

# **United Nations Conference on the Law of the Sea**

Geneva, Switzerland  
24 February to 27 April 1958

## **Summary Records of the 17<sup>th</sup> Plenary Meeting**

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

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.

8. The same remarks applied to the accession clause, which should have been wider than the signature clause. As drafted by the Drafting Committee, both clauses were equally restrictive.

9. Sir Gerald FITZMAURICE (United Kingdom) said that the figure of twenty-two for the minimum number of ratifications required for entry into force was too low. That figure, which had become a standard one in United Nations practice, had originally been specified at a time when the organization had had only some sixty Member States. Since the convention or conventions would be open for signature by all States Members of the United Nations — at present over eighty — and of specialized agencies, it was desirable that the minimum number of ratifications should be higher — say, twenty-five or even thirty. It had to be remembered that some fifteen land-locked States would have a very special interest in a section of one of the conventions which would deal with their particular problems; if those land-locked States ratified that particular convention promptly, the result would be that the whole convention might enter into force after ratification by no more than about seven maritime States — an undesirable situation. He proposed that in the clause relating to entry into force the word “twenty-second” should be replaced by dots.

10. Moreover, it was probable that some four or five separate conventions would result from the work of the Conference. Where a convention codified existing rules of international law, it was perhaps appropriate to be content with a small number of ratifications. The situation was, however, quite different in the case of conventions dealing with more controversial questions involving the progressive development of international law.

11. It was very difficult to discuss the reservations clause in a general manner because each convention, according to its contents, would probably call for different treatment. Thus, in the convention on the continental shelf prepared by the Fourth Committee, it might be advisable to allow reservations. In some other instruments, it might be desirable not to permit any reservations. He proposed that the first paragraph of alternative II of the reservations clause should be revised to read:

“At the time of signature, ratification or accession, reservations may be made only to articles . . .”

12. Mr. ZOUREK (Czechoslovakia) said that the signature clause was unsatisfactory. The proposed rules affected the interests of all States and hence should ultimately become universal. *A fortiori*, the accession clause should likewise aim at universality.

13. His delegation opposed alternative I for the reservations clause. It was impossible to deny to a sovereign State, without its consent, the right to make reservations.

14. The second paragraph of the revision clause made provision for action by the General Assembly. The normal practice was to leave the matter to the signatories of the convention.

15. Mr. JHIRAD (India) said that perhaps there were technical difficulties in the way of opening the

instrument to signature by States other than those which had participated in the Conference or which might be invited by the General Assembly to become parties to the convention or conventions.

16. No such technical difficulty, however, arose in the case of the accession clause and his delegation agreed with the Czechoslovak delegation's criticism of the words “mentioned in article . . .” in that clause.

17. Mr. DEAN (United States of America) said that it was hardly possible to open the convention or conventions to signature by entities which flouted the very principles of the United Nations and which had been characterized as aggressors by United Nations decisions.

18. Mr. STAR BUSMANN (Netherlands) supported the drafting amendment proposed by the United Kingdom representative to alternative II of the reservations clause. As drafted by the Drafting Committee, that clause seemed to invite reservations, whereas it was desirable to discourage them.

19. It had been considered that the revision clause made a denunciation clause unnecessary. The Netherlands delegation did not share that view and considered that some of the conventions would require a denunciation clause.

20. The five-year period mentioned in the revision clause was not suitable to all the conventions. It could apply to a convention such as that on the continental shelf which dealt with a subject in constant development. With regard to other subjects, a longer period might be necessary.

21. Mr. MELO LECAROS (Chile) said that the signature clause appeared to make the convention or conventions open for signature by States which would be members of the United Nations or of any of the specialized agencies on 31 October 1958. The accession clause referred to the States mentioned in the signature clause, and in that manner, seemed to limit accession to those States which would be Members of the United Nations or of any of its specialized agencies on 31 October 1958. It was desirable to make accession possible for States which might become members of the United Nations or of any of its specialized agencies after that date.

22. He drew attention to the different conceptions of accession in the Latin American and in the Anglo-Saxon systems of law. According to the Anglo-Saxon system, accession was equivalent to ratification, and was binding on States. In accordance with the Latin American system, accession was equivalent merely to signature; the treaty did not become binding until subsequently ratified. In accordance with Chilean law, it was not easy to submit to Congress a treaty which had not yet been signed. That situation might lead to practical difficulties which his delegation would do its best to solve. While drawing attention to the difficulties in question, his delegation wished to make it clear that it did not intend to oppose the accession clause as drafted.

