

United Nations Conference on the Law of the Sea

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Summary Records of the 8th Plenary Meeting

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EIGHTH PLENARY MEETING*Tuesday, 22 April 1958, at 10 a.m.**President* : Prince WAN WAITHAYAKON (Thailand)**Consideration of the report
of the Fourth Committee (A/CONF.13/L.12 to L.16)**

1. The PRESIDENT observed that the report of the Drafting Committee of the Conference on articles 67 to 74 adopted by the Fourth Committee and the final clauses adopted by that Committee were contained in document A/CONF.13/L.13. Two amendments proposed by Yugoslavia, one to article 67 (A/CONF.13/L.14) and the other to article 72 (A/CONF.13/L.15) adopted by the Fourth Committee, together with a Canadian proposal concerning final clauses (A/CONF.13/L.16), were also before the Conference.

2. Mr. DIAZ GONZALEZ (Venezuela), Rapporteur of the Fourth Committee, explained that its report (A/CONF.13/L.12) sought to describe briefly the trend of opinion in the Committee.

3. Mr. JHIRAD (India) said that it might be difficult to secure agreement on a single convention embodying all the articles approved at the Conference, and the numerous reservations to which such a convention could give rise might cause confusion. He therefore proposed that the Conference should first decide to incorporate the articles on the continental shelf, which was an entirely new concept, in a separate convention, allowing reservations to all of them except articles 67, 68 and 69 which were of fundamental importance.

4. He also proposed that the International Law Commission's expression "sovereign rights" be restored in article 68, paragraph 1, in place of the expression "exclusive rights", which had been adopted by the Fourth Committee at its 24th meeting by a majority of only one vote, and was clearly causing concern to some delegations. He also proposed that the words "but crustacea and" be deleted from paragraph 4, a similar amendment having been rejected at the same meeting of the Fourth Committee by a tied vote.

5. Sir Reginald MANNINGHAM-BULLER (United Kingdom) supported the Indian proposal and agreed that reservations should not be allowed on articles 67, 68 and 69.

6. Mr. TUNKIN (Union of Soviet Socialist Republics) also supported the Indian proposal, and agreed that States might have difficulty in accepting a single convention of very wide scope.

7. Miss WHITEMAN (United States of America) favoured a separate instrument for the articles on the continental shelf, especially as international law on that subject was in process of development. She thought it would be unfortunate to jeopardize the acceptance of all the articles of the International Law Commission's draft by incorporating them in too wide a convention, which might not obtain the necessary number of ratifications.

8. Mr. GROS (France) did not attach great importance to whether the articles were placed in a separate chapter

of a general convention or in an independent instrument. The argument that the articles dealing with the continental shelf pertained to a new domain of international law had little force, because rules of international law, whatever their history and age, acquired the same status once they had been embodied in a convention. In any case, he doubted whether it would be possible to settle the matter before any decision had been taken on reservations. He therefore proposed that the vote on the Indian proposal be deferred.

9. Mr. BARROS FRANCO (Chile) agreed with the French representative and furthermore maintained that all the articles adopted by the Conference should be inserted in a single instrument on the law of the sea in time of peace, in recognition of the close connexion between the various topics. An additional reason for adopting a single convention was that it would be more likely to secure parliamentary ratification than a series of conventions.

10. Mr. BARTOS (Yugoslavia) agreed with the two foregoing speakers and considered that it would be premature to take a decision on the Indian proposal before all the committees had concluded their work. He could not support the proposal and doubted whether the new principles embodied in the articles on the continental shelf would have a better chance of acceptance if embodied in a separate convention.

11. He agreed with the Indian representative that reservations on articles 67, 68 and 69 should not be permitted, and would go even further by stating that it would be wholly undesirable to allow reservations on articles 70 and 71, since that would mean that States could unilaterally exonerate themselves from certain responsibilities. Again, it would be extremely dangerous to allow reservations on articles 72 and 74; in the former case, it could lead to disputes liable to endanger peace, since, in a sense, territorial integrity would be at issue, and in the latter it would be tantamount to denying jurisdiction for the settlement of disputes.

12. Mr. MATINE-DAFTARY (Iran), observing that the First Committee had not yet reached agreement on certain vital issues, said he favoured a number of separate conventions, since if the Conference aimed at a single instrument it was doomed to failure. He supported the Indian amendment to article 68, paragraph 1, because the term "exclusive rights" had no meaning in law. He would comment on the problem of reservations after studying the Canadian proposal (A/CONF.13/L.16).

