

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Summary Records of the 10th Plenary Meeting

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

64. The PRESIDENT recommended the Conference to adopt the USSR proposal to refer to the Drafting Committee all the final clauses adopted by the committees. Those adopted by the First Committee might be deferred until that committee had completed its work.

It was so decided.

The meeting rose at 7 p.m.

TENTH PLENARY MEETING

Wednesday, 23 April 1958, at 10.15 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the report of the Second Committee (A/CONF.13/L.17 to L.19)

1. Mr. MADEIRA RODRIGUES (Portugal), Rapporteur of the Second Committee, submitted the report of the Committee (A/CONF.13/L.17), and regretted that considerations of time had prevented him from presenting a more detailed report. He had tried to be as objective as possible and to take into account all the valuable suggestions made by delegations; but he had unfortunately been unable to satisfy fully the representative of the USSR, who had commented adversely on the position given in the report to the resolution on nuclear tests (paragraphs 71 to 73). The final decision on that point, however, as indeed on the whole report, rested solely with the Conference.

2. The PRESIDENT pointed out that the second report of the Drafting Committee (A/CONF.13/L.19) contained certain recommendations on the texts adopted by the Second Committee. If there were no objections, he would assume that those recommendations had been adopted wherever applicable.

It was so decided.

Article 26

Article 26 was adopted by 48 votes to none.

Article 27

Article 27 was adopted by 51 votes to none with 1 abstention.

Article 28

Article 28 was adopted by 58 votes to none.

Article 29

3. Mr. LIMA (El Salvador) said that, although the Conference was entitled to lay down certain general conditions governing the grant of nationality to ships, the provisions of the instrument finally adopted should maintain complete respect for national sovereignty. In his delegation's view, the words "Nevertheless, for purposes of recognition of the national character of the ship by other States", appearing in paragraph 1, seemed to offend against the principle of sovereignty and he would therefore ask for a separate vote on that phrase.

4. Mr. SAFWAT (United Arab Republic) and Mr. MATINE-DAFTARY (Iran) supported the motion.

The phrase "Nevertheless, for purposes of recognition of the national character of the ships by other States" was rejected by 30 votes to 15, with 17 abstentions.

Article 29, as amended, was adopted by 65 votes to none.

Article 30

Article 30 was adopted by 65 votes to none with 2 abstentions.

Article 31

5. Mr. TUNKIN (Union of Soviet Socialist Republics) asked the sponsors of the article to explain its exact purport.

6. Mr. BARTOS (Yugoslavia) explained that the wording of the article had been proposed by the Office of Legal Affairs in consequence of certain difficulties experienced by the United Nations during the Korean war and with the United Nations Emergency Force in the Near East. The purpose of the provision was to emphasize that certain intergovernmental organizations had the right to sail ships under their own flags in the same manner as States. But the provision was admittedly not very well drafted and might be improved by some indication of how the words "intergovernmental organization" were to be understood.

7. Mr. SEYERSTED (Norway) said that, since it had proved impossible to deal with the substance of the question referred to in the article, the sponsors of the text had merely wished to keep the whole question open. The articles on the right to a flag spoke only of States and it would be regrettable if that were construed to mean that an international organization which lacked the attributes of statehood was precluded from sailing ships under its own flag. In those circumstances, since the substance of the complex problem had not been touched upon, he thought that the wording adopted by the Second Committee should be retained, without any attempt to define the organizations contemplated.

8. Mr. LÜTEM (Turkey) regretted that his delegation would have to abstain from voting on the article because its implications were by no means clear. If the text merely referred to the United Nations that fact should have been made clear.

9. Sir Alec RANDALL (United Kingdom) agreed with the Norwegian representative that there was no need to spell out the precise meaning of the term "intergovernmental organization". Any discussion on that point might raise delicate issues, and it would therefore be preferable to retain the article in the form adopted by the Second Committee and to leave the question open.

10. Mr. GIDEL (France) agreed that the problem of ships in the service of an intergovernmental organization was extremely complex, and though that the Conference should not enter into any discussion on the substance of the matter.

11. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation agreed with the speakers who

had stressed that the question of ships operated by certain international organizations should not be prejudged in any way. But the wording of article 31 was open to various interpretations and it might be preferable to indicate that the question was in no way covered, by omitting any reference to it whatever.

