

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

Geneva, Switzerland  
24 February to 27 April 1958

## **Summary Records of the 19<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)*

94. Mr. LETTS (Peru) said that the work of the First, Second and Third Committees was closely interrelated. Accordingly, he proposed that the results of their work should be combined in a single instrument.

95. Mr. SOLE (Union of South Africa) said his delegation considered that the work of the Second Committee should be embodied in a separate single instrument and would therefore vote for the Indian representative's proposal. In view of the absence of agreement on the territorial sea articles, however, it would be undesirable to combine the work of the First and Second Committees in the same convention.

96. Mr. SALAMANCA (Bolivia) suggested that the Conference might embody the work of the First and Second Committees in a single convention and that of the Third Committee in a separate convention.

97. Mr. SEYERSTED (Norway) considered that the work of the Third Committee should appear in a separate instrument and must not be combined with that of the Second. The suggestion that the work of the First and Second Committees should be included in a single separate convention could be examined more profitably when the Conference considered the First Committee's report. He supported the Indian representative's proposal, that the Conference should adopt the preamble suggested by the Drafting Committee (A/CONF.13/L.37) and should then decide to embody the results of the Second Committee's work in a convention.

*The preamble was adopted by 52 votes to none, with 2 abstentions.*

*The proposal that the work of the Second Committee should be embodied in a convention was adopted.*

#### *Ratification*

98. The PRESIDENT noted that the Canadian representative had proposed that the convention should enter into force after twenty-two ratifications had been received.

*The Canadian representative's proposal was adopted by 59 votes to none, with 2 abstentions.*

#### *Reservations*

99. Mr. JHIRAD (India) observed that, according to the preamble, the Second Committee's articles were generally declaratory of established principles of international law. He therefore proposed that no reservations clause should be included in the convention.

*The Indian representative's proposal was adopted by 54 votes to none, with 8 abstentions.*

#### *Revision*

100. The PRESIDENT suggested a period of five years for purposes of revision.

*The President's suggestion was adopted by 59 votes to 2, with 3 abstentions.*

101. Mr. THOMAS (Austria), referring to paragraph 5 of the Drafting Committee's seventh report (A/CONF.13/L.37), proposed that the new article adopted by the

Fifth Committee should be inserted after article 27 in the convention embodying the Second Committee's work.

102. Mr. TABIBI (Afghanistan) supported the proposal because, in his view, the work of the Fifth Committee was closely related to that of the Second.

*The Austrian representative's proposal was adopted by 61 votes to none, with 2 abstentions.*

103. The PRESIDENT put to the vote, as a whole, the convention on the high seas, as adopted in the course of the meeting and during the 11th plenary meeting, on the understanding that if it was decided to adopt a combined convention the preamble and final clauses would be adapted, *mutatis mutandis*.

*The convention as a whole was adopted by 65 votes to none, with 1 abstention.*

The meeting rose at 12.15 a.m.

## NINETEENTH PLENARY MEETING

*Sunday, 27 April 1958, at 11.30 a.m.*

*President*: Prince WAN WAITHAYAKON (Thailand)

### **Consideration of the report of the First Committee (Part II: articles 1, 2, and 4 to 25) (A/CONF.13/L.28/Rev.1, L.38, L.39, L.44, L.46, L.47)**

1. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur of the First Committee, introduced part II of the Committee's report (A/CONF.13/L.28/Rev.1). He recalled that some regret had been expressed at the 14th plenary meeting that the report was not to contain a legal analysis of, or comments on, the articles. Such treatment might have been desirable, especially in view of the very thorough work done by the First Committee on the basis of the earlier labours and comments of the International Law Commission, but might equally have entailed fresh discussion of the way in which the material had been organized. When the articles as a whole were finally published in their new form, jurists would be able to examine in detail the official records of the Conference, and would have a clear picture of the position of all delegations.

2. The PRESIDENT invited the Conference to take a decision on articles 1, 2, and 4 to 25 contained in the annex to the report of the First Committee (A/CONF.13/L.28/Rev.1). He drew attention to the report of the Drafting Committee of the Conference (A/CONF.13/L.47); if there were no objection, he would assume that the changes recommended by the Drafting Committee had been adopted together with the articles to which they referred. Finally, he reminded the Conference that four proposals had been submitted in connexion with the articles adopted by the First Committee (A/CONF.13/L.38, L.39, L.44, L.46).

