

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Summary Records of the 16th Plenary Meeting

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

56. Mr. SIKRI (India) said that his delegation, which had made the original proposal for a division into two sections, agreed with the Ecuadorian representative's views.

57. Mr. WALL (United Kingdom) asked whether there were likely to be any new articles for inclusion in the second section of the convention.

58. The PRESIDENT said that the First Committee might produce some other articles, but that they would not reach the Conference until later. He suggested that the Conference should now decide on the principle of embodying the articles in a convention and should leave it to the Drafting Committee to establish the contents.

It was so agreed.

59. Mr. GARCIA AMADOR (Cuba), introducing his delegation's proposal for a preamble to the convention (A/CONF.13/L.33), said that the International Law Commission had approved such a text at its seventh session,¹ but had decided to delete it at the eighth session, when the articles had been amalgamated in a single draft. His delegation had redrafted some of the paragraphs of the preamble to adjust them to the deliberations of the Conference. The proposed preamble referred to all the basic ideas and economic and scientific considerations taken into account in the articles.

60. Mr. TUNKIN (Union of Soviet Socialist Republics) suggested that the Cuban proposal should be referred to the Drafting Committee.

It was so agreed.

61. The PRESIDENT invited the Conference to give its decision on the draft resolution on international fishery conservation conventions (A/CONF.13/L.21, annex).

The draft resolution was adopted.

62. The PRESIDENT invited the Conference to give its decision on the draft resolution on the procedure of abstention (A/CONF.13/L.21, annex).

63. Mr. TUNKIN (Union of Soviet Socialist Republics) requested a vote on the draft resolution.

The result of the vote was 31 in favour and 20 against, with 8 abstentions. The draft resolution was not adopted, having failed to obtain the required two-thirds majority.

64. The PRESIDENT invited the Conference to give its decision on the draft resolution on conservation measures in the adjacent high seas (A/CONF.13/L.21, annex), with the amendments proposed by the Drafting Committee (A/CONF.13/L.26).

The draft resolution was adopted.

65. The PRESIDENT invited the Conference to give its decision on the draft resolution concerning humane killing of marine life (A/CONF.13/L.21, annex).

The draft resolution was adopted.

66. The PRESIDENT called upon the Conference to consider the South African draft resolution (A/CONF.13/L.27).

67. Mr. CORREA (Ecuador) said that there were certain differences between his delegation's proposal on the subject in the Third Committee (A/CONF.13/C.3/L.89) and the South African draft resolution. If article 60 A had been approved, Ecuador would have wanted it to be supplemented by a general recommendation to States to lend their co-operation to the fair settlement of special situations, by regional or other international means. The South African draft, however, merely restated article 60 A in the form of a recommendation.

68. Moreover, the South African draft resolution provided that the objectives concerned should be achieved by "establishing agreed measures". The Ecuadorian delegation considered it necessary to avoid the implication that a coastal State could not take measures without outside consent, and would therefore ask for a separate vote on the words "agreed". Secondly, it wished to introduce another operative paragraph, based on the operative part of its own proposal in committee, to the effect that States should collaborate to secure just treatment of the situations concerned by regional agreements, by the recognition of duly justified unilateral measures or by other means of international co-operation. The South African draft as so amended would contain both general and specific conditions. Finally, he suggested that the word "overwhelmingly" in the first preambular paragraph should be replaced by "primarily" to facilitate translation into French and Spanish.

69. Mr. SOLE (Union of South Africa) urged the Conference to take into account the main purpose of his delegation's draft resolution, which was to obtain a two-thirds majority. The first two preambular paragraphs covered the most needy groups of countries. If the scope of the text were extended in accordance with the Ecuadorian suggestion, the chance of obtaining the requisite majority would be diminished. His objection applied in particular to the deletion of the word "agreed" and to the inclusion of the operative part of the earlier Ecuadorian proposal.

70. The PRESIDENT suggested that the Ecuadorian amendments should be submitted in writing at the next meeting.

The meeting rose at 12.20 a.m.

SIXTEENTH PLENARY MEETING

Saturday, 26 April 1958, at 10.30 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the report of the Third Committee (A/CONF.13/L.21, L.27, L.24) (continued)

1. Mr. LLOSA (Peru), explaining the vote of his delegation on articles 49 to 60 at the previous meeting, said that he had abstained from voting because, although

¹ *Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934), p. 13.*

those articles represented some progress in that they recognized the legitimate interests of the coastal State, they were far from perfect and took no account of many historical, economic and geographic considerations nor would they protect the coastal State from uncontrolled exploitation of its maritime resources by other States. Finally, he had been unable to accept the provisions for compulsory arbitration which weakened the whole system of the peaceful settlement of disputes under the United Nations Charter, and did not provide sufficient safeguards for weaker States.

