United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Summary Records of the 7th Plenary Meeting

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FIFTH PLENARY MEETING

Tuesday, 18 March 1958, at 10.30 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Note verbale addressed to the President of the Conference by the Secretary-General of the United Nations (A/CONF.13/L.4)

1. The PRESIDENT said that, annexed to the note verbale addressed to him by the Secretary-General of the United Nations (A/CONF.13/L.4), were two communications constituting formal notification of the unification of Egypt and Syria to form a single State — the United Arab Republic — and of the election of President Gamal Abdel Nasser as its president.

2. On placing the Secretary-General's communication before the Conference, he wished to welcome Mr. Omar Loutfi, leader of the delegation of the United Arab Republic, and to invite him to convey his congratulations to President Nasser.

3. Mr. TABIBI (Afghanistan), on behalf of the African and Asian States represented at the Conference, offered their warmest congratulations to the United Arab Republic.

4. Mr. DEAN (United States of America) said it was his government's view that, as a consequence of the voluntary union of Egypt and Syria following a plebiscite, the United Arab Republic was the successor of those States in all organs of the United Nations. He extended his government's good wishes to the new republic, and welcomed its representatives to the Conference.

5. Mr. TUNKIN (Union of Soviet Socialist Republics), after welcoming the delegation of the United Arab Republic, said that the Soviet Union Government had decided to recognize the United Arab Republic as an independent and sovereign State, and had made known its willingness to continue with that State the friendly relations it had formerly maintained with Egypt and Syria.

6. Mr. BARTOS (Yugoslavia) observed that the Yugoslav Government had extended *de jure* recognition to the United Arab Republic on the day of its creation. The Yugoslav delegation welcomed the representatives of the new Arab State to the Conference.

7. Mr. SEN (India), Mr. BHUTTO (Pakistan), Mr. GRIGOROV (Bulgaria), Mr. LAMANI (Albania), Mr. GEAMANU (Romania), Mr. KRISPIS (Greece), Mr. MATINE-DAFTARY (Iran), and Mr. LESCURE (Argentina) on behalf of the Latin-American States represented at the Conference, and Mr. SHUKAIRI (Saudi Arabia) on behalf of the Arab States, associated themselves with the welcome extended by the President to the delegation of the United Arab Republic.

8. Mr. LOUTFI (United Arab Republic) expressed his thanks for the congratulations offered to his delegation on the occasion of the establishment of the United Arab Republic. He had been deeply touched by the good wishes addressed to his country.

9. In its international relations, the United Arab Republic would be guided by the principles of the Charter, and would collaborate with the United Nations in putting them into effect. Acting in a spirit of co-operation and conciliation, his delegation would do all in its power to ensure the success of the Conference.

The meeting rose at 11.15 a.m.

SIXTH PLENARY MEETING

Monday, 14 April 1958, at 3 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Report by the General Committee on the progress of the work of the Conference and on the appointment of the Drafting Committee (A/CONF.13/L.9)

1. The PRESIDENT drew attention to the third report of the General Committee (A/CONF.13/L.9), which contained certain recommendations concerning the organization of the work of the Conference. The General Committee recommended, in the first place, that each committee should decide as soon as possible on any recommendations it would make to the Conference regarding the kind of instrument or instruments required to embody the results of its work, and what final clauses, if any, were necessary. Secondly, the General Committee proposed that the committees should complete their work by certain given dates. Thirdly, it recommended that the closing date of the Conference should be put back from Thursday, 24 April, to Saturday, 26 April.

The recommendations of the General Committee concerning the organization of the work of the Conference were adopted.

2. The PRESIDENT announced that the General Committee had also recommended, pursuant to rule 49 of the rules of procedure, that the Conference appoint a Drafting Committee composed of nine members. The names proposed by the General Committee were: Mr. Liu (China), Mr. Zourek (Czechoslovakia), Mr. Correa (Ecuador), Mr. Gros (France), Mr. Bhutto (Pakistan), Mr. Lacleta (Spain), Mr. Tunkin (Union of Soviet Socialist Republics), Sir Gerald Fitzmaurice (United Kingdom) and Mr. Dean (United States of America). Each member would, of course, have the right to nominate an alternate.

The General Committee's recommendations concerning the appointment of the Drafting Committee of the Conference were adopted.

The meeting rose at 3.15 p.m.

SEVENTH PLENARY MEETING

Monday, 21 April 1958, at 10.15 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of proposals concerning the settlement of disputes (A/CONF.13/BUR/L.3, L.5, L.6)

1. The PRESIDENT suggested that the delegations of Colombia, the Netherlands and Switzerland, which

sponsored the various proposals on the judicial or arbitral settlement of disputes, should consult with the Drafting Committee with a view to working out a unified text.

