

United Nations Conference on the Law of the Sea

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24 February to 27 April 1958

Documents:
A/CONF.13/C.4/SR.36-42

Summary Records of the 36th to 42nd Meetings of the Fourth Committee

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were improvements on the original text, with the possible exception of paragraph 1 of the Netherlands proposal. She would support article 73 as it stood.

42. Mr. RIGAL (Haiti) too was strongly of the opinion that article 73 should be adopted as it stood. There was a primacy of international obligations over the municipal law of the various States, which should be made to conform with them. It was made clear in the draft article that States were not compelled to accept the jurisdiction of the International Court, since there was a reference to other methods which could be adopted by mutual consent.

The Argentine proposal (A/CONF.13/C.4/L.51), as amended, was rejected by 30 votes to 25, with 5 abstentions.

43. Mr. CARMONA (Venezuela) took over the Soviet Union amendment (A/CONF.13/C.4/L.59), which had been withdrawn.

The Venezuelan amendment was rejected by 29 votes to 26, with 6 abstentions.

Paragraph 1 of the Netherlands amendment (A/CONF.13/C.4/L.62) was rejected by 29 votes to 25, with 7 abstentions.

Paragraph 2 of the Netherlands amendment was rejected by 44 votes to 3, with 13 abstentions.

The Indian amendment (A/CONF.13/C.4/L.61) was rejected by 25 votes to 11, with 25 abstentions.

44. The CHAIRMAN put to the vote the International Law Commission's draft of article 73.

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

Iraq, having been drawn by lot by the Chairman, was called upon to vote first.

In favour : Israel, Italy, Japan, Monaco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Portugal, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia, Belgium, Cambodia, Canada, China, Colombia, Cuba, Denmark, Finland, France, Federal Republic of Germany, Ghana, Greece, Haiti, Iceland.

Against : Republic of Korea, Peru, Poland, Romania, Union of Soviet Socialist Republics, Venezuela, Albania, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Guatemala, India, Indonesia.

Abstentions : Jordan, Libya, Mexico, Morocco, Saudi Arabia, Spain, Tunisia, United Arab Republic, Australia, Brazil, Burma, Ceylon, Ecuador, Iran.

Article 73 was adopted by 33 votes to 15, with 14 abstentions.

45. Mr. CALERO RODRIGUES (Brazil) said that he had abstained from voting, both on the amendments and on the article, because he considered article 73 to be unnecessary. He saw no reason for a special procedure governing questions arising out of articles 67-72.

46. Mr. RUIZ MORENO (Argentina), in accordance with international practice, wished to state that Argen-

tina did not accept the compulsory jurisdiction of the International Court.

47. Mr. JHIRAD (India) explained that he had voted against article 73, not because India did not recognize the jurisdiction of the International Court, but because it did not wish to accept compulsory jurisdiction in disputes with States which did not otherwise recognize generally the jurisdiction of the International Court. But India would still be bound by its declaration under Article 36 of the Statute to refer to the Court any dispute with a State that had also made such a declaration.

The meeting rose at 5.50 p.m.

THIRTY-SIXTH MEETING

Friday, 11 April 1958, at 2.45 p.m.

Chairman : Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (concluded)

NEW ARTICLE ON FISHERIES ABOVE THE CONTINENTAL SHELF (A/CONF.13/C.4/L.6)

1. Mr. RUIZ MORENO (Argentina), withdrawing his delegation's proposal concerning a new article on fisheries above the continental shelf (A/CONF.13/C.4/L.6), explained that it had been submitted at a time when it had not been certain, as it then was as a result of decisions taken by the Third Committee, that the Conference would adopt a series of articles relating to fisheries. His delegation had considered that the results of the Conference's work would be incomplete if they included provisions relating to the continental shelf but none relating to fisheries in the superjacent waters. His delegation would accordingly be content if the subject of the proposal were considered by the Third Committee.

ESTABLISHMENT OF THE DRAFTING COMMITTEE

2. The CHAIRMAN proposed that Mr. Wershof (Canada), Mr. Barros Franco (Chile), Mr. Patey (France), Mr. Jhirad (India), Mr. Molodtsov (Union of Soviet Socialist Republics) and Miss Whiteman (United States of America) should join the officers of the Committee in making such drafting changes as were necessary to the draft articles adopted by the Committee. He added that it would be necessary for the Committee to express in its report an opinion on the question whether those articles should be embodied in a convention relating to a number of subjects, in a convention relating solely to the continental shelf or in some other type of international instrument. The proposed drafting committee might discuss the matter and include an appropriate passage in its report to the Committee for the latter's further consideration.

It was agreed that the drafting committee proposed by the Chairman should be set up.

3. Mr. GARCIA AMADOR (Cuba) said that during the consideration of the articles he, and, he believed, most other representatives, had had a convention in mind. He would, however, suggest that the drafting committee consider the possibility of embodying the articles in a draft declaration which States would not have to ratify formally. Such a procedure would have the advantage of eliminating the difficulties which States nearly always experienced in acceding to an international convention. It would also have the advantage of being sufficiently flexible to allow of the modifications which technical progress would certainly make necessary in the future. The Organization of American States had found that declarations of principles were often a more satisfactory means of developing international law than international conventions. Since it was obvious from the discussions that had taken place that several States had serious objections to various clauses in the articles adopted by the Committee, he thought that they would find it easier to sign a declaration than a convention. If, however, the majority of delegations to the Conference preferred a convention, he would defer to their wishes.

4. He also suggested that the drafting committee consider the addition of a preamble to the draft articles explaining the principles on which they were based.

5. Mr. ROSENNE (Israel) pointed out that the words in General Assembly resolution 1105 (IX): "*Decides...* that an international conference of plenipotentiaries should be convoked to examine the law of the sea... and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate" showed that the Conference was not bound to embody the results of the Committee's work in a draft convention.

6. Mr. SOLE (Union of South Africa) said that it was obvious that the Committee itself could not take the final decision whether the articles it had adopted should be embodied in a general convention relating to the law of the sea, in a convention relating solely to the continental shelf or in an international instrument of some other kind; only the Conference could take that decision. But he agreed with the Chairman that the drafting committee should discuss the matter. He was inclined to think that the results of the Committee's work should be embodied in a convention relating solely to the continental shelf, and not in a general convention or in a declaration, because the continental shelf, unlike the régime of the high seas, was a comparatively new concept in international law, and especially because article 73, which related to the adjudication of disputes, was not suitable for inclusion in a declaration. It might, however, be made the subject of a protocol, which States would be expected to ratify, to a declaration embodying the other articles adopted by the Committee, but a protocol would suffer from the same disadvantages as a convention.

7. States should be allowed to enter reservations in respect of some, but not all, of the articles proposed by the Committee. The drafting committee might discuss that point too.

8. Mr. GOMEZ ROBLEDO (Mexico) thought that the

drafting committee should confine itself to making the necessary drafting changes. It should not concern itself with final clauses. He agreed with the representative of the Union of South Africa that article 73 was not suitable for inclusion in a declaration of principles. The International Court of Justice would hardly be able to settle disputes between States regarding the interpretation or application of the other articles adopted by the Committee if the latter were included in a mere declaration.

9. The CHAIRMAN said that he had never suggested that the drafting committee should discuss draft final clauses.

10. Mr. PATEY (France) said that it would not be within the Committee's terms of reference to embody the draft articles referred to it either in a draft convention or in a draft declaration of principles. The question of the types and number of the instruments in which the texts adopted by the Conference were to be embodied would have to be decided in plenary meeting; it could not therefore be discussed in committee.

11. Mr. BARROS FRANCO (Chile) said that, as he had stated in the general debate, his delegation's position with regard to the question whether the articles adopted by the Committee should be embodied in a general convention, in a convention relating solely to the continental shelf or in an instrument of another type would depend on the results of the Conference as a whole, particularly those relating to fisheries. He hoped that the drafting committee's discussions on the question would not prejudice the discussions in the Drafting Committee of the Conference provided for in rule 49 of the rules of procedure. The words in that rule: "A drafting committee... appointed by the Conference on the proposal of the General Committee... shall be entrusted with the final drafting and co-ordination of the instruments approved by the committees of the Conference" showed that the question was not one for the Committee to discuss. The drafting committee should do no more than make the drafting changes it thought necessary to the draft articles adopted by the Committee. It would be sufficient if the Committee's report consisted solely of one sentence, reading: "The result of the Committee's discussions is the following text" followed by the draft articles as adopted.