2. Mr. CASTAÑEDA (Mexico) said the Third Committee had adopted the joint proposal submitted by Burma, the Republic of Korea, Mexico and Venezuela (A/CONF.13/C.3/L.49) for the insertion of the phrase "Subject to the interests and rights of the coastal State, as provided for in this convention" and had placed it in article 49, paragraph 1; but that proviso was equally applicable to article 51, 52 and 53.

3. Mr. AYCINENA SALAZAR (Guatemala) said he would have reservations to make to the articles relating to compulsory arbitration.

4. Mr. LEE (Republic of Korea) said that he had abstained from voting on articles 49-60 when put to the vote as a whole because articles 57-59 were unacceptable to his delegation. As his delegation had explained in the Third Committee, it had no objection to the settlement of disputes by arbitration but could not agree to it being compulsory. States must be left some latitude in selecting the most appropriate procedure in accordance with Article 33 of the United Nations Charter.

5. The PRESIDENT invited the Conference to resume its consideration of the South African draft resolution (A/CONF.13/L.27).

6. Mr. TRUJILLO (Ecuador) said that, after informal discussions with the South African representative, he had decided to withdraw the two drafting changes he had proposed at the previous meeting, and to submit instead an amendment (A/CONF.13/L.42) for the insertion of the following new paragraph between the two operative paragraphs for the purpose of giving moral support to States in a special situation:

"Recommends that States should collaborate to secure just treatment of such situations by regional agreements or by other means of international co-operation."

The legal position would in no wise be affected.

7. Mr. SOLE (Union of South Africa) agreed with the principle of the Ecuadorian amendment but believed that the balance of the draft resolution would be better preserved if the amendment were inserted as a last paragraph in the preamble with the substitution of the words "Believing that States should collaborate" for the words "Recommends that States should collaborate". He thanked the Ecuadorian representative for withdrawing his other amendments, a step which would do much towards securing the requisite two-thirds majority.

8. Mr. TRUJILLO (Ecuador) accepted the South African representative's suggestion.

9. Mr. MALLIN (Ireland) proposed the deletion of the word "legitimate" in operative paragraph 1 because that word might be misconstrued as prejudicing the issue, whereas it was intended to strengthen the paragraph.

10. Mr. SOLE (Union of South Africa) accepted the Irish representative's amendment.

11. Mr. WALL (United Kingdom) said that during the general debate in the Third Committee his delegation had emphasized the need to safeguard the livelihood of coastal fishing communities which usually operated with small boats only. That object would not be achieved by article 58 and his delegation had, in the course of informal consultations, undertaken to support the South African draft resolution provided that the changes did not go further than those introduced at the previous meeting. The present Ecuadorian and Irish amendments were more limited in scope and would be acceptable.

12. The PRESIDENT put to the vote the South African draft resolution (A/CONF.13/L.42) as amended.

A vote was taken by roll-call.

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

In favour: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Ghana, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Jordan, Republic of Korea, Lebanon, Liberia, Luxembourg, Mexico, Monaco, Morocco, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Romania, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, 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, Venezuela, Yugoslavia, Afghanistan, Albania.

Against: None.

Abstaining: Bulgaria, China, Federal Republic of Germany, Greece, Holy See, Italy, Japan, Netherlands, Poland, Portugal.

The South African draft resolution, as amended, was adopted by 67 votes to none, with 10 abstentions.

13. Mr. ANDERSEN (Iceland) expressed his gratitude to the delegations which had shown their sympathy for the Icelandic people in connexion with the voting on article 60 A. It was a sorry chapter in the history of the United Nations that an appeal by one of its smallest members went unheeded by so many. He hoped that there would be a change in that attitude when the next opportunity presented itself. He wished to thank the South African delegation for having been instrumental in securing the adoption of the principles contained in their resolution; it would have been a sad affair indeed had the Conference rejected that resolution. The Icelandic delegation had voted in favour of the resolution because it felt that the procedure suggested in it might

become helpful as regards the area outside the limits of coastal fisheries jurisdiction.