23. His delegation opposed any clause which excluded reservations altogether. It was desirable to permit reservations and so to facilitate the signature and

ratifications of the conventions. Many ratifications would thus take place subject to reservations which would ultimately be withdrawn. That process would lead to the gradual entry into force of the conventions.

24. With regard to the revision clause, his delegation considered that the five-year period should be reckoned from the date of signature. If, at the end of that period, the requisite number of ratifications had not been obtained, it would become apparent that the text had some serious defect which prevented it from being generally acceptable; the text would then be revised.

25. Mr. GUNDERSEN (Norway) said that the reservations clause could not really be discussed sensibly except with reference to each particular convention. It had now become apparent that, although the work of the First and Second Committees, together with some of the provisions drafted by the Fifth Committee, might be incorporated in one instrument, two other instruments would embody the work of the Third and Fourth Committees. In view of that situation, the Norwegian delegation could not accept at that stage a general reservations clause to the effect that no reservations could be made, and would support alternative II as reworded by the United Kingdom representative.

26. Mr. KUSUMAATMADJA (Indonesia) proposed that the accession clause be voted upon before the signature clause. In that manner, the objects of certain delegations which applied to both clauses would be disposed of in one vote.

27. With regard to the reservations clause, his delegation considered that the question of drafting it in negative or positive terms was merely a matter of convenience. A different drafting might be adopted for each one of the conventions. What mattered was that reservations should be limited, lest an excessive number of reservations destroy the work of the committees.

28. The PRESIDENT said, in reply to the Indonesian representative, that the amendments relating to the signature clause and to the accession clause would be voted upon first.

29. Mr. CORREA (Ecuador), Chairman of the Drafting Committee, said, with reference to the question raised by the Chilean representative, that the intention of the Drafting Committee had been to make the convention or conventions open for accession by all States who were members of the United Nations or of any of the specialized agencies at the time of their accession.

30. Mr. BARTOS (Yugoslavia) said that his delegation had serious doubts with respect to the words "if any" in the second paragraph of the revision clause.

31. With regard to the question of a denunciation clause, his delegation shared the views of the Netherlands delegation.

32. With regard to the reservations clause, his delegation supported the proposal that the clause should state explicitly which articles could be made the subject of reservations.

33. It was desirable to include a provision concerning

the effects of reservations, an extremely complex question on which opinion was divided. In the opinion of the Yugoslav delegation, a State which, by making reservations, failed to assume obligations under the convention which it had signed, could not well expect other States to carry out all the terms of that convention.

34. With regard to the clause on entry into force, he drew attention to the technical difficulties arising from the inevitable delay in the notification reaching the interested governments. There was no specified period for ratification, which might take place at any time. It was, however, specified that the convention would enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession. When a convention containing such a clause entered into force, the Secretary-General informed the permanent delegations concerned in New York which had to inform their governments. Thus it sometimes happened that a State was bound by a convention before its competent authorities had taken cognizance of the fact.

35. Mr. JHIRAD (India) recalled that it had already been decided that reservations would be permitted to articles 67, 68 and 69. He therefore suggested that the reservations clause should be considered when the various conventions were discussed. It would be unnecessary to discuss the revision clause when those conventions were considered, since the Conference would decide upon the question of revision in respect of each article.

36. Sir Gerald FITZMAURICE asked that the clause relating to entry into force should also be considered when the various conventions were studied.

37. The preoccupations of certain speakers with regard to the phrase "States mentioned in article..." could easily be met by amending the text of the clause relating to accession to read "This convention shall be open for accession by any States belonging to any of the categories mentioned in article..."

*It was so agreed.*

38. Mr. GLASER (Romania) said that any State excluded from acceding to the proposed conventions could certainly not be obliged to respect their provisions. The conventions should be open for the signature of all States.

39. Turning to the reservations clause, he pointed out that if States were not allowed to make reservations they would not sign the conventions. The right of States to formulate reservations should not therefore be limited since in many cases reservations to a treaty had later become the general rule of international law.

40. His delegation could accept the revision clause, although it felt that the wording could be improved.

41. Mr. WERSHOF (Canada) urged representatives to support the text recommended by the Drafting Committee.

42. Mr. OCIOSZYNSKY (Poland) recalled that the report of the Drafting Committee was based on a document prepared by the Secretariat (A/CONF.13/L.7) which had contained several alternatives for the reservations clause, but no alternative text for the

signature clause. Many important conventions contained signature clauses allowing all States to become parties, and he had been surprised to hear the United States representatives suggest that certain States should not be allowed to become parties to the proposed conventions on the law of the sea. Every effort should be made to ensure that the provisions of the proposed conventions became universally applicable. The conventions should therefore be open to accession by all States.

