservations.

97. The PRESIDENT said that if that alternative were adopted, he would invite delegations to enumerate the articles to which they wished to make reservations.

98. Mr. BAILEY (Australia) moved that the Conference should vote on the proposals relating to reservations, not in the order in which those proposals had been submitted, but in a different order, as it was empowered to do under rule 41 of the rules of procedure. The order he suggested was: the Indian representative's proposal; the United States representative's proposal; and alternative II proposed by the Drafting Committee (A/CONF.13/L.32).

99. If the Indian representative's proposal was adopted, there would be no need to consider the other two and if the United States representative's proposal was adopted, there would be no need to consider the third.

100. The PRESIDENT put to the vote the Australian representative's motion that the normal order of voting be modified in the manner suggested.

The motion was adopted by 63 votes to none, with 2 abstentions.

101. The PRESIDENT put to the vote the Indian representative's proposal that the convention should not contain any clause dealing with reservations.

The proposal was adopted by 43 votes to 16, with 8 abstentions.

102. Sir Gerald FITZMAURICE (United Kingdom) said he had voted against the Indian proposal because experience had shown how unwise it was not to state unequivocally whether reservations could be made to a particular convention.

103. He disagreed with the view expressed by the representatives of the USSR and Uruguay that, in the absence of a clause relating to reservations, States were free to make whatever reservations they wished. As had been made clear in the advisory opinion of the International Court of Justice in the matter of reservations to the Convention on Genocide,[1] any reservation made by a particular State would be valid only *vis-à-vis* States which accepted it. No State could be bound against its will by a reservation made by another State.

[1] *I.C.J. Reports, 1951,* p. 15.

104. Mr. BARTOS (Yugoslavia) said he had voted for the Indian proposal because he thought it would discourage reservations. That view was borne out by the advisory opinion of the International Court of Justice in connexion with the Genocide Convention.

105. Mr. KRISPIS (Greece) said he had voted for the Indian proposal because he took it to be an accepted rule of international law that, if a convention did not contain a clause relating to reservations, reservations were permitted.

106. Mr. GROS (France) drew attention to the diametrically opposed conclusions which had been drawn from the Indian proposal by the two preceding speakers.

107. He supported the views expressed by the representative of the United Kingdom on the subject of reservations.

108. Mr. VERZIJL (Netherlands) supported the views expressed by the representatives of France and the United Kingdom.

109. Mr. SHUKAIRI (Saudi Arabia) was of the opinion that the absence of a reservations clause meant that reservations were neither expressly permitted nor prohibited. Consequently, any State was entitled to make whatever reservations it wished.

110. Mr. QUADROS (Uruguay) expressed the same opinion.

111. Mr. BOCOBO (Philippines) said he had voted for the Indian proposal to avoid having to vote for any proposal which would single out some particular articles as capable of admitting reservations.

112. Mr. LAZAREANU (Romania) said that the situation was confused because the Conference had failed to adopt a precise text. If the United States proposal had been adopted, the position would have been clear.

113. Mr. DEAN (United States of America) supported the views expressed by the representative of the United Kingdom. If governments could claim that they were free to make any reservations they wished, the whole work of the Conference would have been in vain, since there would be no inducement to accede to a convention if the right to formulate reservations was unrestricted.

Revision

114. The President pointed out that in the draft final clauses prepared by the Drafting Committee (A/CONF. 13/L.32) a five-year period was provided for during which no revisions could be requested.

115. Mr. GARCIA AMADOR (Cuba) observed that the adoption of such a provision might hamper the work of any Conference which was convened before the expiry of that five-year period.

116. Mr. SIKRI (India) suggested that in the clause proposed by the Drafting Committee the words "After the expiration of a period of five years from the date on which this convention shall enter into force" should be deleted.

117. Sir Claude COREA (Ceylon) suggested that it might be more appropriate to consider the subject of revision after the three proposals relating to the convening of another conference had been dealt with. If, however, the Indian proposal were adopted, the matter could be settled immediately.

118. Sir Gerald FITZMAURICE (United Kingdom) objected to the Indian proposal. The chief object of the Conference had been to bring some stability and certainty into the international law of the sea. It was desirable at least to allow for the expiry of an initial period, during which the practical operation of the convention could be observed, before States could ask for revision.

119. Mr. SIKRI (India) observed that the clause recommended by the Drafting Committee contained a provision to the effect that the General Assembly of the United Nations should decide upon the steps, if any, to be taken in respect of requests for revision. Consequently, it was by no means a foregone conclusion that such requests would be granted. Since the crucial question of the breadth of the territorial sea had not been settled, it was desirable to leave the way open for a subsequent conference to revise earlier decisions.

120. Mr. NIKOLAEV (Union of Soviet Socialist Republics) agreed with the representative of the United Kingdom that it would be wrong to delete the provision for an initial five-year period during which no revisions could be requested. Although the question of the breadth of the territorial sea had not been settled, many of the decisions that had been reached related to the régime of the territorial sea, and some time should be allowed to elapse before those decisions could be revised. He was therefore in favour of adopting a revision clause similar to that adopted in the case of the convention prepared by the Second Committee.

121. Mr. QUADROS (Uruguay) observed that the revision clause recommended by the Drafting Committee provided a sufficient safeguard against the possibility that any and every request for revision might be granted.