2. Mr. WERSHOF (Canada) thought that the Committee should first hear the sponsors of the various proposals and hold at least a preliminary discussion. The Colombian and Netherlands proposals (A/CONF. 13/BUR/L.5 and L.6) advocated the inclusion of a new article in the body of the instrument to be adopted, while the Swiss proposal (A/CONF.13/BUR/L.3) suggested that the whole question of judicial settlement should be covered by a separate protocol. That seemed to be a fundamental difference, on which representatives should have the opportunity to state their views.

3. Mr. RUIZ MORENO (Argentina) supported the Canadian representative's suggestion.

4. Mr. RUEGGER (Switzerland), explaining the Swiss proposal (A/CONF.13/BUR/L.3), said that the question of clauses on the settlement of disputes appeared very important, as any decision in the matter by the Conference would have much persuasive force as a precedent.

5. The Swiss delegation was convinced that any codification of international law required, as an indispensable corollary, the establishment of a system of compulsory arbitration or judicial settlement. It was not sufficient to state the law in general terms without providing for its effective application by an impartial arbitrator or judge. Switzerland was well qualified to speak on the subject, as arbitration had always been one of the cardinal points of its foreign policy. It had been one of the very first signatories of the optional clause of Article 36 of the Statute of the Permanent Court of International Justice, and had since then entered into some twenty treaties providing for arbitration or the judicial settlement of disputes. In each case, Switzerland had gone as far towards compulsory arbitration as its partner had been ready to accept. In that connexion, he stressed that the Swiss Government would welcome the opportunity of concluding similar treaties with States which had only recently attained nationhood.

6. His delegation was also convinced that provisions stipulating compulsory arbitral or judicial settlement were particularly necessary in instruments which codified existing law. A system of compulsory arbitration had great advantages even in other contexts, but a work of codification which did not contain a watertight arbitration clause seemed wholly inconceivable. In the Swiss delegation's opinion, the signatories could not be the only judges in the interpretation and application of the rules which they themselves had reaffirmed and codified. Moreover, the history of international law showed that arbitral awards based on customary law generally preceded codified law and contributed to its formation. For those reasons, the Swiss delegation had consistently voted and would continue to vote for any clause providing for truly compulsory arbitration and judicial settlement. For example, it had supported article 73, which had been adopted by the Fourth Committee.

7. His government therefore welcomed the Colombian proposal which — in keeping with the best traditions of Latin America — called for compulsory settlement by the International Court of Justice of any dispute regarding the interpretation or application of any of the provisions which the Conference might adopt. His delegation also warmly supported the Netherlands proposal, which would give the parties a choice between judicial settlement and arbitral procedure.

8. He wished to stress that the Swiss proposal was of an essentially subsidiary character, and was designed to salvage as much of the idea of compulsory arbitration as prevailing circumstances permitted. A number of Powers were still not prepared to accept the principle of genuinely compulsory arbitration and even certain members of the International Law Commission had made reservations on that particular point. That reluctance in certain quarters was further confirmed by the records of the Sixth Committee of the General Assembly, where some delegations had gone so far as to assert that compulsory arbitration was incompatible with sovereignty. The Swiss Government hoped that such a negative attitude was only temporary and that the whole world would ultimately agree that the peaceful and compulsory settlement of all disputes was vital to peace. But realities had to be taken into account and the Swiss proposal was designed to enable those States which supported the idea of arbitration to enter into an undertaking, binding only between themselves, to submit any dispute to the International Court of Justice on the application of either party. The Swiss proposal had been submitted in the belief that it was better to record the agreement of those who genuinely desired machinery for a compulsory settlement rather than to seek partial solutions which might not prove generally acceptable.

9. The Swiss formula had been prompted by the same considerations as those which had led to the adoption of Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice. The form of the proposed undertaking followed the text adopted, after long discussion, by the Institute of International Law at Granada at its last session in 1956. Another feature of the Swiss proposal was that it gave the parties ample freedom to agree on other forms of arbitration, provided that they acted within specified time limits and on the understanding that the compulsory character of the settlement remained unaffected.

10. The Swiss proposal, though essentially subsidiary, would provide a basis for the development of the case-law of the International Court of Justice in maritime matters. The Court's decisions would admittedly have no universally binding force, but they would certainly carry considerable weight. That conclusion seemed borne out by the repeated references heard at the Conference to the Court's judgements in the Anglo-Norwegian fisheries case and the Corfu Channel case.

11. The Swiss delegation believed that the Conference could and should give some new impetus to compulsory arbitration and international jurisdiction. If it did so, its work would bear comparison with that of The Hague conferences of 1899 and 1907, while failure to take any clear decision in the matter would represent a deplorable step backward.

