

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Summary Records of the 12th Plenary Meeting

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

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

It was so agreed.

The meeting rose at 6.5 p.m.

TWELFTH PLENARY MEETING

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

President: Prince WAN WAITHAYAKON (Thailand)

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

1. Mr. TABIBI (Afghanistan), Rapporteur of the Fifth Committee, presented the Committee's report (A/CONF.13/L.11).
2. Mr. SZITA (Hungary) said that the incorporation of the Fifth Committee's recommendations in one of the conventions to be adopted by the Conference was important to the land-locked countries and to the international community alike.
3. His delegation had supported the Fifth Committee's report as a whole, but had voted for part II of its recommendations (A/CONF.13/L.11, para. 26) reluctantly. The Preliminary Conference of Land-locked States had accepted certain principles, the most important being the right of free access to the sea which derived from the fundamental principle of the freedom of the high seas. The principle of the freedom of the high seas would sound hollow indeed to the land-locked countries if the right of free access were not regarded as an inalienable right. Unfortunately, that right had not been expressly recognized in the Swiss proposal adopted by the Fifth Committee.
4. He pointed out in that connexion that neither the memorandum of the Preliminary Conference (A/CONF.13/C.5/L.1) nor the nineteen-power proposal (A/CONF.13/C.5/L.6) had sought to infringe the sovereignty of the States of transit. On the contrary, both documents explicitly safeguarded the rights of those States, and emphasized that they would retain full sovereignty over their territory and further provided that the form in which a land-locked country would exercise its right of access should in each individual case be decided by agreement between the States concerned.
5. In the opinion of his delegation, therefore, the right of the land-locked countries to free access to the sea was something much more positive than the vague

recommendations of the Fifth Committee and, although it would vote for those recommendations, it maintained that the principles adopted at the Preliminary Conference did not go beyond the rules of existing international law.

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

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

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

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

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

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

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

documents would make it clear that there was no reason why the Fifth Committee could not take decisions and embody the results of its work in a suitable international instrument should it so decide. In his opinion, the seven principles adopted by the Preliminary Conference clearly indicated that the land-locked countries had tried to provide adequate safeguards for the rights of transit States.

13. His delegation would accept the Fifth Committee's recommendations on the understanding that in doing so its position on the seven principles or the nineteen-power proposal would in no way be affected. His government maintained the view that the freedom of the high seas and the principle of equality of States constituted the legal basis of the fundamental right of access to the sea of land-locked countries.

14. The PRESIDENT put to the vote part I of the recommendations contained in the Fifth Committee's report (A/CONF.13/L.11, paragraph 26).

Part I of the Fifth Committee's recommendations was adopted by 67 votes to none, with 3 abstentions.

15. Mr. BHUTTO (Pakistan) explained that he had abstained from the vote because the issue had been confused by the reservations expressed by the representatives of Hungary and Nepal.

16. Mr. GUEVARA ARZE (Bolivia) regretted the impression given by the Pakistani representative that the international community was granting certain rights to the land-locked countries as a special favour. That was not the spirit in which the text under consideration should be adopted, for it represented the interests of the land-locked countries and of the transit countries alike. The solution reached was fair and would contribute to the progressive development of international law.

17. Mr. MÜNCH (Federal Republic of Germany), referring to part II of the Fifth Committee's recommendations, said that it would not be possible to vote on the new article recommended by the Committee if the delegations of Nepal and Afghanistan maintained their position that the article, if adopted, would not be part of international law.

18. Mr. BHUTTO (Pakistan) said that the article was based on a Swiss proposal (A/CONF.13/C.5/L.15) which had been the result of a compromise. If reservations were made to the proposed article, there was no longer a compromise. However, his delegation would reconsider its position if the delegations of Nepal and Hungary withdrew their reservations.

19. Mr. VELILLA (Paraguay) said that his delegation supported the seven principles adopted by the Preliminary Conference of Land-locked States because it considered that the right of land-locked States of free access to the high seas was a part of international law recognized by existing practice and by agreements in force.

20. Mr. BACCHETTI (Italy) said his delegation could not accept the view that the land-locked States had a right of free access to the high seas in customary international law; nevertheless, it would support part II of the Fifth Committee's recommendations.

21. The PRESIDENT put to the vote part II of the Fifth Committee's recommendations (A/CONF.13/L.11, paragraph 26).

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

India, having been chosen by lot by the President, was called upon to vote first.

In favour: India, Indonesia, Ireland, Israel, Italy, Japan, Liberia, Libya, Luxembourg, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Romania, San Marino, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Yugoslavia, Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, Federal Republic of Germany, Ghana, Guatemala, Haiti, Holy See, Hungary, Iceland.

Abstaining: Iran, Pakistan, Paraguay, Portugal, Turkey, Venezuela.

Part II of the Fifth Committee's recommendations was adopted by 67 votes to none, with 6 abstentions.

22. Mr. MATINE-DAFTARY (Iran) said that his delegation had abstained in the vote because it considered the preparation of a draft convention outside the terms of reference of the Fifth Committee.

23. Mr. BHUTTO (Pakistan) said that his delegation had abstained because of the reservations formulated by the delegations of Nepal and Hungary. He appealed to them to withdraw those reservations before a final vote was taken on the results of the work of the Conference.