12. Mr. DEAN (United States of America) stressed that article 31 deliberately made no attempt for specify what an intergovernmental organization was or what its flag should be. The very purpose of the article was to stress that the question had not been passed upon.

13. Mr. JHIRAD (India) said that, although he fully respected the views of the sponsors of article 31, the text seemed seriously defective. It lent itself even to the extreme construction that ships in the service of an intergovernmental organization did not enjoy the freedoms enumerated in article 27.

Article 31 was adopted by 50 votes to 9 with 11 abstentions.

Article 32

Article 32 was adopted by 73 votes to none.

Article 33

14. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 33, which implied that government ships on commercial service would be subject to the jurisdiction of States other than the flag State, appeared to be in flagrant contradiction with article 30. If article 33 were adopted, government-owned commercial ships would enjoy less favourable treatment than any other craft.

15. Mr. DEAN (United States of America) recalled that the victims of collisions caused by the negligence of government-owned commercial vessels had often been unable to obtain satisfaction because the ship had claimed immunity. Article 33 was thus specifically designed to place commercial state ships on a footing of absolute equality with privately owned ones. The decisive factor should be not the identity of the owner, but the purpose for which the ship was operated.

16. Mr. MUNCH (Federal Republic of Germany) said that article 33, far from contradicting article 30, followed naturally from it. The USSR representative had not questioned the propriety of article 32, paragraph 1, which recognized the immunity of warships just as article 33 extended that privilege to other non-commercial government ships. Moreover, in suggesting that article 30 reserved the jurisdiction of the flag State in all cases, the USSR representative had apparently overlooked the words "save in exceptional cases expressly provided for in international treaties or in these articles".

17. Mr. TUNKIN (Union of Soviet Socialist Republics) replied that the saving clause in article 30 applied only where an international treaty made an exception in explicit terms. It was thus obviously inapplicable when the purport of the provision concerned was predominantly implicit.

Article 33 was adopted by 55 votes to 11 with 10 abstentions.

Article 34

Article 34 was adopted by 72 votes to none.

Article 35

18. Mr. SOLE (Union of South Africa) said that his government wished to reserve its position on paragraph 1, as under South African law the competent authorities were entitled to waive jurisdiction in penal or disciplinary proceedings. Similar provisions existed in the laws of several other Commonwealth countries.

19. The South African delegation also had doubts on the compatibility of paragraphs 1 and 2. Under paragraph 1, the flag State would be entitled to take proceedings against the master of a ship even though he was not a national of that State, while paragraph 2 stipulated that if there was any question of withdrawing the master's certificate the withdrawal could only be authorized by the State that had issued the certificate. That complication might lead to serious difficulties in practice.

Article 35 was adopted by 63 votes to 1 with 7 abstentions.

Article 36

Article 36 was adopted by 71 votes to none.

Article 37

Article 37 was adopted by 73 votes to none.

Article 38

Article 38 was adopted by 69 votes to none.

Article 39

20. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation found articles 39 to 45 unacceptable, because the concept of piracy adopted in them was wholly obsolete. The International Law Commission and the Second Committee had both ignored the fact that, in modern times, piracy could be committed otherwise than by individual private ships. Even the principles approved in the Nyon arrangement of 14 September 1937 had been omitted. The Conference should reject those articles and not oblige delegations to formulate unwelcome reservations.

Article 39 was adopted by 54 votes to 9 with 4 abstentions.

Article 40

Article 40 was adopted by 55 votes to 10 with 1 abstention.

Article 41

Article 41 was adopted by 59 votes to 9 with 2 abstentions.

Article 42

Article 42 was adopted by 62 votes to 9 with 1 abstention.

Article 43

Article 43 was adopted by 60 votes to 9 with 1 abstention.

Article 44

Article 44 was adopted by 60 votes to 9 with 2 abstentions.

Article 45

Article 45 was adopted by 60 votes to 9 with 2 abstentions.

Article 46

21. Sir Reginald MANNINGHAM-BULLER (United Kingdom) said that article 45 had been amended in committee to permit ships or aircraft on government service, other than warships, to carry out seizures on account of piracy. Since the purpose of article 46 was to restrict the actions of warships, it must *a fortiori* also restrict the actions of other government ships or aircraft, so that his delegation had not proposed amendments to it consequential on the amendments made to article 45.