14. Mr. TRUJILLO (Ecuador) observed that the resolution on the procedure of abstention, which had been adopted at the 40th meeting of the Third Committee by 38 votes to 17 with 8 abstentions had at the previous plenary meeting failed to secure a two-thirds majority, there having voted 31 in favour with 20 against and 8 abstentions, showing that at that late hour some twenty delegations had already left the meeting. Although he believed that rule 32 of the rules of procedure should be applied with the greatest circumspection, he moved that the discussion on the resolution be reopened since the vote had clearly not been representative.

15. Mr. KRYLOV (Union of Soviet Socialist Republics) said that the vote had been perfectly in order and the fact that it had been taken very late in the evening gave no ground for such a motion.

16. Mr. TSURUOKA (Japan) also opposed the motion which had surprised him greatly in view of the determined opposition in the First Committee to the United States motion for reconsideration of its proposal on the breadth of the territorial sea.

17. The PRESIDENT put the motion of the representative of Ecuador to the vote.

The result of the vote was 43 in favour and 26 against, with 11 abstentions. The motion was not adopted, having failed to obtain the required two-thirds majority.

18. Mr. GARCIA-AMADOR (Cuba) moved the reconsideration of the proposal of the Federal Republic of Germany which had been submitted at the 15th plenary meeting, that reservations to the articles on fisheries should not be admitted. He believed the proposal had been rejected at the previous meeting because many delegations had assumed that article 60 A would be adopted.

19. As he had indicated in the Fourth Committee, because international conventions were increasingly assuming a legislative character, the modern trend was to restrict the right to make reservations, which in the past had been regarded as absolute; his view was supported by the International Court of Justice in its advisory opinion on reservations to multilateral conventions.¹ The instrument under discussion was certainly one in which the right to stipulate reservations should be restricted because, the articles being so closely interdependent, reservations to one would destroy the efficacy of the whole, and that was particularly true of articles 54 and 55 and 57 to 60.

20. Mr. RUIZ MORENO (Argentina) opposed the Cuban representative's motion because, although Argentina had voted in favour of the fisheries articles and had no reservations to make to those articles, he believed it would be impossible to secure agreement on what were in effect novel rules of international law if reservations were disallowed.

21. Mr. ULLOA SOTOMAYOR (Peru) opposed the motion and was unable to understand how the Cuban representative could suppose that governments would sign the instrument if their legitimate right to make reservations were not recognized.

22. The PRESIDENT put to the vote the Cuban representative's motion for the reconsideration of the German proposal concerning reservations.

A vote was taken by roll-call.

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

In favour: Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Ghana, Haiti, Honduras, India, Indonesia, Iran, Ireland, Israel, Italy, Lebanon, Luxembourg, Monaco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Panama, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Afghanistan, Australia, Canada, China, Colombia, Costa Rica, Cuba.

Against: Ecuador, Greece, Guatemala, Hungary, Republic of Korea, Federation of Malaya, Mexico, Peru, Philippines, Poland, Romania, Saudi Arabia, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Albania, Argentina, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia.

Abstaining: El Salvador, Holy See, Iceland, Iraq, Japan, Liberia, Morocco, Nicaragua, Paraguay, Thailand, Union of South Africa, Republic of Viet-Nam, Yugoslavia, Austria, Belgium, Ceylon.

The result of the vote was 37 in favour and 26 against, with 16 abstentions. The motion was not adopted, having failed to obtain the required two-thirds majority.

23. Mr. DEAN (United States of America), explaining his vote on the Ecuadorian proposal that discussion of the resolution on the procedure of abstention should be re-opened, said that the articles on fisheries were a significant step towards achieving conservation and the maximum utilization of resources to the general benefit. His government very much regretted the fact that the resolution on the procedure of abstention had not secured a majority because such an essential provision was the only means of encouraging States to spend time and money on research and to impose restraints on their own fishermen. The United States for its part would continue to work towards the acceptance of the principle, was prepared to enter into agreements giving it effect, and would pursue its own research making the results available to all other countries.

Consideration of the report of the Credentials Committee (A/CONF.13/L.35)

24. Mr. WERSHOF (Canada), Chairman of the Credentials Committee, introduced the Committee's report (A/CONF.13/L.35). Referring to paragraph 15, he explained that the Committee had reported the facts on Yemen's credentials and had adopted the United States motion that it take no decision regarding the

¹ *Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports, 1951, pp. 21-55.*

credentials submitted on behalf of the representative of Hungary.