12. Mr. CAICEDO CASTILLA (Colombia) said that the draft articles adopted by the Committee should be embodied in a convention, since a convention was mandatory. A declaration containing the draft articles would be ineffective, inasmuch as it would not be mandatory.

13. Mr. KANAKARATNE (Ceylon) suggested that there should be no further discussion by the Committee of the question of the type of instrument in which the draft articles it had adopted should be embodied until the drafting committee had submitted its report.

It was so agreed.

The meeting rose at 4.15 p.m.

THIRTY-SEVENTH MEETING*Tuesday, 15 April 1958, at 10.55 a.m.**Chairman:* Mr. A. B. PERERA (Ceylon)**Consideration of the kind of instrument required to embody the results of the work of the Committee**

1. Mr. BARROS FRANCO (Chile) suggested that no recommendation be made to the Conference on the kind of instrument required to embody the results of the Committee's work. The Committee was not in a position to make any recommendation, because it did not yet know the results of the discussions in the other committees. It should merely submit the articles it had adopted to the Conference, and leave it to the Conference to decide on the kind of instrument in which they should be embodied.
2. Mr. TAYLHARDAT (Venezuela) agreed with the representative of Chile.
3. Mr. PATEY (France) said it was now clear that the Committee was competent to make a recommendation on the form of instrument in which it wished the results of its work to be embodied. France, however, was opposed to any such recommendation. From what had so far been said, it seemed necessary for the Committee first to decide whether or not it wished to make a recommendation.
4. The CHAIRMAN pointed out that the General Committee had decided (A/CONF.13/L.9) that a recommendation from each committee would help the Conference in its work. Some representatives had said that the continental shelf was an entirely new concept and that the articles adopted by the Fourth Committee should therefore be embodied in a separate instrument; that was precisely the point which the Committee was called upon to decide.
5. Mr. MÜNCH (Federal Republic of Germany) moved that the Committee should vote on whether or not it was going to make a recommendation to the Conference.
6. Mr. WERSHOF (Canada) said that the only argument he had heard advanced against the submission of a recommendation to the Conference was that the Fourth Committee did not yet know the outcome of the discussions in the other committees. However, the Committee could make a recommendation without prejudice to what might later be decided in the other committees and representatives could at the same time reserve the right to change their position should the need arise. If the question was put to the vote, he would vote in favour of making a recommendation.
7. Mr. LESCURE (Argentina) endorsed the views expressed by the representatives of Chile and Venezuela. The Committee should submit the articles it had adopted, together with its report, to the Conference, which should then decide on the instrument to be adopted.
8. Mr. GOMEZ ROBLEDO (Mexico) agreed with the representatives of Chile, Venezuela and Argentina. It was impossible for the Committee to decide whether or not to recommend that the results of its work be embodied in a separate instrument if it did not know whether the other committees had been able to agree on a basis for a convention.
9. Mr. KANAKARATNE (Ceylon) was not convinced by the argument that the Committee did not know the results of the work of the other committees. It was not a question of submitting an instrument, but merely of making a recommendation relating to an instrument. Moreover, if every committee decided, on the same grounds, not to make recommendations, the work of the Conference would be made much more difficult. He could not see that there was any harm in making a recommendation.
10. Mr. QUARSHIE (Ghana) thought that a recommendation should be made. The whole of the Committee's work was tentative and subject to approval by the Conference.
11. Mr. CARBAJAL (Uruguay) supported the views expressed by the representatives of Chile, Venezuela, Argentina and Mexico.
12. Mr. SOLE (South Africa) said that, although the Committee could decide to make no recommendation whatsoever, there was no doubt that such a recommendation would help the Conference to finish its work. As the representative of Canada had pointed out, no vote that was taken in the Committee at that stage would be binding on representatives at plenary meetings.
13. He thought it possible that the opposition to the making of a recommendation was prompted, not by the considerations which had so far been put forward, but by a desire to prevent the Committee's conclusions from being embodied in any instrument at all.
14. Mr. GAETANO DE ROSSI (Italy) said that perhaps the best solution of the problem would be to prepare a brief report for submission to the Conference, stating that some delegations were in favour of one kind of instrument, that others preferred another kind, and that there were some who wished to make no recommendation at all.
15. The Italian delegation hoped that the Committee's work would be embodied in an instrument which would lead to a draft convention.
16. Miss WHITEMAN (United States of America) pointed out that, whatever recommendation was made by the Committee, it was the Conference which would decide on the form of instrument to be adopted. Nevertheless, a recommendation from the Fourth Committee would be helpful to the Conference. She feared that if other committees were to follow the example of the Fourth Committee and refrain from submitting recommendations, the plenary meetings would be chaotic.
17. Mr. ROSENNE (Israel) said that his delegation would not be able to vote on the motion put by the representative of the Federal Republic of Germany,

because no recommendations had yet been proposed. He therefore suggested that the vote be postponed until the drafting committee had prepared three alternative texts which might form the basis for recommendations.

18. He thought there were three main possibilities. First, there might be a single instrument embodying all the results of the work of the Conference; secondly, the articles on the continental shelf might be embodied in a convention dealing exclusively with that subject; thirdly, those articles might be embodied in a different kind of instrument, such as a declaration.

19. Mr. WERNER (Switzerland) agreed that it was difficult for the Committee to vote on whether or not to make a recommendation, without having concrete proposals before it.

20. Mr. JHIRAD (India) proposed that, in view of the considerations advanced by the representatives of Israel and Switzerland, the Committee should proceed to consider the form of instrument, if any, that it should recommend to the Conference.

21. Mr. OBIOLS GOMEZ (Guatemala) thought that agreement might be reached without recourse to an immediate vote. In an attempt to reconcile the two points of view, he proposed that the Committee should agree that, if the Conference decided on a single instrument, it would make no specific recommendations; but, if the Conference decided on separate instruments, the Committee would recommend that its decisions be included in an appropriate instrument.

22. The CHAIRMAN said that the Committee must make its wishes clear. The representative of Guatemala had revealed the dilemma. The drafting committee could prepare a draft as had been suggested; but, if it were then decided that no recommendation should be made, much time would have been lost — and time was extremely limited.

23. Mr. WERSHOF (Canada) moved that the Committee should decide, in principle, that it would make recommendations to the Conference on the kind of instrument or instruments required to embody the results of its work and on what final clauses, if any, were necessary.

24. After a procedural debate, in which Mr. KANAKARATNE (Ceylon), Mr. PATEY (France), Mr. RANUKUSUMO (Indonesia), Mr. MOUTON (Netherlands), Mr. CALERO RODRIGUES (Brazil), Mr. QUARSHIE (Ghana), Mr. JHIRAD (India), Mr. URBINA ORTIZ (Ecuador), Mr. MÜNCH (Federal Republic of Germany), Mr. GOMEZ ROBLEDO (Mexico) and Mr. GAETANO DE ROSSI (Italy) took part, Mr. BARROS FRANCO (Chile) moved the adjournment of the meeting.

The motion was carried by 23 votes to 20, with 11 abstentions.

The meeting rose at 12.50 p.m.

THIRTY-EIGHTH MEETING

Wednesday, 16 April 1958, at 8.50 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the kind of instrument required to embody the results of the work of the Committee (concluded)

1. Mr. CAICEDO CASTILLA (Colombia) said that the results of the Committee's work should be embodied in a convention, for only in that way would it be possible to give legal force to the decisions reached; a mere declaration would not be binding. The purpose of the Conference was to codify the law of the sea. If the Conference did not prepare a general convention capable of being ratified, it would have failed in its task.

2. His delegation would accept a separate convention dealing with the continental shelf if no agreement were reached in the First Committee regarding the breadth of the territorial sea.