12. An argument advanced in the past against general

recognition of the principle of compulsory arbitration and judicial settlement had been that the rules of customary international law which the judge or arbitrator could use as guidance were excessively vague. That argument obviously could not be maintained when a codification conference had succeeded in adopting precise rules governing an entire subject.

13. In conclusion, he again stressed that the Swiss proposal was of a subsidiary nature, and was not designed to replace any of the more general proposals which might have a genuine chance of wider acceptance. Furthermore, the Swiss delegation had no intention of reopening the discussion on partial clauses already approved, such as article 73. His government only hoped that the Conference would give the most generous possible support to the idea of compulsory arbitration, which remained one of the finest safeguards of legitimate rights.

14. Mr. CAICEDO CASTILLA (Colombia) said that his delegation had submitted its proposal (A/CONF. 13/BUR/L.5) because it firmly believed that differences between States should all be settled on a compulsory basis. That view had been traditionally maintained by Colombia in its foreign policy and successive governments had never hesitated to submit international problems — on such matters as the delimitation of the national territory, the responsibility of the State for measures affecting aliens and the interpretation or application of international agreements — to arbitration or to the International Court of Justice. Moreover, the Colombian Government had always faithfully complied with the decisions of arbitral or judicial tribunals even when they had ruled against its own contentions. Colombia was thus not merely advancing an abstract theory but was proposing something which its own experience had shown to be practical and effective. It was always better to refer a dispute at the earliest opportunity to an impartial judge or arbitrator than to resort to violence or to allow a tense situation to subsist indefinitely. Furthermore, a prompt reference to an arbitral or judicial tribunal benefited not only the States directly concerned but also the entire international community and the region to which those States belonged.

15. For those reasons, and mindful of the fact that the Conference had gathered together representatives from almost every State in the world, the Colombian delegation had come to the conclusion that any legal or technical problems that might arise in the interpretation or application of the many provisions which would probably be approved should be governed by some general provision on the settlement of disputes. His delegation thought that no instrument would be complete without a general provision similar to that which the International Law Commission had proposed in article 73 in the specific context of the regime of the continental shelf. Such a rule was particularly necessary in the case of the continental shelf, since the subject-matter was a novel one in the evolution of international law. But it was also needed in the case of the other texts, since it was impossible to maintain that no differences of opinion would arise in the future as to the interpretation and scope of those texts and their application in individual cases.

16. The Colombian delegation was well aware that some countries — although supporting arbitration by mutual consent and the ordinary jurisdiction of the International Court of Justice — considered the notion of compulsion incompatible with their national interests and historical conditions or with their concept of sovereignty. Colombia itself did not agree with them, as it had always believed that compulsory arbitration was in no way inconsistent with the principle of sovereignty and that the sovereign or discretionary rights of States sometimes had to be subordinated to the paramount needs of the international community. But the views of others deserved respect and no decision on the settlement of disputes could be of much value without unanimity. The Colombian delegation would accordingly be prepared, as a conciliatory gesture, to change its text to the effect that the obligation to refer a dispute to the Court would in each case be determined by the Court's Statute. It might be argued that such a change would greatly reduce the scope of the provision's application, but the situation would be exactly the same if the Conference adopted a rigid rule which would merely oblige a number of States to avail themselves of their undeniable right to make reservations.

17. The modified Colombian formula should thus prove acceptable to all delegations. As an additional measure, however, the Conference should also approve the well-conceived proposal submitted by Switzerland. The two documents would between them afford a satisfactory solution, by reaffirming the adherence of many States to the loftiest of juridical principles without offending any national susceptibilities.

18. Mr. VERZIJL (Netherlands) said that his government was strongly in favour of compulsory jurisdiction by independent judicial or arbitral organs, and had a definite preference for the former so that it would have supported the original Colombian proposal ; but since that proposal had lost much of its force by the change just introduced by the Colombian representative, he would have to maintain the Netherlands proposal (A/CONF.13/BUR/L.5). One of its essential elements was that contained in paragraph 2 whereby one of the parties could opt for arbitration rather than for judicial settlement ; that clause had been introduced in recognition of the fact that some States had persisted in refusing to accept the compulsory jurisdiction of the International Court of Justice. In order to make such latitude acceptable, certain stipulations had been laid down to ensure that the party choosing arbitration was not able to obstruct the proceedings by, for example, failing to appoint its arbitrator within the time-limit specified.

19. With regard to paragraph 3 in the Swiss proposal, he doubted whether it would be wise to substitute for article 57 in the Commission's draft a general jurisdictional clause.