25. Mr. SZITA (Hungary) regretted that a credentials committee consisting of such eminent lawyers should not have restricted itself to purely legal considerations according to its terms of reference as laid down in rule 4 of the rules of procedure. He pointed out that the Hungarian People's Republic as a Member of the United Nations had a rightful claim to be invited under paragraph 5 of General Assembly resolution 1105 (XI), and indeed such an invitation had been received at the Ministry of Foreign Affairs. There was no other Hungarian government, and the credentials had been issued in accordance with the prescribed formalities by the competent Hungarian authority. He referred to paragraph 12 of the Committee's report, and said that his government took the strongest exception to the terms of the United States motion mentioned in that paragraph and to the Committee's endorsement of the motion, which violated the principles of the Charter concerning international co-operation and the sovereign equality of States. In addition, it infringed the Conference's rules of procedure. Accordingly, he protested against the course taken by the Committee, and said he would vote against its report.

26. Mr. LAZAREANU (Romania) said that the majority decision of the Credentials Committee on the question of the representation of China wrongfully endorsed the discredited Kuomintang régime, and suggested that a group of imposters possessed genuine authority. Equally deplorable was the Committee's attempt to cast doubt on the legitimacy of the Hungarian Government.

27. The report itself contained some serious inconsistencies. So far as the representation of China was concerned, paragraph 9 stated that the only question within the Committee's competence had been to determine whether the credentials issued to the alleged representatives of China were "in order", when in reality the Committee should first have ascertained whether the invitation to attend the Conference had been sent to the correct address. In the case of Hungary, on the other hand, the Committee had adopted exactly the opposite approach; it had greatly exceeded its authority, by introducing strictly political issues, and had deliberately overlooked the fact that nobody's credentials could be more in order than those of the Hungarian representative. The Hungarian Government had been duly represented in the General Assembly at the time of the adoption of resolution 1105 (XI), pursuant to which the Conference had been convened, and had received a formal invitation from the Secretary-General.

28. The Committee's decision on the representation of China thus merely reflected the views of those who—mindless of the rights of one-quarter of the world's inhabitants—tried to transform a fiction into reality. On the other hand, the refusal to take any decision on the credentials of the Hungarian representative was an act of gratuitous interference in the internal affairs of a country with which practically all governments, including those of the delegations represented on the Credentials Committee, maintained normal relations.

29. In conclusion, he stressed that his delegation's vote on the Committee's report as a whole would in no way signify any change in its position on the question of China's representation or on the lawfulness of the Hungarian Government.

30. Mr. ZOUREK (Czechoslovakia), Mr. OCIOS-ZYNSKI (Poland), Mr. SIKRI (India), Mr. BARTOS (Yugoslavia), Mr. LOUTFI (United Arab Republic), Mr. LAMANI (Albania), Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), Mr. NIKOLAEV (Union of Soviet Socialist Republics) and Mr. RADUILSKY (Bulgaria) associated themselves with the Romanian representative's statement.

31. Sir Claude COREA (Ceylon) said that paragraphs 15 and 16 of the Committee's report were somewhat unfortunate, as they suggested that the Conference should challenge the validity of invitations issued to representatives whose credentials were in themselves unimpeachable.

32. Mr. SHAHA (Nepal), while regretting that the Conference had reopened the discussion on certain largely irrelevant issues, said that his delegation would vote for the Credentials Committee's report on the understanding that the Nepalese Government's position on the question of the representation of China remained unchanged.

33. Mr. GUNDERSEN (Norway) said that paragraph 15 raised a difficult point. The Hungarian delegation having participated in the Conference's work and voted, it was necessary to clarify whether the votes thus cast had been valid. While that point remained unsettled, the Norwegian delegation might find it very difficult to vote on the report as a whole.

34. Mr. ASANTE (Ghana) observed that the Conference was not qualified to challenge the legitimacy of governments. It should therefore confine itself to the strictly legal aspect of the question and recognize the validity of the Hungarian representative's credentials.

35. Mr. DEAN (United States of America) said that the question of China's representation had been duly settled at the first two plenary meetings of the Conference. With regard to Hungary, the Credentials Committee had merely followed the precedent established by the General Assembly at its eleventh and twelfth sessions. The reasons for the Assembly's action were well known, and neither the Hungarian authorities nor the Government of the Soviet Union had since made any real effort to regain the confidence of the international community.

36. Mr. LIU (China) said it was regrettable that certain speakers, instead of merely making reservations to the Credentials Committee's report, had attempted to distort historical facts. The question of his right to represent the Chinese people having been decided at the first two plenary meetings, he would merely refer those gentlemen to the statement he had made on that occasion.