3. Mr. CARTY (Canada) formally proposed that "The Fourth Committee should recommend to the Conference that the results of its work be embodied in a separate convention relating only to the continental shelf."

4. The purpose of the proposal was to direct attention to the General Committee's recommendations contained in paragraph 5 of its report (A/CONF.13/L.9). The Fourth Committee had made good progress; it should accept its responsibility and formulate, in the form of a convention, the articles which it had adopted. He agreed that the topics discussed at the Conference were interrelated and that it would be desirable to decide on the form of instrument for articles 67 to 73 in the light of the results achieved by other committees. The Committee's decisions, however, were not final, but only recommendations to the Conference.

5. If the Committee were merely codifying existing law, a convention would not be necessary; but as the continental shelf was a new area of international law, only a convention was capable of investing its decisions with the necessary authority. A general convention might lead to reservations, whereas a separate convention on articles 67 to 73 would be more acceptable.

6. Miss GUTTERIDGE (United Kingdom) said that the articles adopted concerning the continental shelf were novel provisions and should be regarded as contributing to the progressive development, rather than to the codification, of international law. The rules of international law on the continental shelf were mainly the result of unilateral declarations, such as President Truman's proclamation of 1945. Declarations were usually intended to state existing rules and did not require ratification, though there were exceptions, such as the Paris Declaration of 16 April 1856, concerning maritime law in time of war. Article 73 would be appropriate in a convention, but not in a declaration. New provisions which might give rise to differences of interpretation should be embodied in a convention. Although a declaration might be more widely acceptable, it would also be less binding.

7. There was no reason why the Committee should not recommend a separate convention, since the provisions relating to the continental shelf were self-contained, and since the Conference would take the final decision. For those reasons, her delegation supported the Canadian proposal.

8. Mr. NIKOLIC (Yugoslavia) said that the Conference had met to codify existing rules of the law of the sea. Since all the topics of the law of the sea were closely interconnected, a single international convention should be the outcome of the Conference's work. The attitude of many representatives to the articles concerning the continental shelf had been based on their expectations regarding other articles, since they expected the International Law Commission's draft to be followed. In conformity with the statement in paragraph 29 of the International Law Commission's report (A/3159) concerning the interdependence of the various sections of the law of the sea, his delegation considered that the articles on the continental shelf should form part of a general convention. For those reasons, his delegation was opposed to the Canadian proposal.

9. In general, his delegation found the draft final clauses submitted by the Secretariat in document A/CONF.13/L.7 satisfactory, but thought that, so far as reservation clauses were concerned, only alternatives I and IV should be taken into consideration.

10. Mr. WERNER (Switzerland) said that his delegation was in favour of a single convention covering all the topics dealt with by the Conference. But the various committees had not made equal progress; in the circumstances, a separate convention on the continental shelf would be an encouraging step, pending a general convention. The important question was whether the continental shelf should form the subject of a separate instrument, not whether that instrument should be in the form of a convention or of a declaration. In public international law the words "convention" and "declaration" had no specific meaning. The Paris Declaration of 1856 had greater authority than many conventions which had been ratified, but not applied. It had been said that a declaration could not include article 73, but he could not share that view. His delegation would vote for the Canadian proposal.

11. Mr. GOMEZ ROBLEDO (Mexico) said that the only reason which the Canadian representative had given for his proposal was that a general convention might give rise to a greater number of reservations than a separate one. It was not the number of articles in a convention, but the importance of the stipulations made in them that gave rise to reservations. The articles adopted concerning the continental shelf contained very important stipulations. His delegation could not therefore support the Canadian proposal. If the Conference failed to formulate a general convention, some other solution might have to be envisaged, but it was premature to consider alternative solutions.

12. Mr. RUIZ MORENO (Argentina) said that ultimately it was for the Conference to decide in what form the articles relating to the continental shelf should be expressed. He agreed with the view of the Yugoslav

delegation that those articles should form part of a general convention and with the view of the Mexican delegation that the provisions contained in those articles were too important to be isolated in a separate convention. For those reasons, he would be unable to support the Canadian proposal. Furthermore, he pointed out that any decision concerning article 73 was bound to be affected by whatever was eventually decided by the plenary Conference concerning the Swiss (A/CONF.13/BUR/L.3) and Colombian (A/CONF.13/BUR./L.5) proposals on the judicial settlement of disputes.

13. He added that the draft final clauses submitted by the Secretariat (A/CONF.13/L.7) might give rise to contradictions. For example, four types of reservation clauses were given. Conceivably, different committees might choose different clauses, and hence the question of final clauses should be left to the Conference.

14. Mr. BARROS FRANCO (Chile) said that the law of the sea in time of peace was a single topic, as was evident from paragraph 29 of the International Law Commission's report. It was the duty of the Conference to frame a single instrument. Such an instrument would be more practical in that it would be much easier to submit to governments for ratification than would be separate conventions each covering the work of one of the five main committees. His delegation would not therefore support the Canadian proposal.

15. Mr. TAYLHARDAT (Venezuela) said that, in his delegation's opinion, the Committee should not make a recommendation to the Conference regarding the kind of instrument that was to embody the articles on the continental shelf. In the Second Committee, the South African delegation had proposed a separate convention for the articles with which that committee was concerned. Now the same procedure was being proposed for the articles on the continental shelf. The Conference had been divided into committees for the sake of simplifying the work, not in order that each committee should produce a separate instrument. His delegation would not therefore support the Canadian proposal, although it would agree to a separate convention if a general convention proved impossible.

16. Mr. KANAKARATNE (Ceylon) said that his delegation supported the Canadian proposal. He noted that opposition to it stemmed not from an objection to the incorporation of the Committee's work in a convention, but from the view that the Committee should not make a recommendation to the Conference before it knew what decision the Conference would reach on the work of other committees. The problem was therefore purely one of timing. If, next week, the Conference were in a position to embody the articles approved by all committees in a single convention, the problem would cease to exist. In those circumstances, there was no reason why the Committee could not recommend that its work should be embodied in a separate convention if, owing to lack of agreement in other committees, a single convention could not be prepared.

17. The Yugoslav representative had quoted paragraph 29 of the International Law Commission's report in support of his argument, but had failed to mention

paragraph 30. The Committee must indeed ensure that the mistake of not concluding a convention on the points on which agreement had been reached was not repeated; that was a particularly strong argument in the case of the Fourth Committee, whose work related to a completely new field of international law.

18. Mr. CALERO RODRIGUES (Brazil) suggested that the objections to the Canadian proposal might be overcome by the addition of the words "... unless the Conference decides to embody the results of its work in a single instrument." The use of the term "single convention" would be unwise, since it would tend to prejudge the decisions of the Conference.

19. Mr. MOUTON (Netherlands) said that the use of the word "instrument" in the Brazilian representative's proposal might be construed to mean that, if the Conference decided to adopt a declaration covering all articles, the Committee would be unable to embody its own articles in a convention. That would be most undesirable. He suggested, as a possible compromise, that the last part of the Canadian proposal should be amended to read "...work be embodied (a) in a separate convention relating only to the continental shelf or (b) in a convention covering all articles."

20. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said that the Committee should spare no effort to ensure that the results of its work were incorporated in a proper legal instrument. A declaration would not be binding upon States, and, since it would not require ratification, it could be used against the legitimate interests of some countries. Accordingly, a convention appeared to be the only possible instrument capable of satisfying the Committee.

21. The Brazilian representative's amendment to the Canadian proposal was in the nature of a compromise, but tended to make the decision of the Conference depend on the adoption of a single instrument. In his view, the Canadian proposal could be made more flexible and acceptable by the deletion of the words "separate" and "only".

22. Mr. CARTY (Canada) accepted the Soviet Union representative's amendment.

23. Mr. NARAYANAN (India) said that the articles approved by the Committee should be embodied in a convention. The Conference was free to prepare other conventions if it wished to do so.

24. Mr. MERON (Israel) supported the Canadian proposal, as amended.

25. Mr. SOLE (Union of South Africa) said that the results of the Committee's work should be embodied in an instrument that would be ratified by governments. He would therefore vote for the Canadian proposal, as amended.