#### *Article 1*

*Article 1 was adopted by 72 votes to none.*

*Article 2*

*Article 2 was adopted by 75 votes to none.*

*Article 4*

*Article 4 was adopted by 75 votes to none, with 1 abstention.*

*Article 5*

3. Mr. SIKRI (India) asked that a separate vote be taken on the phrase "as a whole" in article 5, paragraph 1. The phrase had not appeared in the original text proposed by the International Law Commission, and it was implicit in the phrase "in localities where the coastline... is deeply indented". Its retention might create confusion.

4. Mr. DREW (Canada) asked that a separate vote be taken on the second sentence of paragraph 2 of article 5. The text before the Conference was a redraft of that prepared by the Commission, but it had now been specified that the length of the straight baseline should not exceed fifteen miles. Such a provision was neither necessary nor desirable, since the decision of the International Court of Justice in the Anglo-Norwegian fisheries case<sup>1</sup> had established the jurisprudence and defined the circumstances in which cases coming under paragraph 2 might be considered. To depart from a firm legal basis would be undesirable. The International Law Commission had begun by considering a specified limit for the straight baseline, but, on maturer consideration, had decided against it. Now an attempt was being made to impose an arbitrary mathematical limit in a provision which was intended to be flexible.

5. Mr. NIKOLAEV (Union of Soviet Socialist Republics) supported the Canadian representative's view. The text proposed by the International Law Commission was certainly preferable.

6. Sir Gerald FITZMAURICE (United Kingdom) urged that the sentence in question be retained. Admittedly, no definite limit had been suggested in the decision on the Anglo-Norwegian fisheries case, but to decide that there should be such a limit would not be incompatible with that decision. The sentence had been carefully drafted to allow the coastal State some latitude in the matter. The length of fifteen miles was not laid down as an absolute limit, since exceptions were provided for in the same sentence.

7. Mr. STABELL (Norway) asked that a separate vote be taken on article 5, paragraph 3.

8. Mr. AGO (Italy) objected in all three cases to a separate vote. The second sentence of paragraph 2 had been accepted after exhaustive discussion, and article 5 as a whole was the outcome of long and difficult negotiation. If separate votes were now permitted on certain parts of the article, and, as a result, those parts were deleted, many delegations would be unable to accept the article as a whole.

9. Mr. SUBARDJO (Indonesia) observed that the fifteen-mile limit specified for the straight baseline had

been made arbitrary by the fact that no decision had been taken on the breadth of the territorial sea. He therefore agreed with the Canadian and Soviet Union representatives that the second sentence of paragraph 2 did not allow the coastal State sufficient latitude. Furthermore, the final phrase of paragraph 4 with its reference to "long usage", could hardly be expected to prove acceptable to a new State which had had no say in the matter in the past.

*The Indian motion was adopted by 34 votes to 28, with 12 abstentions.*

*The Canadian motion was adopted by 35 votes to 31, with 10 abstentions.*

*The Norwegian motion was rejected by 29 votes to 20, with 16 abstentions.*

10. The PRESIDENT called for a vote on the phrase "as a whole" in paragraph 1.

*The result of the vote was 38 votes in favour and 32 against, with 7 abstentions. The phrase was not adopted, having failed to obtain the required two-thirds majority.*

11. The PRESIDENT called for a vote on the second sentence of paragraph 2.

*The result of the vote was 34 votes in favour and 30 against, with 12 abstentions. The sentence was not adopted, having failed to obtain the required two-thirds majority.*

12. Sir Gerald FITZMAURICE (United Kingdom) pointed out that if all those delegations which had voted against the principle of separate votes and against the retention of the texts involved also voted against the article as a whole, it would not receive the required two-thirds majority. The United Kingdom delegation would therefore vote for article 5 as a whole, impaired though it was by the deletions, since the principle had been sanctioned by the International Court of Justice in the Anglo-Norwegian fisheries case and ought to be embodied in any convention adopted by the Conference.

13. Mr. AGO (Italy) regretted that separate votes had been taken. He would abstain from voting on the article as a whole. He deprecated the amended text, but did not wish to see the principle abandoned.

14. Mr. DREW (Canada) observed that the Italian representative had been wrong in referring to the text of article 5 as the outcome of negotiation. The text had been voted upon in the ordinary way, and in voting on the present occasion the Canadian delegation would be re-affirming the exact position which it had maintained at all times.

15. Mr. VERZIJL (Netherlands) said that he would vote against article 5 as it now stood. Consolation was to be found in the fact that the decision by the International Court of Justice would subsist and could always be relied upon.

16. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the deletion of the second sentence from paragraph 2 had virtually restored the article to the satisfactory state in which it had been drafted by the International Law Commission. His delegation would therefore vote for it as a whole.

<sup>1</sup> *I.C.J. Reports, 1951, p. 116.*

17. Mr. BAILEY (Australia) said that he had voted against the motions for separate votes, but would vote for the article as a whole, for the same reasons as the Soviet Union representative. The text was now substantially the same as the Commission's, but the drafting had been improved.

18. Mr. GROS (France) said that he would vote against the article as a whole. He must draw attention to the undesirability of making changes in plenary meeting at the very last moment. The principle at issue had been carefully studied in the First Committee, but had now been impaired by the deletion of the precise stipulation of the length of the straight baseline.

19. Mr. STABELL (Norway) observed that his delegation had been placed in an embarrassing position by the Conference's refusal to take a separate vote on paragraph 3, which embodied a provision which was inconsistent with the decision taken by the International Court of Justice in 1951, when the Norwegian straight baselines had been recognized as based on certain low-tide elevations. As, however, he realized that the Conference would find itself in a very unfortunate situation if the article as a whole were rejected, he would, albeit with considerable reluctance, vote for article 5 as amended. But he would reserve his government's right to consider in due course whether it would not be obliged to make a reservation to the paragraph in any convention embodying such an article.

20. Mr. GARCIA AMADOR (Cuba) explained that his delegation could not have voted for article 5 had paragraph 2 been retained as approved by the First Committee. But it now conformed with the International Law Commission's draft and with the decision in the Anglo-Norwegian fisheries case. His delegation still had some reservations about paragraph 3, but would vote for article 5 as a whole.

21. Mr. BOCOBO (Philippines) said that he would abstain from voting on the article as a whole since it conflicted with the Constitution of the Philippine Republic. The doctrine embodied in it was, however, sound, and he would therefore not oppose the article.

22. Mr. DAHLMAN (Sweden) observed that the voting had seriously impaired the article; but the Swedish delegation would vote for it, since it would be very valuable to retain at least some stipulations regarding the straight baseline.

23. Mr. BARTOS (Yugoslavia) said that he had supported both the motions for separate votes and the retention of paragraph 2 as it stood, but wished to safeguard the principle involved. He would therefore vote for the article as a whole, even in its weakened state.

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

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

*In favour:* Norway, Pakistan, Panama, Paraguay, Poland, Portugal, Romania, Saudi Arabia, 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, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina, Australia, Austria, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, Ghana, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Republic of Korea, Lebanon, Federation of Malaya, Mexico, Morocco, New Zealand, Nicaragua.

*Against:* Uruguay, Belgium, France, Federal Republic of Germany, Japan, Luxembourg, Monaco, Netherlands.

*Abstaining:* Peru, Philippines, Spain, Greece, Holy See, Iran, Italy, Liberia.

*Article 5 was adopted by 63 votes to 8, with 8 abstentions.*

#### *Article 5 A*

24. Mr. NIKOLAEV (Union of Soviet Socialist Republics) asked that a separate vote be taken on paragraph 2.

*Paragraph 2 was adopted by 55 votes to 16, with 6 abstentions.*

*Article 5 A as a whole was adopted by 68 votes to none, with 9 abstentions.*

#### *Article 6*

*Article 6 was approved by 74 votes to none.*

#### *Article 7*

25. Mr. KRISPIS (Greece) asked that separate votes be taken on paragraphs 4 and 5. The original text proposed by the International Law Commission had provided that the length of the closing line across the bay should be fifteen miles, and in the First Committee lengths of ten, and even twenty-four miles had been suggested. A small majority had been in favour of a twenty-four-mile line. The Conference itself should therefore take the final decision on the length of the closing line.

*Paragraph 4 was adopted by 49 votes to 19, with 9 abstentions.*

*Paragraph 5 was adopted by 47 votes to 19, with 8 abstentions.*

26. The PRESIDENT observed that, paragraphs 4 and 5 having been adopted, there was no need for the Conference to examine the proposal submitted by Greece, Italy and Liberia (A/CONF.13/L.44) to put to the vote the original text of the International Law Commission, should those paragraphs not be adopted.