13. Mr. CAICEDO CASTILLA (Colombia), supporting the Indian proposal, said that he would vote for the articles on the continental shelf in the form submitted by the Fourth Committee. He would have no reservations to make, but recognized that, due account being taken of the Yugoslav representative's observations, they must be allowed on certain articles.

14. The PRESIDENT suggested that it might be advisable to proceed with the Committee's report on the assumption that the proposal in paragraph 16 would ultimately be approved. The final decision could then be taken at the same time as that on final clauses,

unless the Indian representative insisted on his proposal being put to the vote.

15. Mr. GROS (France) pointed out that it was not quite correct to interpret paragraph 16 as meaning that the Committee had pronounced itself in favour of a separate convention, since it had omitted the word "only" after the word "relating" and the word "separate" before "convention" in the original Canadian proposal.

16. Mr. BARROS FRANCO (Chile) pointed out that in answer to a question by Mr. García Amador at the 28th meeting of the Fourth Committee as to the precise purport of the decision on the Canadian proposal, Mr. Wershof had explained at the 39th meeting that the question whether the convention containing the articles on the continental shelf was to be a separate instrument or part of a more general one had been left open.

17. Mr. BARTOS (Yugoslavia) agreed that the Fourth Committee had taken no decision as to whether the convention should be a separate one or not.

18. Mr. WERSHOF (Canada) said that his delegation still favoured a separate convention, but had modified its proposal in committee so that some kind of agreement could be reached. He hoped that, as time was short, the Conference could take a decision forthwith on whether the instrument should be a separate one or not.

19. Mr. MOUTON (Netherlands) agreed with the President that it might be expeditious to proceed on the assumption that the articles would be placed in a separate convention, but he also supported the French representative's view that the final decision must be deferred, particularly as other articles might have to be transferred. For example, article 48 had a direct bearing on the exploration and exploitation of the continental shelf.

20. Mr. SOLE (Union of South Africa) did not think that much would be gained by postponing the decision at the present late stage, particularly as it was essential to dispose of the problem of reservations before discussing the articles themselves.

21. With regard to the last point made by the Netherlands' representative, he did not think that a decision in favour of a separate convention at that stage would preclude subsequent insertion of additional articles relating directly to the continental shelf.

22. Mr. JHIRAD (India) regretted that he must press for a vote on his proposal because he had learnt, after consulting a number of delegations, that they were anxious to obtain a definite decision.

23. Mr. AGO (Italy) thought it would be putting the cart before the horse to seek agreement on the form of the final instrument before adopting the articles themselves. Moreover, the decision must be influenced by the action taken on the articles discussed in other committees.

24. Mr. DIAZ GONZALEZ (Venezuela) thought it advisable to reach agreement on the final clauses and

reservations before deciding on the Indian proposal, which he would support.

25. He had already explained his delegation's view on the nature of the rights exercised by the coastal State over its continental shelf, and he supported the Indian amendment to restore the Commission's expression "sovereign rights" in article 68, paragraph 1.

26. Mr. SUBARDJO (Indonesia) said that it would save time to vote on the Indian proposal forthwith.

27. The PRESIDENT put to the vote the Indian proposal that the articles on the continental shelf should be embodied in a separate convention.

The proposal was adopted by 57 votes to 11, with 12 abstentions.

28. The PRESIDENT invited the Conference to consider seriatim the articles submitted by the Fourth Committee in the annex to its report (A/CONF.13/L.12).

Article 67

29. The PRESIDENT drew attention to the text proposed by the Drafting Committee for article 67 (A/CONF.13/L.13) and to the Yugoslav amendment to that article (A/CONF.13/L.14).

30. Mr. BARTOS (Yugoslavia) introducing his amendment, urged moderation and asked that thought be given to the consequences of the text proposed and to the considerations he had outlined in the note appended to his amendment.

31. Mr. MOUTON (Netherlands) asked for the vote on the Yugoslav amendment to be deferred until the next meeting, because it would be difficult to decide without further consultation. The delimitation of the continental shelf by reference to a fixed distance from the coast was not a new idea. It had been rejected by the International Law Commission and the Fourth Committee as serving no useful purpose. The Yugoslav amendment would curtail the potential exploitation of the continental shelf, and the distance specified in the amendment should at least be increased to 200 miles.

32. Mr. KANAKARATNE (Ceylon), observing that precisely the same amendment (A/CONF.13/C.4/L.12) had been submitted by the Yugoslav delegation and supported with the same arguments in the Fourth Committee, saw no reason whatever for postponing the vote.