26. The CHAIRMAN put to the vote the Canadian proposal, as amended.

The Canadian proposal, as amended, was adopted by 39 votes to 6, with 7 abstentions.

27. Mr. PATEY (France) said that his delegation's negative vote implied neither a negative nor a positive

attitude on the substance of the proposal. It had merely wished to record its opposition to the idea of the Committee's making a recommendation.

28. Mr. OBIOLS GOMEZ (Guatemala) explained that his delegation had abstained from the vote since it considered that the adoption of the Canadian proposal would make it impossible for the Conference to adopt a single convention.

29. Mr. BARROS FRANCO (Chile) said that his delegation had voted against the proposal for the reasons he had explained at that meeting.

30. Mr. NIKOLIC (Yugoslavia) said that he voted against the Canadian proposal, the purport of which had not been changed by the USSR amendment.

The meeting rose at 10.45 p.m.

THIRTY-NINTH MEETING

Thursday, 17 April 1958, at 3.30 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft final clauses (A/CONF.13/L.7)

1. Mr. GARCÍA AMADOR (Cuba) said that he would have some difficulty in voting on final clauses, because he was not clear as to the meaning of the Canadian proposal adopted at the 38th meeting. He asked the representative of Canada whether he now understood the proposal to mean that the Committee was recommending a separate convention incorporating the articles on the continental shelf or whether the intention was that those articles should be included in a general convention.

2. Mr. WERSHOF (Canada) said that the amended text of his proposal as adopted meant that the articles on the continental shelf should be embodied in a convention, but the question whether that convention should be a separate instrument or part of a general one was left open.

3. Mr. GARCIA AMADOR (Cuba) said that in view of that reply it would be difficult for him to reach a decision on such final clauses as those dealing with reservations, since their form would depend on the nature of the convention in which they were inserted. Before discussing final clauses, the Committee should know whether or not they were to relate to other matters as well as to the continental shelf.

4. Mr. PATEY (France) agreed with the representative of Cuba and said that he would be obliged to vote against any final clause, even if he would otherwise have been disposed to vote in favour of it.

5. Mr. BOWETT (Secretary of the Committee) drew attention to the sample final clauses submitted by the Secretariat in its note (A/CONF.13/L.7). It was for the Committee to choose the clauses it preferred. The first three clauses on signature, ratification and accession

constituted an alternative to the fourth clause on signature followed or not by acceptance.

6. Mr. WERNER (Switzerland) said that he would prefer the first three clauses.

7. Mr. CALERO RODRIGUES (Brazil) agreed with the representative of Switzerland, and would suggest a time-limit of six months for signature, which was the normal period for such conventions.

8. Mr. WERSHOF (Canada) agreed with the previous two speakers, though he would have no objection to using the alternative clause if it were shown to have been more frequently used in recent United Nations the first three clauses multilateral treaties.

9. Mr. MÜNCH (Federal Republic of Germany) agreed that the first three clauses were preferable.

10. Miss GUTTERIDGE (United Kingdom) preferred the first three clauses and thought that a six-month time-limit for signature would be suitable. She suggested, however, that in the ratification clause the words "must be ratified" should be changed to "shall be subject to ratification" and that the words "must be deposited" should be changed to "shall be deposited".

It was so agreed.

11. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said he believed that, in the light of the amended Canadian proposal adopted at the previous meeting, the question of final clauses should be dealt with in plenary meeting, which would decide whether or not the convention on the continental shelf would be a separate instrument. Different committees might adopt different and inconsistent final clauses, which would put the Conference in a very difficult position. The final clauses should be decided upon by the Conference as a whole.

12. He therefore proposed that the Fourth Committee should make no recommendations on the subject.

The proposal by the Soviet Union was rejected by 21 votes to 19, with 10 abstentions.

13. Mr. SOLE (Union of South Africa) said that, since the first group of four clauses in the secretariat note had little relation to the articles dealt with by the Fourth Committee, the precise form of the final clauses should be left to the Drafting Committee of the Conference.

14. Mr. WERNER (Switzerland) proposed that the Fourth Committee should recommend for inclusion in the convention on the continental shelf the following clauses from the secretariat note (A/CONF.13/L.7): clauses I, II and III on signature, ratification and accession—a six-month time-limit being recommended for signature; the clause on entry into force—the dates being left open; alternative III on reservations or if that were not approved alternative II, or as his last choice, alternative I; the clauses on measures of application, denunciation, revision, notifications and on deposit of the convention and languages.

15. There should be no expiration clause and, in view of the adoption by the Committee of article 73 proposed by the International Law Commission, no clause relating to the settlement of disputes.

16. Mr. MÜNCH (Federal Republic of Germany) suggested that each of the final clauses should be discussed and put to the vote.

Signature, ratification and accession clauses

17. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said that he would be prepared to vote for the ratification and accession clauses and for a time-limit of six months for signature.

18. He objected to the signature clause because he thought that it would be wrong to exclude certain States which were not Members of the United Nations and had not taken part in the Conference. By the present conference, the United Nations was contributing to the progressive development of international law, which had a universal application. There was no such thing as United Nations international law. International law could only exist if it was accepted and recognized by all States. To tell any State that it was debarred from accepting whatever international law emerged from the Conference was contrary to the legal concept of the relations between modern States.

19. He therefore proposed that the signature clause should read "The present convention shall, until . . . be open for signature on behalf of all States", the rest of the clause being deleted.

20. Mr. WERNER (Switzerland) supported the Soviet Union proposal.

21. Mr. BARROS FRANCO (Chile) thought the six-month time-limit might not be enough to allow some governments to obtain the necessary parliamentary approval.

22. Mr. CALERO RODRIGUES (Brazil) pointed out that the six-month time-limit was for signature, and not for the deposit of ratifications.

23. Mr. BOWETT (Secretary of the Committee) said that the Convention on Genocide of 1948 had been first signed on 9 December 1948, but left open for signature until 31 December 1949.

24. Mr. WERSHOF (Canada) said that he was in favour of the first three clauses, with a time-limit of either six or twelve months for signature. He pointed out that, if a State failed to sign the convention within six months, it could become a party by filing an instrument of accession, which would have the same legal effect as signature.

25. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said that he, too, would be prepared to accept a time-limit of more than six months if some representatives considered a longer period more suitable.

26. Mr. WERSHOF (Canada) said that he would vote against the USSR amendment. He realized that it was prompted by sincere motives which had led to similar proposals in all United Nations international conferences during the previous ten years. However, the question involved was a political one, which only the General Assembly of the United Nations could settle.

27. Mr. RADOUILSKY (Bulgaria) said that since the convention should have universal application he could not agree that it should not be open for signature by all States, and he would therefore vote for the USSR amendment.

28. Mr. LEE (Republic of Korea) said that the question of inviting non-member States of the United Nations to the Conference had been raised at the preparatory stage. The Soviet Union amendment would mean inviting the accession of a country with which the Republic of Korea was still in a state of war. He would therefore vote against the amendment.

29. Mr. MÜNCH (Federal Republic of Germany) said that the Soviet Union amendment would have the effect of enabling States that had no legal personality in international law to accede to the convention.

30. Mr. KANAKARATNE (Ceylon) said that he favoured the first three clauses and a time-limit of either six or twelve months.

31. His delegation would support the Soviet Union amendment. It would not be correct, from a legal point of view, to restrict the convention to the three categories of States referred to in the signature clause. It was one thing to exclude certain States from the Conference under the terms of General Assembly resolution 1105 (XI), and quite another to decide what States could accede to the new convention. To limit accession would be to rob the convention of the universal application it should have.

32. Mr. WERNER (Switzerland) moved the closure of debate on the Soviet Union amendment.

33. Mr. GOMEZ ROBLEDO (Mexico) and Mr. TAYLHARDAT (Venezuela) opposed the closure of debate.

The motion to close the debate on the Soviet Union amendment was carried by 27 votes to 2, with 21 abstentions.

The Soviet Union amendment to the signature clause was rejected by 28 votes to 14, with 10 abstentions.