*Article 7 as a whole was adopted by 63 votes to 6, with 5 abstentions.*

#### *Article 8*

*Article 8 was adopted by 78 votes to 1.*

#### *Article 9*

27. Sir Gerald FITZMAURICE (United Kingdom) asked that a separate vote be taken on the words

“buoyed channels”, which occurred twice in paragraph 1. Whereas roadsteads were natural formations, buoyed channels were artificial, and there was no case for treating them on the same footing, since they were situated outside the normal territorial sea.

28. Mr. LEDESMA (Argentina) opposed the United Kingdom representative's motion for a separate vote. Buoyed channels and roadsteads served a common purpose: that of enabling ports to be used. If the coastal State was unable, in cases where it alone had sovereignty over the waters in the neighbourhood of ports, to issue regulations regarding buoyed channels, there was a danger that certain ports might lose all their utility. In some cases, there was only one course giving access to the open sea, and the absence of regulations might entail risk of accidents.

*The motion for a separate vote on the words “buoyed channels” was carried by 38 votes to 17, with 18 abstentions.*

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

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

*The result of the voting was as follows:*

*In favour:* Yugoslavia, Albania, Argentina, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Ecuador, El Salvador, Greece, Guatemala, Haiti, Honduras, Hungary, India, Iran, Iraq, Republic of Korea, Liberia, Libya, Federation of Malaya, Mexico, Morocco, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela.

*Against:* Australia, Belgium, Cambodia, Canada, Ceylon, Denmark, Finland, France, Federal Republic of Germany, Ghana, Holy See, Ireland, Israel, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

*Abstaining:* Afghanistan, Austria, Burma, China, Dominican Republic, Iceland, Indonesia, Lebanon, Nepal, Pakistan, Switzerland, Turkey, Union of South Africa.

*The result of the vote was 41 in favour and 26 against, with 13 abstentions. The words “buoyed channels” were not adopted, having failed to obtain the required two-thirds majority.*

29. Sir Gerald FITZMAURICE (United Kingdom) pointed out that the words “buoyed channels” having been rejected, paragraph 2 was no longer necessary.

30. The PRESIDENT put to the vote article 9 as amended.

*Article 9 as amended was adopted by 77 votes to none, with 1 abstention.*

#### Article 10

31. Mr. BOCOBO (Philippines) asked that a separate vote be taken on paragraph 2, which his delegation was

unable to accept, because, under the Constitution of the Philippine Republic all waters between the islands constituting the Philippine archipelago were regarded as internal waters, irrespective of the distance between the islands. He would request that his negative vote be explicitly recorded.

*Paragraph 2 was adopted by 73 votes to 1, with 1 abstention.*

*Article 10 as a whole was adopted by 75 votes to none, with 2 abstentions.*

#### Article 11

*Article 11 was adopted by 77 votes to none.*

#### Article 12

32. Mr. KRISPIS (Greece) said that he would vote for article 12 on the understanding and in the sense that under no conditions might it, or any other article of the convention, or such other convention as the Conference might adopt, be interpreted or applied in such a way as to deprive, in whole or in part, any State of any of the territorial sea over which it exercised sovereignty along any coast.

*Article 12 was adopted by 76 votes to none, with 1 abstention.*

#### Article 13

33. Mr. TRUJILLO (Ecuador) asked that separate votes be taken on each of the two paragraphs. His delegation would vote against paragraph 2, because the case dealt with therein was covered either by paragraph 1 in its latest form or by article 7. He recalled that, during the discussion in the First Committee, the Netherlands delegation had requested the deletion of the entire article on the grounds that it was superfluous, and that the United States delegation had moved the deletion of paragraph 2. Mr. François, the special rapporteur of the International Law Commission, had expressed the view that article 13 was one of the least satisfactory of the entire draft.

34. Mr. BOAVIDA (Portugal) could not agree with the representative of Ecuador. In the First Committee, paragraph 2 had been approved by 26 votes to 7, with 10 abstentions.

35. Mr. SIKRI (India) opposed the motion for separate votes.

*The motion for separate votes was carried by 29 votes to 22, with 14 abstentions.*

*Paragraph 1 was adopted by 72 votes to none, with 1 abstention.*

*The result of the vote on paragraph 2 was 37 in favour and 20 against, with 17 abstentions. Paragraph 2 was not adopted, having failed to obtain the required two-thirds majority.*

36. The PRESIDENT put article 13, as amended, to the vote.

*Article 13, as amended, was adopted by 73 votes to none, with 3 abstentions.*

The meeting rose at 1.45 p.m.