33. Mr. BARTOS (Yugoslavia) was prepared to modify his amendment as suggested by the Netherlands representative.

34. Mr. QUARSHIE (Ghana) regretted that an amendment which had been carefully examined and rejected in the Committee, and which had no bearing on the definition adopted, should have been re-introduced.

35. Mr. GROS (France) was unable to accept the amendment because it was impossible to speak of a limitation of distance where a geological concept was concerned.

36. The PRESIDENT observed that in the light of the foregoing remarks he was unable to comply with the Netherlands representative's request for postponement of the vote on the Yugoslav amendment.

The Yugoslav amendment (A/CONF.13/L.14) was rejected by 53 votes to 3 with 11 abstentions.

37. Mr. GROS (France) moved that a separate vote be taken on the words: "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas" in article 67, paragraph 1. If the principle of exploitability was rejected, as he hoped it would be, it would still be possible to put the limit of 550 metres' depth to the vote.

38. Mr. DIAZ GONZALEZ (Venezuela) opposed the French motion because the text had been the subject of long discussion in committee.

39. Mr. JHIRAD (India) opposed the motion because the draft had been adopted as a composite whole.

40. Mr. TUNKIN (Union of Soviet Socialist Republics), while supporting the text as it stood, did not think it proper to deny any delegation the right to ask for a separate vote on part of a proposal.

41. Mr. MOUTON (Netherlands) and Miss GUTTERIDGE (United Kingdom) supported the French representative's proposal.

42. Mr. SOLE (Union of South Africa), speaking on a point of order, submitted that there should only be two speakers in favour of a motion for division and two against it.

43. The PRESIDENT agreed.

The French representative's motion for division of the text was approved by 32 votes to 24, with 9 abstentions.

44. The PRESIDENT put to the vote the words "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas."

At the request of the representative of Venezuela, a vote was taken by roll-call.

The Holy See, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Republic of Korea, Liberia, Federation of Malaya, Mexico, Morocco, Peru, Philippines, Poland, Romania, Saudi Arabia, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Uruguay, Venezuela, Afghanistan, Albania, Argentina, Australia, Bolivia, Brazil, Bulgaria, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Czechoslovakia, Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala.

Against: Italy, Japan, Monaco, Netherlands, New Zealand, Norway, Pakistan, Portugal, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, Yugoslavia, Belgium, Byelorussian Soviet Socialist Republic, Denmark, Finland, France, Federal Republic of Germany, Greece.

Abstentions: Lebanon, Spain.

The words in question were adopted by 48 votes to 20, with 2 abstentions.

Article 67 as a whole, with the changes suggested by the Drafting Committee (A/CONF.13/L.13), was adopted by 51 votes to 5, with 10 abstentions.

Article 68

45. Mr. JHIRAD (India) proposed that the words "exclusive rights" in paragraph 1 should be replaced by the words "sovereign rights". Since the approval of the text by the Fourth Committee, many delegations had had further opportunity to study it and had come to the conclusion that the word "sovereign" — the term originally proposed by the International Law Commission — was preferable. The reasons for introducing the somewhat imprecise term "exclusive" no longer applied, since the fact that the coastal State's rights over the continental shelf would not affect the legal status of the superjacent waters or of the air space above those waters was now expressly recognized in article 69.

46. Mr. DIAZ GONZALEZ (Venezuela) said that his delegation had always favoured the Commission's text, and would therefore have no hesitation in supporting the Indian proposal.

47. Mr. CARBAJAL (Uruguay) recalled that his delegation too had always declared its preference for the word "sovereign". The fears which that word evoked in certain quarters were not justified, as the concept of sovereignty had lost much of its absolute character and certain limitations had become universally accepted. Moreover, the term "exclusive" was negative and inexact.

48. Mr. AGO (Italy) said that he failed to see how the rights in question could be "sovereign" when they were expressly stated to be exercisable for specified and limited purposes only. Nor could he accept the criticisms of the term "exclusive", which seemed both accurate and clear.

49. Mr. GOMEZ ROBLEDO (Mexico) recalled that his delegation had originally proposed (A/CONF.13/C.4/L.2) that paragraph 1 should refer to the sovereign rights exercised by the coastal State over the seabed and subsoil of the continental shelf and its natural resources. That proposal had been narrowly defeated in the Fourth Committee, and the Mexican delegation had made no attempt to re-introduce it, but when it came to choosing between the International Law Commission's original text and the one finally adopted by the Fourth Committee there could be no doubt that the original text was clearly superior. The fears that the term "sovereign" might restrict the freedom of navigation in the epicontinental sea should be dispelled by article 69.

50. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation would also support the Indian proposal because the exact significance of the word "exclusive rights" was obscure.

51. Miss WHITEMAN (United States of America) said that, as article 69 clarified the entire question of the

legal status of the waters and air space above the continental shelf, the United States delegation would vote in favour of the Indian proposal.

52. Mr. MATINE-DAFTARY (Iran) said that the expression "exclusive rights" might be perfectly appropriate in private law, where the right of ownership was a *dominium*, but was wholly out of place in a provision of public law, where the question was one of *imperium*.

53. Mr. GROS (France) deplored the disdain with which certain other representatives tended to reject the Italian representative's statement that the term "sovereign" could not properly be employed in the context of article 68. If the views of acknowledged authorities on the law of nations were to go completely unheeded, some legal experts might reasonably conclude that they should have stayed at home to await the appearance of the defective texts of the Conference, which they seemed powerless to improve.

54. In the context under discussion, the expression "sovereign rights" would render the whole provision defective. What was contemplated was not sovereignty but the reservation of special powers for determined purposes. The Conference was perfectly at liberty to produce bad texts if it wished to do so, but it should at least have no illusions about the value of the "rules of law" thus devised.

55. Mr. BARROS FRANCO (Chile) said that it was precisely because of its conviction that "sovereign rights" could not be subject to limitations that the Chilean delegation had supported the original Mexican proposal in the Fourth Committee. As things stood, however, he thought that the restoration of the word "sovereign" might be the lesser of two evils.

56. Mr. BARTOS (Yugoslavia) said that the difficulty of choosing the correct term had been fully appreciated by the International Law Commission, as was apparent from paragraphs 6 and 8 of the relevant commentary. It seemed to him, however, that the term "exclusive" would reflect the exact intent of the article more accurately. The rights envisaged were not "sovereign" in the strict sense, but subject to specific qualifications.

57. Mr. MÜNCH (Federal Republic of Germany) observed that there was absolutely no justification for interfering with the Fourth Committee's decision. The function of the Conference was to make general international law; questions involving a few local interests were therefore irrelevant. Even more deplorable were the attempts quite recently made for propaganda reasons by certain great maritime powers to achieve a compromise at the expense of the smaller countries.

58. Mr. AGO (Italy) said that he could not accept the Iranian representative's contention that the concept of "exclusive rights" pertained solely to private law. The expression could be used equally well in a provision of public law and in a rule of the law of nations. The expression "sovereign rights" on the other hand would be wholly improper in article 68 as it would imply that the coastal State could somehow enjoy sovereignty over the subsoil while having no such right in the superjacent waters. The principal reason for the difficulty was the

tendency of certain delegations to use words merely because of their rhetorical attraction. In practice, the use of such words would not give States any greater prerogatives, but would only make the whole text the object of ridicule.

59. Mr. QUARSHIE (Ghana) said that his delegation would support the Indian proposal although it had originally voted for the word "exclusive". It had since become clear that some delegations believed that that term did not adequately safeguard their position.

60. Mr. GOMEZ ROBLEDO (Mexico) said that, although the Mexican delegation had the greatest respect for recognized experts in international law, it should be remembered that the Conference was not a university, but an assembly of sovereign States. Furthermore, very country in the world could now inform itself as to the true meaning of the principle of sovereignty and no State had a monopoly of learning on the matter. Those who refused to agree that the concept of sovereignty was susceptible of development or qualification should remember that until quite recently few had dared to assert that a State enjoyed full sovereignty over the airspace above its territory.

61. Mr. JHIRAD (India) pointed out that the expression "exclusive rights" had been approved in the Fourth Committee by a very small majority and that some of its principal supporters had been unable to agree on its exact meaning. By contrast, the expression "sovereign rights" was a term which had been used in international law for decades.

62. Mr. LIMA (El Salvador) moved that a separate vote be taken on the words "crustacea and" in the second sentence of paragraph 4.

63. Mr. KANAKARATNE (Ceylon) moved that a separate vote be taken on the first sentence of paragraph 4.

64. Sir Reginald MANNINGHAM-BULLER (United Kingdom) thought that if the words "crustacea and" were deleted there should also be a separate vote on the remaining part of the second sentence. That would enable the Conference to remove a possible source of future misunderstanding, namely, the meaning of the expression "swimming species" which could conceivably be said to include the swimming members of the crustacea family. The United Kingdom delegation, for its part, approved of the article as it stood.