22. Mr. SAFWAT (United Arab Republic) and Mr. AL DUGHATHER (Saudi Arabia) asked for a separate vote on sub-paragraph (b) of paragraph 1.

23. Mr. SOLE (Union of South Africa) asked for a separate vote on the phrase "while in the maritime zones treated as suspect... of the slave trade" in that sub-paragraph, because he did not favour the restriction it introduced. If that phrase was rejected, the remainder of sub-paragraph (b) should, of course, be amended to read: "That the ship is engaged in the slave trade; or".

24. The PRESIDENT put to the vote the phrase "while in the maritime zones treated as suspect... of the slave trade" in sub-paragraph (b) of paragraph 1.

The phrase was rejected by 32 votes to 25 with 15 abstentions.

25. Mr. SAFWAT (United Arab Republic) said that in view of that decision he would withdraw his request for a separate vote on sub-paragraph (b).

Article 46 as amended was adopted by 62 votes to none with 9 abstentions.

26. Mr. ROJAS (Venezuela) asked that the Spanish version of the amended text of sub-paragraph (b) be referred to the Drafting Committee, as it was not clear in its present form.

Article 47

Article 47 was adopted by 67 votes to none with 3 abstentions.

27. Mr. GARCIA SAYAN (Peru) reserved his government's position on articles 47 and 27 because, by the 1952 Declaration of Santiago concerning the Maritime Zone, Peru, together with Chile and Ecuador, had proclaimed its jurisdiction over specific areas of sea for fishing purposes.

Article 48

Article 48 was adopted by 71 votes to none.

New article relating to the pollution of the sea by radioactive waste

The new article was adopted by 70 votes to none.

28. Mr. OHYE (Japan) explained that his support for paragraph 2 of the new article in no way affected his government's position concerning the prohibition of nuclear tests.

Article 61

Article 61 was adopted by 70 votes to none.

Article 62

Article 62 was adopted by 73 votes to none.

Article 63

Article 63 was adopted by 71 votes to none.

29. The PRESIDENT pointed out that article 64 of the Law Commission's draft had been deleted.

Article 65

Article 65 was adopted by 71 votes to none.

30. Mr. ROSENNE (Israel), referring to paragraph 9 of the report, asked what action was to be taken by the Conference on the decision of the Second Committee to state in principle that the articles in general adopted by it did not override specific conventions in force. It might suffice to take note of that statement and mention it in the final act of the Conference.

31. Mr. BARTOS (Yugoslavia) thought that the matter should be taken up in conjunction with the final clauses.

32. The PRESIDENT invited the Conference to consider the joint proposal by Czechoslovakia, Poland, the Union of Soviet Socialist Republics and Yugoslavia (A/CONF.13/L.18) to add a new article worded as follows: "States are bound to refrain from testing nuclear weapons on the high seas."

33. Mr. DEAN (United States of America), observing that the Soviet Union had recently conducted a series of exceptionally intensive nuclear tests on land, which had greatly increased the volume of radio-active fallout, said that the United States representative had already pointed out in the Second Committee that to adopt an article on nuclear tests might materially jeopardize the delicate negotiations on disarmament in which the United States had played a leading part. His government was not opposed to the prohibition of nuclear tests provided it was accompanied by effective international control, but, unfortunately, owing to the attitude of the Soviet Union Government, no agreement had so far been possible. A declaration of the kind proposed in the new article without adequate arrangements for supervision had serious drawbacks; and the cessation of nuclear tests could only be regarded as one of a number of essential issues forming an inseparable whole, which called for a general settle-

ment. In that connexion, he regretted that the Soviet Union should have boycotted the Disarmament Commission.

34. In view of the Second Committee's adoption of the draft resolution concerning the testing of nuclear weapons submitted by India, he appealed to the sponsors of the proposal to withdraw it, so as not to endanger the work of other United Nations bodies.

35. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation had joined with others in submitting the proposal in the belief that such a prohibition was a logical consequence of the definition adopted in article 27.