34. Mr. SOLE (Union of South Africa), supported by Mr. WERNER (Switzerland), proposed that the words "or of one of the specialized agencies" should be inserted in the signature clause after the words "all States Members of the United Nations".

35. The CHAIRMAN pointed out that under the terms of General Assembly resolution 1105 (XI), all States members of the specialized agencies had been invited to the Conference; they were therefore covered by the clause in any case.

36. Mr. SOLE (Union of South Africa) emphasized that the signature clause should be read in conjunction with the accession clause. A State might become a member of one of the specialized agencies after the Conference had been held.

The proposal of the Union of South Africa was adopted by 20 votes to 5, with 27 abstentions.

37. Miss WHITEMAN (United States) said that she had voted for the proposal on the understanding that the drafting committee would consider and, if necessary, amend the wording of the clause.

38. Mr. PATEY (France) said that he had abstained from voting because he thought it highly improbable that, if a State became a member of one of the specialized agencies after the Conference had been held, the United Nations would fail to invite it to become a party to the convention.

39. The CHAIRMAN invited the Committee to vote on the signature clause, as amended, inserting in the blank space a date six months after the date of signature of the Final Act of the Conference.

By 29 votes to 10, with 14 abstentions, that clause, as amended, was adopted.

40. Mr. GOMEZ ROBLEDO (Mexico) explained that he had voted against that clause and would vote against any other final clauses the Committee might decide to recommend because, in his view, only the Conference was competent to decide upon the final clauses of a general convention on the law of the sea.

41. Mr. TAYLHARDAT (Venezuela), Mr. LETTS (Peru), Mr. BARROS FRANCO (Chile) and Mr. PATEY (France) associated themselves with the Mexican representative's remarks.

By 30 votes to 7, with 16 abstentions, the ratification clause, as amended by the United Kingdom, was adopted.

By 28 votes to 7, with 18 abstentions, the accession clause was adopted.

Entry-into-force clause

42. Mr. WERSHOF (Canada) pointed out that the Committee would have to decide on the figures to be inserted in paragraph 1 and in the second blank space in paragraph 2 of the entry-into-force clause. The figure to be inserted in the first blank space in paragraph 2 would be the minimum number of instruments of ratification or accession required for the convention to enter into force; he wondered what current international practice was in that matter.

43. Mr. GARCIA AMADOR (Cuba) said that the matters raised by the representative of Canada were common points of United Nations practice. A more difficult problem was that of the influence which the reservations clause might have on the number of States prepared to ratify or accede to the convention. He suggested that the Committee should first consider what type of reservations clause it would recommend.

44. Mr. LETTS (Peru) wondered whether the number of ratification or accession instruments specified in the second paragraph should not correspond to the number of votes required for the convention to be adopted by the Conference.

45. Mr. MÜNCH (Federal Republic of Germany) observed that the articles on the continental shelf, unlike most multilateral conventions, were not based on reciprocity, but belonged to the field of general relations within the international community. Hence, the number of ratifications or accessions required for those articles to enter into force should be very large. The number of votes required for the convention to be adopted by the Conference was two-thirds of the

representatives present and voting; he suggested that the number inserted in paragraph 2 should therefore be two-thirds of all States represented at the Conference.

46. At the suggestion of Mr. WERNER (Switzerland), the CHAIRMAN invited the Committee to vote on the entry-into-force clause, leaving the blank spaces unfilled.

By 28 votes to 6, with 17 abstentions, that clause was adopted.

Reservations clause

47. Mr. SOLE (Union of South Africa) remarked that the question of the reservations clause had a distinct bearing on the form of convention to be adopted and the number of ratifications and accessions to be required. On the one hand, it was desirable that the right of States to make reservations should be recognized; on the other, the convention as a whole would be of little practical value if States were permitted to make reservations on all its articles. He suggested that articles giving definitions—which, in his opinion, included articles 67, 68 and 69—should not be open to reservations. He was uncertain whether the same restrictions should apply to article 73 of the International Law Commission's draft. The convention would undoubtedly lose much of its force if reservations could be made on an article laying down the procedure to be followed in case of disputes. But, unless the right to make reservations on that article was granted, many States with a particular interest in the continental shelf might refuse to ratify the convention altogether. The views of the South African delegation on the number of ratifications required for the convention to enter into force, and on whether it was generally desirable to have a convention on the continental shelf, would be formed in the light of the discussion on the reservations clause.

48. Mr. GARCIA AMADOR (Cuba) remarked that the traditional view on reservations was that they constituted a free and unlimited right of a contracting party; he quoted article 7 of the Convention on Treaties, signed at Havana in 1928 by the American States,¹ in support of that interpretation. That traditional concept might, however, be regarded as inconsistent with current trends of international law. Many multilateral conventions, besides their contractual character, possessed a legislative element which, indeed, was frequently their principal feature; in the case of such conventions, the traditional concept of reservations did not apply. Certain international instruments—such as those of the International Labour Organisation and those establishing international organizations—did not lend themselves to any reservations. Other types of international instrument would only allow of minor reservations, their very object being to limit the freedom of action of States in certain respects. Such instruments could be, and frequently had been rendered entirely ineffective by a large number of reservations.

49. The only possible solution consistent with the progressive development of international law was that each convention should embody a provision concerning the admissibility or otherwise of reservations with regard to its separate articles. An advisory opinion by the International Court of Justice on the reservations to the Convention on Genocide set forth the principle of compatibility of reservations with the purpose and object of the convention;² a similar principle had been evolved by the Inter-American Council of Jurists.³

50. For those reasons, he was in favour of recommending alternative I of the reservations clause, which was truly compatible with the purpose and object of the convention. He would, however, be equally prepared to support alternative IV, listing those articles with regard to which no reservations could be made; if that clause were recommended, however, the Committee would have to decide which articles should be so listed.

51. Mr. MOUTON (Netherlands), supported by Mr. BARROS FRANCO (Chile), proposed that the discussion on the reservations clause should be deferred until the following meeting.

It was so decided.

Measures-of-application clause

51. Mr. BARROS FRANCO (Chile) doubted the necessity for including the measures-of-application clause.

53. Mr. MOUTON (Netherlands) pointed out that similar clauses were included in the convention on genocide and in the Geneva Red Cross conventions of 1949.

54. Miss WHITEMAN (United States) was inclined to share the Chilean representative's doubts. The object of including such a clause in the genocide convention had been to ensure the enactment of provisions of domestic criminal law without which that convention would have been ineffective. The introduction of a similar clause in the convention under consideration would cause unnecessary complication.

55. Miss GUTTERIDGE (United Kingdom) agreed with the representatives of Chile and the United States. The purpose of the clause in the Geneva Red Cross conventions was to ensure the adoption of measures prohibiting the misuse of the Red Cross emblem and similar abuses. The clause was unnecessary in the present context. She pointed out that the United Kingdom never ratified a convention until it had adopted corresponding measures in domestic legislation.

56. Mr. WERNER (Switzerland) withdrew the measures-of-application clause from those that he had proposed for inclusion in the convention.

The meeting rose at 6.10 p.m.

¹ See *Final Act of the Sixth International Conference of American States*.

² *I.C.J. Reports, 1951*, p. 29.

³ *Yearbook of the International Law Commission, 1956*, Vol. II (A/CN.4/SER.A/1956/Add.1), p. 251.

FORTIETH MEETING*Thursday, 17 April 1958, at 8.45 p.m.*

Chairman: Mr. A. B. PERERA (Ceylon)

**Consideration of the draft final clauses
(A/CONF.13/C.7) (continued)***Reservations clauses*

1. Miss GUTTERIDGE (United Kingdom) said that it was extremely important in any convention to indicate to which articles reservations could be made. The nature of articles 67, 68 and 69 was such that it would be undesirable to weaken their effect by admitting reservations. Her delegation would therefore favour alternative I set forth in document A/CONF.13/L.7, but if the Committee felt that reservations should be allowed, it would vote for alternative III.