The proposal of El Salvador that the words "crustacea and" should be put to the vote separately was carried by 29 votes to 24 with 13 abstentions.

The proposal of India that the word "exclusive" in paragraph 1 should be replaced by "sovereign" was adopted by 51 votes to 14 with 6 abstentions.

The first sentence of paragraph 4 was adopted by 62 votes to 4 with 2 abstentions.

65. The PRESIDENT put to the vote the words "crustacea and" in the second sentence of paragraph 4.

A vote was taken by roll-call.

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

In favour : Belgium, Brazil, Canada, Ceylon, China, Cuba, Denmark, Dominican Republic, Finland, Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Federation of Malaya, New Zealand, Norway, Spain, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland.

Against : Australia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Chile, Colombia, Czechoslovakia, Ecuador, El Salvador, France, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Republic of Korea, Mexico, Monaco, Netherlands, Pakistan, Panama, Peru, Philippines, Romania, Saudi Arabia, Switzerland, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina.

Abstaining : Costa Rica, Iraq, Liberia, Poland, Portugal, United States of America.

The words "crustacea and" were rejected by 42 votes to 22, with 6 abstentions.

The remaining words of the second sentence of paragraph 4, reading "but swimming species are not included in this definition", were rejected by 43 votes to 14 with 9 abstentions.

Article 68, as amended, and with the changes suggested by the Drafting Committee (A/CONF.13/L.13) was adopted by 59 votes to 5 with 6 abstentions.

The meeting rose at 1.15 p.m.

NINTH PLENARY MEETING

Tuesday, 22 April 1958, at 3 p.m.

President : Prince WAN WAITHAYAKON (Thailand)

Consideration of the report of the Fourth Committee (A/CONF.13/L.12, L.13, L.15, L.16) (continued)

1. The PRESIDENT invited the Conference to continue its consideration of the report of the Fourth Committee (A/CONF.13/L.12) and of the amendments recommended by the Drafting Committee (A/CONF.13/L.13) to the articles adopted by the Fourth Committee.

Article 69

Article 69, with the changes to the Spanish text recommended by the Drafting Committee (A/CONF.13/L.13), was adopted by 43 votes to none, with 3 abstentions.

Article 70

Article 70 was adopted by 45 votes to none, with 2 abstentions.

Article 71

2. Mr. STABEL (Norway) asked the Chairman to put paragraph 8 to the vote separately.

3. Mr. JHIRAD (India) requested a separate vote on the words in paragraph 1 reading "nor [result] in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication". Oceanographic research did not form part of the problem of the continental shelf, and in particular he doubted whether the words "in any interference" should be used in view of the words "any unjustifiable interference" in the first part of the paragraph.

4. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the request made by the representative of Norway. He opposed paragraph 8 because, if no kind of scientific research into the continental shelf could be undertaken without the consent of the coastal State, much valuable purely scientific work would be stopped. The preceding clauses sufficiently safeguarded the interests of the coastal State. The inclusion of the paragraph in the Convention might dissuade some States from becoming parties.

The words "nor [result] in any interference . . . intention of open publication" were adopted by 44 votes to 10, with 8 abstentions.

Paragraph 8, with the changes recommended by the Drafting Committee (A/CONF.13/L.13), was adopted by 43 votes to 15, with 5 abstentions.

The whole of article 71, with the changes recommended by the Drafting Committee (A/CONF.13/L.13), was adopted by 50 votes to none, with 14 abstentions.

Article 72

5. Mr. BARTOS (Yugoslavia) said the reasons for his delegation's proposal (A/CONF.13/L.15) were explained in the commentary appended to it. The words in the proposed text "unless another boundary line is justified by special circumstances" were not justified by any text in an international law manual.

6. Mr. MATINE-DAFTARY (Iran) said that he supported those words and, in general, all the texts which were the result of many months of careful work by the International Law Commission. Every law which was too strictly worded was inevitably broken. There was no mention of the clause in question in international law manuals because the continental shelf was a new subject. It should not be forgotten that continental shelves were of very different shapes.

The Yugoslav proposal (A/CONF.13/L.15) was rejected by 47 votes to 5, with 11 abstentions.

Article 72, with the changes to the Spanish text recommended by the Drafting Committee (A/CONF.13/L.13), was adopted by 63 votes to none, with 2 abstentions.

Article 73

Article 73, with the changes recommended by the Drafting Committee (A/CONF.13/L.13) was adopted by 62 votes to none, with 4 abstentions.

Article 74

7. Mr. TUNKIN (Union of Soviet Socialist Republics) suggested deferment of the discussion on article 74