122. The PRESIDENT put to the vote the revision clause recommended by the Drafting Committee (A/CONF.13/L.32).

The clause was adopted by 61 votes to one, with 8 abstentions.

123. Mr. MELO LECAROS (Chile) said he had voted for the text recommended by the Drafting Committee on the understanding that it did not prejudge the decision to be adopted at a later stage by the Conference concerning the holding of a further conference to complete the gaps in the work of the present conference.

Notifications

124. Sir Gerald FITZMAURICE (United Kingdom) suggested that, in view of the decision that the convention should not contain a clause relating to reservations, sub-section (*d*) of the notifications clause recommended by the Drafting Committee should be reconsidered.

125. Since the articles dealt with by the First Committee were to be embodied in a separate convention, he would ask that the convention should include a provision similar to that incorporated in the convention prepared by the Second Committee "The provisions of this convention shall not affect conventions or other international agreements already in force as between the States parties to them."

It was so agreed.

126. The PRESIDENT put to the vote, as a whole, the convention on the territorial sea and the contiguous zone, as adopted in the course of the meeting and during the 14th, 15th and 19th plenary meetings.

The Convention on the Territorial Sea and the Contiguous Zone, as a whole, was adopted by 61 votes to none, with 2 abstentions.

The meeting rose at 8.15 p.m.

TWENTY-FIRST PLENARY MEETING

Sunday, 27 April 1958, at 10.10 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

STATEMENTS BY THE REPRESENTATIVES OF GUATEMALA, MEXICO AND THE UNITED KINGDOM

1. Mr. AYCIENENA SALAZAR (Guatemala) said that his delegation reserved, in respect of the territory of Belize, all the rights accorded to States by the Conference.

2. Mr. GARCIA ROBLES (Mexico) said that the position of his government with regard to the question of Belize was well known. If a change were to occur in the legal status of that territory, his government would have claims to make to the territory.

3. Sir Gerald FITZMAURICE (United Kingdom), referring to the statements of the representatives of Mexico and Guatemala, said that the territory in question was British territory.

4. Mr. AYCINENA SALAZAR (Guatemala) said that his delegation could not accept the statement by the representative of Mexico, since the problem concerned Guatemala alone. The attitude of the United Kingdom delegation was logical, but the United Kingdom was gradually withdrawing from all its colonies. His previous statement was based on the assumption that the United Kingdom might one day leave the territory of Belize.

Proposals for the convening of a new United Nations conference on the law of the sea (A/CONF.13/L.10, L.25, L.43, L.49)

5. Mr. ULLOA SOTOMAYOR (Peru) introduced his delegation's proposal regarding the periodic reconvening of a United Nations conference on the law of the sea (A/CONF.13/L.10). The idea behind the proposal was that the Conference should meet at regular intervals in order to examine problems relating to new developments in the law of the sea and to the practical application of the conventions which had been adopted. The Conference had made great progress and had introduced many innovations. The law of the sea would continue to evolve, and the questions of the territorial sea and fishing zones had not been decided. For that reason his delegation proposed that the General Assembly should be requested to call another United Nations conference on the law of the sea, after the expiry of a period of five years, by which time States would have had an opportunity to observe the practical operation of the instruments adopted by the Conference.

6. Mr. GARCIA AMADOR (Cuba), introducing his delegation's proposal (A/CONF.13/L.25), explained that it not only dealt with the necessity of convening another conference to re-examine the questions left unsettled, but also sought to draw attention to the ramarkable achievements of the present conference. As he had pointed out in the First Committee, the problem of the territorial sea should not be regarded in the same way as it had been at the conference of The Hague in 1930, in case failure to solve it might give the impression that the whole conference had been a failure. At The Hague, the territorial sea had been the sole subject of discussion, whereas at Geneva, twenty-eight years later, the task was codification of the whole of the law of the sea.

7. Far from being a failure, the Geneva conference had achieved success beyond the hopes of the most optimistic. It had approved a number of instruments on very important matters covering most of the existing law of the sea. In particular, it had drawn up two instruments on entirely new subjects which had hardly been considered before the end of the Second World War — the continental shelf and the conservation of the living resources of the high seas. Those remarkable achievements should be emphasized, so that the public would not think the Conference a failure merely because it had been unable to solve the problem of the territorial sea, like The Hague conference before it. That was the purpose of the first paragraph of the Cuban proposal.

8. It should be frankly admitted, however, that the Conference had not found it possible to reach agreement on the breadth of the territorial sea, in spite of all the efforts made to do so. That fact was recognized in the Cuban proposal. In the opinion of his delegation the Conference should not close without recognizing the desirability of recommencing its efforts to reach agreement on the breadth of the territorial sea with a view to completing its work by producing a real code. Accordingly, the operative part of the Cuban proposal requested the General Assembly "to study, at its fourteenth session in 1959, the advisability of convening a second international conference of plenipotentiaries for further consideration of the questions left unsettled by the present conference."

9. Turning to the Peruvian proposal (A/CONF.13/L.10) he said that there were technical difficulties which, in his opinion, would make it impossible to establish a rigid system of regular conferences. Moreover, judging from the opinions expressed during the discussions, he thought the interval suggested before the first of the periodic conferences was too long. However, the idea was a good one and the Cuban proposal