36. The proposal was restricted to tests on the high seas because the Conference was concerned solely with the law of the sea; he had not intended to touch upon the wider problem of nuclear tests in general, but was now obliged to do so owing to the United States representative's intervention. He was unable to understand why Mr. Dean should have assumed that the proposal was directed against his country, since it did not seek to impose a unilateral obligation, but one that would apply to all States on an equal footing. The Soviet Union, for its part, was quite prepared to refrain from conducting nuclear tests on the high seas. Indeed, the Supreme Soviet had recently promulgated a decree suspending all nuclear tests, thereby making an important contribution towards a general solution of the problem.

37. His government had continually worked to obtain, as quickly as possible, an international agreement on disarmament providing for supervision, but since it had met with no response and with obstruction by the United States whose strategy and diplomacy were based on nuclear weapons, it had been forced to act alone.

38. The Conference was bound to include a provision on nuclear tests, and it was quite fallacious to argue that that important matter should be left aside because it formed part of the whole problem of disarmament.

39. Sir Reginald MANNINGHAM-BULLER (United Kingdom) said that no government had been more persistent and sincere than his own in its efforts to institute international control and secure abolition of the testing, manufacture and use of nuclear weapons. It had made those efforts in the proper forum—namely, the General Assembly and its Disarmament Commission. To isolate nuclear tests on the high seas from the whole problem of disarmament in general was clearly artificial, and it could be proved that in recent months potentially more harmful radioactivity had been caused by nuclear tests over land than by those on the high seas. His government had conducted its tests, of which due notice had been given, with a scrupulous regard for the interests of users of the high seas, and scientific research had established that they had had no harmful effects on human, animal or marine life.

40. He regretted the introduction of the joint proposal at the present late stage of the Conference and the Soviet Union Government's action in withdrawing from the Disarmament Commission.

41. The draft resolution proposed by the Indian delegation and adopted by the Second Committee, while

acknowledging the apprehensions aroused by nuclear explosions, referred the matter to the General Assembly within whose competence it lay. It seemed inappropriate, at a time when heads of States were engaged in seeking a means of tackling constructively problems that were vital to the peace and security of the world, for the Conference to encroach upon the General Assembly's work. He therefore supported the Indian draft resolution, for the reasons his delegation had given at the 18th meeting of the Second Committee, and associated himself with Mr. Dean's appeal to the sponsors of the joint proposal.

42. Mr. ZOUREK (Czechoslovakia) said that his delegation had joined in sponsoring the proposal because nuclear tests were the most dangerous threat to the freedom of the high seas since that principle had received general recognition. There could be no doubt that such tests were a flagrant violation of the freedom enunciated in article 27, that they closed vast areas to navigation and fishing and would, according to the experts, endanger neighbouring populations, seafarers and the living resources of the sea. Both the United Nations Scientific Committee on the Effects of Atomic Radiation and an expert committee of the World Health Organization had confirmed that nuclear tests had raised the level of natural radiation, and that international control was urgently needed.

43. He was unable to endorse the Second Committee's action in evading the issue by referring it to the General Assembly, because an express prohibition of nuclear tests on the high seas had nothing whatever to do with their general prohibition; tests on the high seas were already contrary to existing international law. The Committee's timorous attitude was particularly inappropriate after the Soviet Union Government's decision of 31 March 1958 to stop nuclear tests, which had been welcomed by men of good-will, and would make the task of the Conference easier. Failure to insert the proposed article, which was no more than a statement of existing law, would certainly be condemned by public opinion and future generations.

44. Mr. JHIRAD (India) said that his government's view that nuclear tests either on land or sea were contrary to humanitarian principles and international law was well known. Moreover, nuclear tests at sea were a serious infringement of the principle of the freedom of the high seas, and were therefore unlawful on that account as well. Though he agreed with the substance of the joint proposal, he believed its introduction at the present juncture would complicate the discussion of other serious issues, and he therefore asked that the Indian draft resolution adopted by the Committee, having been submitted earlier, should be put to the vote first in accordance with rule 41 of the rules of procedure.

45. Mr. OCIOSZYNSKY (Poland) said that his delegation had joined in sponsoring the proposal because the matter definitely lay within the competence of the Conference, and because there was no justification for referring it to the General Assembly. Obviously, nuclear tests on the high seas and the institution of prohibited zones were a violation of the freedom of the seas and a threat to seafarers and the living resources

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 1.30 p.m.

ELEVENTH PLENARY MEETING

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

President: Prince WAN WAITHAYAKON (Thailand)

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

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

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