24. Mr. ZOUREK (Czechoslovakia) said that, in the absence of a prepared text as a basis for its work, and owing to pressure of time, the Fifth Committee had not succeeded in codifying all the law relating to the free access of land-locked States to the high seas. It was unfortunate that it had not been able to deal as exhaustively as it should have done with the nineteen-power proposal (A/CONF.13/C.5/L.6). Moreover, part II of the Swiss proposal had been weakened by the adoption of an amendment (A/CONF.13/C.5/L.26) and by the adoption of language which was not sufficiently categorical. Nevertheless, his delegation had voted in favour of the provisions just approved by the Conference.

25. Mr. VELILLA (Paraguay) said that his delegation had abstained because the Spanish text of the provisions voted on had not apparently been settled in final form.

26. Mr. MÜNCH (Federal Republic of Germany) said that his delegation had cast a favourable vote on the understanding that the delegations of Nepal and Hungary had withdrawn their reservations. It did not think that the criticism expressed by the representative of Czechoslovakia was justified.

Consideration of the recommendations adopted by the General Committee concerning the procedure to be followed in connection with the articles relating to the breadth of the territorial sea and the contiguous zone (A/CONF.13/L.23/Rev.1)

27. The PRESIDENT drew attention to the under-mentioned recommendations (A/CONF.13/L.23/Rev.1) which had been unanimously adopted at the 7th meeting of the General Committee, concerning the procedure to be followed in dealing with article 3 (Breadth of the territorial sea) and article 66 (Contiguous zone):

"1. The order of procedure in relation to voting on articles 3 and 66 in the plenary session is to be decided by the President. Delegations are urged as far as possible not to appeal against the decisions of the President.

"2. All proposals presented in plenary relating to articles 3 and 66 are to be put to the vote at 5 p.m. on Friday, 25 April.

"3. No proposals for postponement of voting on the above proposals relating to these articles shall be considered.

"4. No amendments to, or motions for division of, proposals may be submitted or discussed.

"5. Speeches to be limited to two speakers for and two against each proposal and to ten minutes duration each. Whether or not all speeches are concluded, voting will start at 5 p.m."

28. The procedure was exceptional, the object being to expedite the work of the Conference.

29. Mr. BARTOS (Yugoslavia) said that his delegation was strongly opposed to the General Committee's recommendations, which would deprive delegations of rights to which they were entitled under the rules of procedure.

30. The PRESIDENT explained in answer to questions that paragraph 3 of the General Committee's recommendations meant that any proposal for postponing the final decision of the Conference should not be considered until after the proposals relating to articles 3 and 66 had been put to the vote. Any delegation would be entitled to submit proposals until 1 p.m. on Friday, 25 April. Roll-call votes and explanations of votes would be in order.

31. Mr. DIAZ GONZALEZ (Venezuela) protested against the fact that representatives of sovereign States should be obliged to vote, not only hurriedly, but in the manner decided upon by the General Committee. The recommendations which had been submitted were in conflict with rules 22, 28, 32, 39 and 41 of the rules of procedure. Even if those recommendations were adopted, he requested that the protest of his delegation against such proceedings should be entered in the record.

32. The PRESIDENT explained that, in order to expedite the work of the Conference, the General Committee was merely appealing to representatives to refrain from exercising their rights under the rules of

procedure. No contravention of the rules of procedure was involved.

The General Committee's recommendations were adopted.

The meeting rose at 5.15 p.m.

THIRTEENTH PLENARY MEETING

Friday, 25 April 1958, at 10.15 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Fourth report of the Drafting Committee of the Conference: proposals regarding the judicial settlement of disputes (A/CONF.13/BUR/L.3, L.5, L.6, A/CONF.13/L.24)

1. Mr. RUIZ MORENO (Argentina) said that his delegation, in accordance with the views it had expressed in the Fourth Committee, maintained that no provision for compulsory jurisdiction of the International Court of Justice should be embodied in any instrument adopted by the Conference. States could not be forced to accept compulsory jurisdiction, and even under the United Nations Charter they were not required to assume an obligation of that kind.

2. Only about thirty States had made the declaration referred to in Article 36 of the Statute of the International Court of Justice, and even those making it were entitled to specify matters which would not be subject to the Court's compulsory jurisdiction. Certain States at the Conference had already stipulated that they could not agree to the submission to compulsory jurisdiction of disputes arising out of certain articles, and in those circumstances it was difficult to see how compulsory jurisdiction could be accepted. Hence, a better procedure would be to include any compulsory jurisdiction provisions in a separate protocol. His delegation would oppose any provision that disregarded the principle of the sovereignty of States and deprived them of their choice between different arbitration procedures.

3. Mr. VERZIJL (Netherlands) said that his government was strongly in favour of compulsory jurisdiction, but would be prepared to accept the principle of compulsory arbitration since it understood the objections of certain States to the compulsory jurisdiction of the International Court of Justice. The principle of compulsory arbitration would, in his view, provide an acceptable alternative for such States.

4. The arguments adduced by the Argentine representative seemed to be without legal foundation. There was no question of forcing States to accept compulsory jurisdiction or arbitration; what the advocates of those methods of settlement were trying to do was merely to persuade States to accept the principle voluntarily.

5. Moreover, the argument that only about thirty States had submitted a declaration under Article 36 of the Statute of the International Court of Justice did not carry much weight, since the scope of the articles