43. He recalled that the advisory opinion of the International Court of Justice concerning reservations to the Convention on Genocide<sup>1</sup> had been very liberal. He therefore considered that all States should have the right to make reservations to the proposed conventions.

44. Mr. SÖRENSEN (Denmark) moved the closure of the debate on the question under discussion.

45. Mr. GOMEZ ROBLEDO (Mexico) and Mr. KUSUMAATMADJA (Indonesia) opposed the motion.

46. The PRESIDENT put the motion for the closure of debate to the vote under rule 28 of the rules of procedure.

*The motion was adopted by 45 votes to 1, with 2 abstentions.*

47. Mr. KUSUMAATMADJA (Indonesia) proposed that the accession clause should be voted on first.

*The proposal was rejected by 37 votes to 11 with 9 abstentions.*

48. Mr. TUNKIN (Union of Soviet Socialist Republics) proposed a separate vote on the phrase "members of the United Nations or of any of the specialized agencies" in the signature clause.

49. Sir Gerald FITZMAURICE (United Kingdom) opposed the USSR representative's proposal.

50. The PRESIDENT put the USSR representative's proposal to the vote.

*The USSR proposal was rejected by 40 votes to 16, with 8 abstentions.*

51. Mr. ZOUREK (Czechoslovakia) proposed a separate vote on the phrase "belonging to any of the categories mentioned in article..." in the accession clause, as amended during the meeting.

*The Czechoslovak proposal was rejected by 43 votes to 17, with 8 abstentions.*

52. The PRESIDENT put to the vote the United Kingdom amendment to replace the word "twenty-second" by dots in the clause relating to entry into force.

*The amendment was adopted by 51 votes to none, with 4 abstentions.*

53. Mr. TUNKIN (Union of Soviet Socialist Republics) thought that it would be better to leave the question of the reservations clause until later.

54. Mr. TUNCEL (Turkey) emphasized that it was a general principle of international law that a State should be permitted to submit reservations unless a convention contained provisions to the contrary. He could not therefore support the United Kingdom representative's amendment regarding the reservations clause and would support the Drafting Committee's proposal.

55. Mr. SOLE (Union of South Africa), associating himself with the remarks of the representative of Turkey, said that the reservations clause should be considered in connexion with each convention.

56. Sir Gerald FITZMAURICE (United Kingdom) withdrew his amendment to the reservations clause on the understanding that it would be dealt with in connexion with each of the conventions.

57. Mr. JHIRAD (India) formally proposed that voting on the reservations clause be deferred until each convention was considered.

*It was so agreed.*

58. Mr. STAR BUSMANN (Netherlands) proposed that voting on the revision clause be deferred until the various conventions were considered.

*The proposal was adopted by 41 votes to 5, with 16 abstentions.*

59. The PRESIDENT put to the vote the remaining clauses contained in the Drafting Committee's report (A/CONF.13/L.32).

*The clause relating to signature was adopted by 58 votes to 8, with 3 abstentions.*

*The clause relating to ratification was adopted.*

*The clause relating to accession, as amended, was adopted by 56 votes to 5, with 9 abstentions.*

*The clause relating to entry into force as amended was adopted by 61 votes to none.*

*The clause relating to notifications was adopted.*

*The clause relating to the deposit of the convention and languages was adopted.*

**Eighth report of the Drafting Committee of the Conference: judicial settlement of disputes (A/CONF.13/L.40)**

60. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the first paragraph of the preamble of the proposed optional protocol of signature (A/CONF.13/L.40) was incorrectly drafted, and should begin with the words "The States Parties" and not "The States represented..."

61. Mr. DEAN (United States of America) proposed that in article V the words "the convention(s)" should be replaced by "any convention".

*It was so agreed.*

62. The PRESIDENT, replying to a question by Mr. BARTOS (Yugoslavia), said that it would be possible for States to accede to any of the proposed conventions without having to sign the optional protocol.

63. Sir Gerald FITZMAURICE (United Kingdom) agreed with the USSR representative regarding the

<sup>1</sup> I.C.J. Reports, 1951, p. 15.

wording of the first paragraph of the preamble, and suggested that it should be redrafted to read: "States Parties to any of the conventions on the Law of the Sea, signed..." Not all States represented at the Conference would become parties to the conventions. It was possible, however, that States not represented might become parties. The protocol of signature should be capable of being signed by all States which became parties to the conventions. In that respect, article V was correctly worded.