2. Mr. WERNER (Switzerland) said that in principle he favoured alternative I, which, given the nature of the convention, would theoretically provide the only logical solution. He agreed, however, that the practice of reservations had been accepted in international law, and therefore an alternative solution must be found. Alternative IV would distinguish between articles to which reservations could or could not be made according to whether they were substantive or procedural. That, however, would be unwise, and he agreed with the United Kingdom representative that reservations to substantive articles should not be admissible, since that would reduce the scope of the convention. On the other hand, if reservations were allowed only to the sole procedural article, namely, article 74, in the hope of securing the adherence of States to the preceding substantive articles, the whole convention would become a dead letter. Moreover, a much more serious situation would arise, since article 74 was the only one which had so far been adopted by a two-thirds majority. If the Committee now decided to admit reservations to that article, it would be going back on its decision and would in effect provide for optional and not compulsory arbitration. That would be even less desirable than a decision to authorize reservations to articles of substance, since then at least the convention would remain intact, particularly because, in the course of the development of international law, States might gradually withdraw their reservations.

3. Alternatives II and III were variations on the same theme, but alternative III was preferable, since it contained the principle of reciprocity in reservations, which would serve to safeguard the interests of States. In any event, States would undoubtedly do their best to keep the number of their reservations to a minimum, so as not to diminish the effect of their accession to the convention.

4. Should the Committee decide against alternative I, he would vote in favour of alternative III.

5. Mr. GOMEZ ROBLED0 (Mexico) said that his vote on the question under consideration would not, as he had already explained, imply lack of co-operation. Alternative I reflected an obsolete League of Nations concept, and should be rejected out of hand, as it would

make the convention acceptable to a few States only. Alternative II was vague. Alternative III was drafted along lines familiar in inter-American practice, but his delegation would not vote for it, since certain States might be unable to accept reservations made by others and therefore find it impossible to accede to the convention.

6. It was premature to stipulate to which articles reservations would be admissible. The advisory opinion of the International Court of Justice, adopted by a very small majority, on the Convention on Genocide on 28 May 1951¹ had in his opinion been rejected by the General Assembly in resolution 598(VI). In that resolution, the Assembly had in fact left States quite free to make reservations and, since that was the only United Nations pronouncement on reservations, it should be applicable to the Committee's convention. For that reason, no special reservations clause was necessary. However, if the Committee insisted on the inclusion of some such clause, he might in plenary meeting support alternative III, amended to read as follows:

“Each contracting party may, at the time of signing, ratifying, or acceding to this convention, declare that it does not consider itself bound by article of the convention; it shall be a party to the convention in respect of States which admit such reservations, with the obvious exception of those clauses in respect of which reservations have been made. On the other hand, the convention shall not come into force between the State making such reservations and the States which declare that they reject such reservations.”

7. Comparison with International Labour Organisation conventions was not valid, since that body, having a tripartite structure, would be unable to secure the agreement of all parties.

8. Mr. WERSHOF (Canada) said that the convention would lose all meaning unless reservations were restricted or prohibited completely. It would, for example, be better to have no convention at all than to admit reservations to articles 67 and 68. His delegation accordingly favoured alternative I, but would be prepared to support alternative IV if reservations to article 67, 68, 69 and 74 were barred. It would vote against alternatives II and III.

9. Mr. NIKOLIC (Yugoslavia) confirmed the views he had expressed previously. Alternatives I and IV alone were worthy of consideration by the Committee, which should reject alternatives II and III.

10. Mr. JHIRAD (India) said that his delegation, despite its opposition to article 68, considered that reservations should not be admissible to articles 67 to 73, which dealt with matters of substance. States should, however, be allowed to make reservations to article 74. That did not, of course, mean that his government regarded compulsory arbitration as an unsuitable means of judicial settlement, for it had deposited its declarations under Article 36 of the Statute of the International Court of Justice, and the principle of arbitration was embodied in the Indian constitution. His delegation would therefore vote for

¹ I.C.J. Reports, 1951, p. 15.

alternative IV, and proposed that the only article to which reference should be made in the blank should be article 74.

11. Mr. GIHL (Sweden) said that his delegation favoured alternative I. Should the Committee feel that reservations were in order, however, he would vote for alternative IV, on the understanding that reservations to articles 67, 68, 69 and 74 would be inadmissible.

12. Mr. ROSENNE (Israel) said that his delegation was in favour of alternative I, but would be prepared to support alternative IV if the Committee felt that reservations should be allowed. In that case, reservations should be admissible only to articles 67, 68, 69 and 71. The purpose of article 69 might be frustrated if reservations were admitted to article 71, but not to article 69. The Committee must spare no effort to safeguard freedom of navigation in superjacent waters.

13. Mr. MÜNCH (Federal Republic of Germany) felt that the general trend in favour of reservations would make it impossible to adopt alternative I, which was the most desirable. However, reservations should be inadmissible to articles 67, 68, 69 and 74, which were extremely important. Disputes were bound to arise in the present new field of international law, and his delegation could not be a party to a convention under which reservations were admissible to article 74, which provided for compulsory jurisdiction. For that reason alternative III, as amended by the Mexican representative, was better than alternative IV.

14. Mr. MOUTON (Netherlands) said that if the Committee's articles were to appear in a separate convention the most appropriate reservations provision would be that contained in alternative I. He realized, of course, that, if alternative I were adopted, several States might find it impossible to ratify the convention, but felt that justice for all parties was better than a *lex imperfecta*.

15. Mr. BARROS FRANCO (Chile) said that his delegation would vote against all the clauses under consideration, and cautioned the Committee that adoption of alternative I would make it extremely difficult for States to adhere to the convention.

16. The CHAIRMAN invited the Committee to vote on the four alternatives of the reservations clause (A/CONF.13/L.7).

Alternative I was rejected by 25 votes to 17, with 5 abstentions.

Alternative II was rejected by 40 votes to none, with 6 abstentions.

17. Mr. WERNER (Switzerland) requested a vote on the Mexican amendment to alternative III.

The Mexican amendment was rejected by 22 votes to 10, with 12 abstentions.

Alternative II was rejected by 24 votes to 18, with 4 abstentions.

Alternative IV was adopted by 19 votes to 17, with 11 abstentions.

18. Mr. TAYLHARDAT (Venezuela) said that his delegation's vote in favour of the Mexican amendment

had merely indicated support for the inter-American doctrine on reservations. It did not affect his delegation's position of principle.

19. The CHAIRMAN invited the Committee to vote on those articles which it wished to insert in alternative IV, in order to exclude any reservations concerning them.

Article 67 was adopted for inclusion by 27 votes to 10, with 7 abstentions.

Article 68 was adopted for inclusion by 25 votes to 12, with 7 abstentions.

Article 69 was adopted for inclusion by 27 votes to 11, with 6 abstentions.

Article 70 was adopted for inclusion by 18 votes to 14, with 13 abstentions.

Article 71 was adopted for inclusion by 18 votes to 13, with 14 abstentions.

Article 72 was rejected for inclusion by 17 votes to 16, with 12 abstentions.

Article 73 was adopted for inclusion by 17 votes to 15, with 12 abstentions.

Article 74 was adopted for inclusion by 20 votes to 18, with 9 abstentions.

20. The CHAIRMAN put to the vote the reservations clause, as completed.

The clause was rejected by 21 votes to 20, with 5 abstentions.

21. The CHAIRMAN said that, as a result of the vote, no recommendation could be made to the Conference on the reservations clause as a whole, but the separate votes would be included in the Committee's report to the Conference.

22. Mr. WERNER (Switzerland) proposed that alternative III should be adopted with the inclusion of article 72 in the appropriate space.

23. Mr. GOMEZ ROBLEDO (Mexico) said that the Committee should not vote a second time on an issue which it had already decided.

It was so agreed.

24. Miss SOUTER (New Zealand) proposed the adoption of a reservation clause to read as follows:

"Any contracting party may declare that it does not accept a reservation to this convention made by any other State at the time of signing, ratifying or acceding to this convention. In that event, the State making the reservation shall not be regarded as a party to the convention."