37. Mr. DIAZ GONZALEZ (Venezuela) and Mr. KUSUMAATMADJA (Indonesia) shared the Norwegian representative's views on paragraph 15.

38. Mr. BOCOBO (Philippines) urged the Conference to desist from an unnecessary and repetitious debate and to approve the Credentials Committee's report forthwith.

39. Mr. COMAY (Israel) said that, in his government's opinion, the question of China's representation could be decided only by the General Assembly. His delegation would support the credentials of the Hungarian delegation. Lastly, there was no denying the right of Yemen to attend the Conference on a footing of equality with all other States, provided that its representative produced credentials in good and due form.

40. Mr. SZITA (Hungary) asked for a separate vote on the reference to Hungary in paragraph 15.

41. Sir Gerald FITZMAURICE (United Kingdom) said that, in the circumstances, he would vote for the deletion of the words "and Hungary", a vote which would amount in practice to recognition of the Hungarian representative's credentials. He would do so very reluctantly, as no decision on the question had been reached by the General Assembly, but a negative vote would not be warranted from the strictly legal point of view, for representatives of the Hungarian authorities participated in the work of the Assembly itself.

42. *The PRESIDENT put to the vote the words "and Hungary" in paragraph 15 of the Credentials Committee's report (A/CONF.13/L.35).*

A vote was taken by roll-call.

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

In favour: Netherlands, New Zealand, Nicaragua, Paraguay, Philippines, Portugal, Spain, Thailand, United States of America, Republic of Viet-Nam, Argentina, Australia, China, Colombia, Costa Rica, Dominican Republic, Ecuador, France, Federal Republic of Germany, Greece, Guatemala, Haiti, Iceland, Italy, Republic of Korea, Mexico.

Against: Morocco, Norway, Poland, Romania, Saudi Arabia, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Yugoslavia, Afghanistan, Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Denmark, Finland, Hungary, India, Indonesia, Israel.

Abstaining: Monaco, Nepal, Pakistan, San Marino, Uruguay, Venezuela, Canada, Chile, Honduras, Iran, Japan, Jordan, Liberia, Libya.

The words "and Hungary" in paragraph 15 of the Credentials Committee's report were rejected by 27 votes to 26 with 14 abstentions.

The Credentials Committee's report as a whole, as amended, was adopted by 58 votes to 1, with 3 abstentions.

The meeting rose at 1.15 p.m.

SEVENTEENTH PLENARY MEETING

Saturday, 26 April 1958, at 3 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Sixth report of the Drafting Committee of the Conference: final clauses (A/CONF.13/L.32)

1. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the rules of the law of the sea were universal, not regional, in character. His delegation therefore objected to the signature clause, which excluded certain States from participation. That clause was contrary to the principle of the equality of States, which was a basic principle of international law.

2. Sir Gerald FITZMAURICE (United Kingdom) said that the signature clause was based on General Assembly resolution 1105 (XI) under which the Conference had been convened. It was normal that the convention or conventions should be open to signature by the States which had participated in the Conference. In any event, it was specified in the signature clause that any other State could be invited by the General Assembly to become a party to the convention or conventions.

3. Mr. LEE (Republic of Korea) said that the signature clause was fully in accordance with General Assembly resolution 1105 (XI) under which the Conference had been convened.

4. Mr. TUNCEL (Turkey) said that his delegation did not share the doubts expressed by the representatives of Czechoslovakia and France regarding the accession clause.

5. With regard to the reservations clause, he said that, if alternative II was put to the vote, his delegation would ask for a separate vote on the words "other than to articles... inclusive". His delegation's instructions had been drawn up with reference to the International Law Commission's draft. That text having been amended in several important respects, his delegation was no longer in a position to know which articles called for reservations by Turkey.

6. The revision clause put all questions of revision on the same footing. In fact, a distinction should have been drawn between major and minor revisions; in the case of minor revisions, an international meeting should not be necessary. In that connexion, his delegation hoped that the proposal submitted by Peru regarding the periodic reconvening of the United Nations Conference on the Law of the Sea (A/CONF.13/L.10) would be examined at the same time as the revision clause.

7. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that the restrictive terms of General Assembly resolution 1105 (XI) concerning invitations to the Conference did not justify a restrictive approach on the part of the Conference itself with regard to the signature of the convention or conventions. States which desired to accept the rules of international law codified by the Conference should not be prevented from doing so.