*The United Kingdom amendment was approved.*

64. Mr. CAICEDO CASTILLA (Colombia) pointed out that, under article 73 of the International Law Commission's draft, States were not necessarily bound to submit their disputes to the International Court of Justice but had the right to agree on other methods of peaceful settlement. The Latin American States had agreed to resort to certain methods of peaceful settlement of disputes under certain treaties and conventions; Article 1 of the Charter of the United Nations also called for the settlement of international disputes by peaceful means. Article III of the protocol should therefore be amended accordingly, and the reference to an arbitral tribunal deleted.

65. Mr. THOMAS (Austria) suggested that a clause relating to accession should be inserted in the protocol.

66. Sir Gerald FITZMAURICE (United Kingdom) pointed out that such a clause was unnecessary since article V provided that the protocol should remain open for signature by all States which became parties to any convention on the law of the sea.

67. He considered that the point raised by the representative of Colombia was covered by the second paragraph of the preamble.

68. Mr. CAICEDO CASTILLA (Colombia) said he would still prefer his point to be taken into account by an amendment to article III, since the preamble would have no legal force.

69. The PRESIDENT put to the vote the optional protocol of signature (A/CONF.13/L.40), as amended.

*The optional protocol of signature, as amended, was adopted by 52 votes to none, with 13 abstentions.*

#### **Consideration of the report of the Fourth Committee A/CONF.13/L.12) (continued)<sup>1</sup>**

70. Mr. JHIRAD (India), speaking on a point of order, said that it was his understanding that, at its 13th plenary meeting, the Conference, when taking decisions on the report of the Drafting Committee regarding proposals for the judicial settlement of disputes (A/CONF.13/L.24), had rejected the principle of article 74 as submitted by the Fourth Committee (A/CONF.13/L.12, annex). It would therefore not be in order for the Conference to take up that article again.

71. Mr. CORREA (Ecuador), Chairman of the Drafting Committee of the Conference, drew attention

in that connexion to the final sentence of paragraph 5 of the Drafting Committee's fourth report (A/CONF.13/L.24).

72. Mr. CARMONA (Venezuela) said that the adoption of the optional protocol on the settlement of disputes (A/CONF.13/L.40) had rendered article 74 completely unnecessary.

73. The PRESIDENT said that all doubts would be removed if article 74 was put to the vote. He therefore called for a vote on that article.

*The result of the vote was 38 in favour and 20 against, with 7 abstentions. Article 74 was not adopted, having failed to obtain the required two-thirds majority.*

The meeting rose at 6.35 p.m.

### **EIGHTEENTH PLENARY MEETING**

*Saturday, 26 April 1958, at 8.50 p.m.*

*President:* Prince WAN WAITHAYAKON (Thailand)

#### **Consideration of the report of the Fourth Committee (A/CONF.13/L.12, L.32) (concluded)**

##### **ADOPTION OF THE CONVENTION ON THE CONTINENTAL SHELF**

##### *Clause relating to entry into force*

1. Mr. WERSHOF (Canada) said that more than twenty-two ratifications might be necessary in the case of some of the conventions adopted by the Conference, but not in the case of the convention on the continental shelf. He therefore proposed that the word "twenty-second" should be entered in the appropriate space in the clause relating to entry into force (A/CONF.13/L.32).

2. Mr. MÜNCH (Federal Republic of Germany) said that, in adopting the convention on the continental shelf, the international community was disposing of common property in favour of the coastal States, and hence a larger number of ratifications should be stipulated. For that reason he proposed that the word "fiftieth" should be inserted in the appropriate space in the clause in question.

3. Mr. WALL (United Kingdom) said that although the number of twenty-two ratifications suggested by the Drafting Committee was too low for some conventions, the number proposed by the German representative was too high for the convention on the continental shelf.

4. Mr. JHIRAD (India) said that his delegation supported the Canadian proposal, since the number proposed by the German representative was so high that the convention might never enter into force.

5. Mr. TUNKIN (Union of Soviet Socialist Republics) said that to the best of his knowledge no convention had ever required a minimum of fifty ratifications. For that reason, his delegation opposed the German proposal, and supported the Canadian proposal.

<sup>1</sup> Resumed from the 9th plenary meeting.