25. That was a drastic provision, but in view of the rejection of all the alternatives to the reservations clause it was essential that some provision should be made in order to avoid uncertainty whether States making reservations were parties to the convention or not.

26. Mr. BARROS FRANCO (Chile) asked what difference there was between the New Zealand proposal and alternative I.

27. Miss SOUTER (New Zealand) said that alternative I allowed no reservations, whereas her proposal

allowed reservations which had been accepted by all other States parties. The question was whether a State was a party to the convention if other States objected to its reservations. According to her proposal, it was not.

28. Mr. GARCIA AMADOR (Cuba) did not suppose that any Latin-American State would accept the New Zealand proposal, which gave any State the right to veto the reservations of another State and was contrary to the practice of the United Nations and of the inter-American system.

29. Mr. MOLODTSOV (Union of Soviet Socialist Republics) asked whether it was in order to introduce a new proposal which was not an amendment to the document under discussion (A/CONF.13/L.7).

30. The CHAIRMAN said that the Committee would decide whether to allow the introduction of the proposal.

31. Mr. ROSENNE (Israel) asked the representative of the Secretary-General whether there was any precedent in United Nations practice for the type of clause proposed by the New Zealand delegation.

32. Mr. STAVROPOULOS (Representative of the Secretary-General) said that some conventions had reservation clauses, others had not. He knew of none like the New Zealand proposal.

33. Mr. JHIRAD (India) formally objected to the consideration of the New Zealand proposal.

34. The CHAIRMAN put to the vote the question whether the New Zealand proposal should be admitted for discussion and voting.

The consideration of the New Zealand proposal was rejected by 24 votes to 14, with 9 abstentions.

Measures-of-application clause

35. Mr. WERSHOF (Canada) asked the representative of the Secretary-General whether there was a precedent for the insertion of a measures-of-application clause in a treaty which did not deal with criminal conduct.

36. Mr. STAVROPOULOS (Representative of the Secretary-General) said that parties to a convention should always take the measures necessary to put it into effect, but there was no reason to include a clause in the text.

37. Mr. WERNER (Switzerland) recalled that at the 39th meeting his delegation had withdrawn its proposal for the adoption of a measures-of-application clause.

38. Mr. MOUTON (Netherlands) pointed out that coastal States already engaged in exploration of the continental shelf and exploitation of its natural resources had accumulated a great body of law regulating such activities, and cited several examples. It was thus clear that article 71 made legislation necessary; but his delegation would not reintroduce the measures-of-application clause.

39. Mr. WERNER (Switzerland) said that he would not reintroduce his delegation's proposal regarding measures of application because article 71 made all the necessary provision.

Denunciation and expiration clauses

40. Mr. WERNER (Switzerland) said that his delegation's proposal to adopt the denunciation and notifications clauses provided that the blanks should be left to the Conference and the drafting committee to fill.

41. Mr. CALERO RODRIGUES (Brazil) said that, although the Swiss delegation had not proposed the inclusion of a clause of expiration, such a clause might be necessary because the Committee had left a blank in the clause it had adopted concerning entry into force. If the Conference decided that the convention should come into force after ratification by a certain number of States, and enough States were not parties to the convention, it would obviously lapse. The question of an expiration clause should be considered in relation to the decision of the Conference regarding entry into force.

42. Miss WHITEMAN (United States of America) said that the Committee was dealing with the progressive development of international law, and the provisions it adopted should be put in a convention because they were new. Once agreement had been reached on the matter, it would be undesirable to allow the convention to be subject to denunciation.

43. Mr. WERNER (Switzerland) said that in substance he agreed with the United States representative. His delegation had proposed a denunciation clause because the form of a convention required it.

44. Mr. GARCIA AMADOR (Cuba) asked the representative of the Secretary-General how many conventions signed under United Nations auspices had included denunciation and expiration clauses.

45. Mr. STAVROPOULOS (Representative of the Secretary-General) said that some United Nations conventions had a revision clause, but rarely a denunciation clause.

46. Mr. WERNER (Switzerland) withdrew his delegation's proposal for a denunciation clause.

47. Mr. MÜNCH (Federal Republic of Germany) reintroduced the Swiss proposal for a denunciation clause, proposed in the secretariate note (A/CONF.13/L.7).

48. The CHAIRMAN put the proposal of the Federal Republic of Germany to the vote.

The proposal was rejected by 17 votes to 5, with 23 abstentions.

49. Mr. KANAKARATNE (Ceylon) said that the rejection of a denunciation clause implied the rejection of an expiration clause.

It was so agreed.

Revision clause

50. Mr. ROSENNE (Israel) said that the revision clause suggested by the Secretariat (A/CONF.13/L.7) was of the usual type. However, in view of the circumstances in which the present conference had been convened, and of the suggestion in the First Committee to refer certain

questions back to the General Assembly, he asked the representative of the Secretary-General whether it would not be better to request the Secretary-General to place the question of revision on the agenda of the General Assembly.

51. Mr. STAVROPOULOS (Representative of the Secretary-General) said that the problem was a financial one. The present conference was being paid for by the United Nations, but a revision conference would have to be paid for by the nations taking part. He quoted the revision clause which appeared as article 16 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

“A request for the revision of the present convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General.

“The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.”

52. Mr. JHIRAD (India) proposed the adoption by the Committee of that revision clause.

53. The CHAIRMAN put the Indian proposal to the vote.

The proposal was adopted by 30 votes to 3, with 11 abstentions.

Notifications clause

54. Mr. STAVROPOULOS (Representative of the Secretary-General) replying to questions by Mr. WERSHOF (Canada) and Miss SOUTER (New Zealand), said that the Drafting Committee of the Conference would replace the word “Etc.” in sub-paragraph (c) of the notifications clause (A/CONF.13/L.7), by the usual formal provisions concerning the duties of the Secretary-General which appeared in all conventions, and that the clause would give the Secretary-General authority to transmit reservations to States, even if the States making reservations did not so request.

55. Mr. WERNER (Switzerland) proposed the insertion in sub-paragraph (c) of the words “Requests for revision”.

56. Mr. WERSHOF (Canada) said that nothing should be included under sub-paragraph (c), but a note should be sent with the Committee's report inviting the Drafting Committee to make any necessary provisions.

57. Mr. WERNER (Switzerland) said that his delegation's proposal should stand, because it was essential that the Secretary-General should communicate requests for revision to all States Members of the United Nations.

The Swiss proposal was adopted.

58. The CHAIRMAN put the notification clause, as amended, to the vote.

The clause, as amended, was adopted by 12 votes to 5, with 25 abstentions.

Deposit of the convention, and languages

59. The CHAIRMAN put the clause in the secretariat note (A/CONF.13/L.7) to the vote.

The clause was adopted by 40 votes to 1, with 6 abstentions.

60. Miss GUTTERIDGE (United Kingdom) announced that her delegation might propose in another forum the inclusion of a suitable territorial application clause in any convention in which the Committee's articles were embodied.

61. Miss SOUTER (New Zealand) said that her delegation would study the matter of a territorial application clause in the light of its responsibility for the administration of the Trust Territory of Western Samoa.

The meeting rose at 11.30 p.m.

FORTY-FIRST MEETING

Friday, 18 April 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft final clauses (A/CONF.13/L.7) (concluded)

Denunciation clause

1. Mr. NIKOLIC (Yugoslavia) stated that the Committee had made a mistake at the 40th meeting in deciding to delete the denunciation clause from the draft it had been discussing, because if there were no denunciation clause it would be presumed that States were entitled to denounce the agreement. The draft should include a clause providing that the agreement might not be denounced.

2. Mr. BARROS FRANCO (Chile) said that many treaties without a denunciation clause could not be denounced.

3. Mr. STAVROPOULOS (Representative of the Secretary-General) said that, although in United Nations practice denunciation clauses were extremely rare, he could quote nine conventions concluded under United Nations auspices in which such clauses had been inserted.

4. Opinions on the effect of introducing denunciation clauses varied widely. The classic theory was that, if no such clause existed, the instrument would continue in force *ad infinitum*. In any case, it was for the Conference to decide that question. In creating international law, clauses providing for revision might be more useful than a denunciation clause.