20. In view of the change introduced by the Colombian representative in his proposal, he was not very optimistic about the prospects of reaching agreement on a compromise text.

21. The PRESIDENT observed that even if the Drafting Committee and the authors of the three proposals were unable to reach agreement on a combined text, their report would greatly assist the plenary meeting in its deliberations. It would clearly be more expeditious to leave the complicated technical points to the Drafting Committee.

22. Mr. SOLE (Union of South Africa) agreed to the procedure suggested by the Chair but thought that the plenary meeting should first give the Drafting Committee some directive as to whether the clauses dealing with the settlement of disputes should be incorporated in the convention or conventions to be adopted or in a separate protocol. At the present stage, he considered that it would be imprudent to contemplate anything but the latter solution.

23. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had no objection to the procedure suggested by the President. If that course was chosen then the corresponding provisions concerning the settlement of disputes adopted by the committees should be held over until the Drafting Committee had submitted its recommendations.

24. Mr. BARROS FRANCO (Chile), observing that he favoured a single convention embodying all the articles adopted at the Conference, said that it would be desirable to incorporate all the provisions concerning the settlement of disputes in a separate group of articles — a course which would simplify the decisions on the substantive articles and which, he thought, the Drafting Committee should take into consideration.

25. Mr. MÜNCH (Federal Republic of Germany) said that his government was a firm believer in compulsory jurisdiction, but agreed with those delegations which had pointed out in the Fourth Committee that the International Court of Justice was not the appropriate body for dealing with highly specialized technical problems. Accordingly, he welcomed the ingenious solution offered in the Netherlands proposal. The system proposed by the Swiss delegation had definite merits, and might be usefully combined with the Netherlands proposal. Apart from that consideration, he also wished to draw the Drafting Committee's attention to the desirability of using terminology that was in line with the provisions of the Court's Statute. Finally, the Drafting Committee should draw up the text in such a form that if it failed to obtain the necessary majority it could be incorporated in an optional protocol of the type proposed by Switzerland.

26. Mr. MATINE-DAFTARY (Iran) said it was very doubtful whether arbitration clauses could secure general approval, for many governments had voiced criticism concerning the International Law Commission's draft provisions on arbitral procedure.

27. He was not yet in a position to state his government's views about the three proposals before the Conference, and for the time being expressed his personal preference for a separate protocol.

28. Mr. WERSHOF (Canada) stated that his government had always favoured the idea of compulsory jurisdiction and could have supported the original Colombian proposal or either of the other two proposals. However, neither the original Colombian proposal nor the Netherlands proposal, both of which represented a genuine compulsory jurisdiction clause, had much chance of obtaining a two-thirds majority. As the question of a compulsory jurisdiction had for long been the subject of controversy, it might have to be settled by some higher body, such as the General Assembly. In the circumstances, therefore, the solution put forward by the Swiss delegation might be the most practicable and a separate protocol, though optional, certainly had some utility.

29. He was opposed to the directive to the Drafting Committee suggested by the Chilean representative, because it would prejudge certain important issues which had not yet been discussed in the plenary meeting. Nor did he think that the decision on a separate protocol as an alternative to a compulsory jurisdiction clause in the conventions could be reached at the present meeting as suggested by the representative of South Africa.

30. Mr. DIAZ GONZALEZ (Venezuela) said that, although his government always faithfully discharged its international obligations, he regretted that it could not accept a compulsory jurisdiction clause ; such a clause would be incompatible with state sovereignty and would, in addition, be unrealistic. He therefore favoured a flexible formula more in accordance with the provisions of the United Nations Charter and the Statute of the International Court of Justice. He agreed with the procedure suggested by the President.

31. Mr. SHAHA (Nepal) welcomed the Swiss proposal which he would support because it paved the way for the progressive development of international law. He agreed to the procedure suggested by the President.

32. Mr. RUIZ MORENO (Argentina) hoped that the Drafting Committee would take into consideration the question of reservations in deciding whether a clause on compulsory jurisdiction, which would be the most desirable, were feasible.

33. Sir Alec RANDALL (United Kingdom) while finding merit in all three proposals, particularly the original Colombian text, said he was unwilling to commit his government to any one of them until the Drafting Committee had submitted its report. Since the Committee was to work in conjunction with the authors of the proposals, no directives were necessary.

34. The PRESIDENT suggested, in the light of the foregoing discussion, that the Colombian, Netherlands and Swiss proposals (A/CONF.13/BUR/L.3, L.5, L.6) be referred to the Drafting Committee which should study the proposals in consultation with the authors and report back to the Conference.

It was so agreed.

The meeting rose at 12.20 p.m.