5. Mr. CARBAJAL (Uruguay) did not consider that any instrument could continue in force indefinitely, even if it contained no denunciation clause. A clause must make provision for either expiration or denunciation.

6. Mr. JHIRAD (India) thought that the differences of opinion arose from the question whether or not a convention could be denounced in the absence of a denunciation clause. His delegation did not think that the convention drawn up by the Committee should be subject to denunciation. The wisest course might be to

provide for a very long period of validity, say for 99 years.

7. Mr. WERNER (Switzerland) considered that the articles adopted by the Committee could not be regarded as a convention in the traditional sense if they contained no provision for reservations, denunciation or expiration. In its present form, the instrument was in fact a declaration subject to ratification.

8. Mr. MÜNCH (Federal Republic of Germany) thought that the question was closely connected with the fundamental problem of whether the Conference was engaged in a creative task or concerned with codifying the existing law. There was no time to consider that question, and the Committee should leave it to the Conference.

9. Mr. WERSHOF (Canada) suggested that the best course would be to request the Rapporteur merely to state that there had been some further discussion of the subject at that meeting.

It was so agreed.

Consideration of the report of the drafting committee set up at the 36th meeting (A/CONF.13/C.4/L.65)

10. The CHAIRMAN said that the Committee should not discuss the substance of any of the draft articles which it had adopted and referred to the drafting committee, unless it specifically agreed to reopen its discussion on a particular article. He hoped that the Committee would merely either approve or reject each of the drafting changes made by the drafting committee, since, if every representative who wished to propose new drafting changes did so and the Committee discussed each proposal, it would not conclude its work before the end of the day. He suggested that the Committee take up the draft articles one by one in the form in which they had been submitted by the drafting committee.

It was so agreed.

Article 67

11. Mr. MÜNCH (Federal Republic of Germany) suggested that the two paragraphs of article 67 should be combined to form a single sentence.

12. Mr. WERSHOF (Canada) thought that the Committee had not time to discuss such suggestions, which might be numerous.

13. Mr. ROSENNE (Israel) suggested that the words "For the purpose of these articles" be amended to read "For the purpose of this convention".

14. Mr. PATEY (France) and Mr. JHIRAD (India) opposed the suggestion, because the Committee could not foresee the decision of the Conference on the form of the instrument in which the draft articles submitted by it would be embodied.

15. Mr. ROSENNE (Israel) withdrew his suggestion.

The text for article 67 submitted by the drafting committee was approved.

Article 68

16. After Mr. BOWETT (Secretary to the Committee) had drawn attention to certain editorial changes to be made to the Spanish text, *the text for article 68 submitted by the drafting committee was approved.*

Articles 69 and 70

17. The CHAIRMAN pointed out that the drafting committee had made no change in the text for articles 69 and 70 adopted by the Committee.

Article 71

18. Miss GUTTERIDGE (United Kingdom) proposed that the Committee reopen its discussion on the substance of paragraphs 5 and 6 of the text it had adopted for article 71, in view of the comments on those paragraphs in the drafting committee's report.

It was so agreed.

19. Miss GUTTERIDGE (United Kingdom) considered that the Committee should adopt the text for the paragraphs reproduced in the comments of the drafting committee on the article, rather than the text which the committee had submitted for those paragraphs.

20. Mr. MÜNCH (Federal Republic of Germany) agreed.

21. Mr. MOUTON (Netherlands) said that the statement in the drafting committee's report that his delegation had been consulted about the paragraphs and had joined in submitting the text which the United Kingdom representative thought should be adopted, was incorrect. He preferred that text, however, to the one recommended by the drafting committee.

22. Mr. BARROS FRANCO (Chile) said that the text which the United Kingdom representative thought the Committee should adopt was different in substance from the text it had adopted for those paragraphs at its 30th meeting (A/CONF.13/C.4/L.63), because the latter provided for the notice to be given to all "groups interested in navigation and fishing" as well as to "all" governments, whereas the former text provided for notice to be given only to "governments with offices which issue Notices to Mariners". The International Law Commission had stated in its comments on the article that "interested parties—i.e., not only governments, but also groups interested in navigation and fishing—should be . . . notified. . . ." He concurred. It should be specified that notice should be given by "the coastal State". He preferred the text submitted by the International Law Commission to any other text proposed for the paragraphs.

23. Mr. MOUTON (Netherlands) objected to the text submitted by the International Law Commission because it had used the past participle "constructed". In the interests of safety, notice should be given of intention to construct the installations before construction began. Installations of which the construction had not been entirely completed and which had not been reported would constitute a great danger to shipping.

24. He suggested the insertion of the words "in particular those" after the word "Governments" in the text advocated by the United Kingdom representative, to bring the text more closely into line with the text adopted at the 30th meeting.

25. Miss GUTTERIDGE (United Kingdom) accepted that amendment.

26. Mr. WERSHOF (Canada) found the text adopted by the Committee unrealistic in several respects. He was opposed to laying down that the notice concerned should be sent to "all... groups interested in navigation and fishing." No one really considered that the notice should be given to associations of boy scouts interested in fishing. States had for a long time been giving notice of the construction of such installations; the notice they had given so far had been entirely adequate. They knew when they should give notice and to whom they should give it. The International Law Commission, rightly agreeing that the questions of when and to whom notice should be given should be left to the commonsense of those concerned, had recommended that it should be laid down simply that "due notice must be given..." without specifying when or to whom. That wording was quite sufficient.

27. If, as the Netherlands representative had suggested, it were laid down that notice should be given to "all governments", there would be a flood of useless paper. If it were laid down that notice should be given only to "governments with offices which issue Notices to Mariners", there would certainly be complaints about discrimination. He had noted the comments of the Netherlands representative regarding the need for notice to be given before construction began. He proposed the adoption of the following single paragraph to replace paragraphs 5 and 6 of the text adopted at the 30th meeting:

"Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed."

28. Mr. JHIRAD (India) agreed with the representative of Canada.

29. Miss WHITEMAN (United States of America) also agreed with the representative of Canada. It would be impossible to lay down at that meeting precisely how, when and to whom the notice should be given.

30. Mr. MOLODTSOV (Union of Soviet Socialist Republics) supported the Canadian representative's proposal, saying he was opposed to the inclusion of any provision distinguishing between governments with offices which issued Notices to Mariners and other governments.

31. Mr. PATEY (France) said that all the difficulties regarding when the notice should be given and to whom it should be given were adequately covered by the word "due" in the text proposed by the Canadian representative.

The Canadian representative's proposal was adopted by 25 votes to 1, with 14 abstentions.

32. Mr. GIHL (Sweden) considered that there was a discrepancy between paragraph 1, last sentence, and paragraph 8.

33. Mr. MÜNCH (Federal Republic of Germany) supported that view. The provision of absolute freedom of scientific research in paragraph 1 was contradicted by the requirement in paragraph 8 of prior consent by the coastal State. He formally moved, under rules 32 and 53 of the rules of procedure, that the two paragraphs should be reconsidered.

34. Mr. TAYLHARDAT (Venezuela) opposed the motion. In his opinion, there was no incompatibility between the two texts, since paragraph 1 set forth a general principle, and paragraph 8 dealt with methods of application.

35. Mr. PATEY (France) agreed with the Venezuelan representative. The provision for the consent of the coastal State was limited by the second part of paragraph 8 and could not therefore be regarded as restrictive. Moreover, the Committee had given careful consideration to the Danish and French amendments, on which the texts at issue were based.

36. The CHAIRMAN put the motion of the Federal Republic of Germany to the vote.

The motion was rejected by 21 votes to 4, with 16 abstentions.

The text of article 71 submitted by the drafting committee, as amended, was approved.

The text of article 72 submitted by the drafting committee was approved.

The text of article 73 submitted by the drafting committee was approved.

Article 74

37. Mr. WERNER (Switzerland) observed that the word "request" (demande) had been used instead of "application" (requête), the term used in the Statute of the International Court of Justice.

38. Mr. PATEY (France) and Mr. WERSHOF (Canada) said that the drafting committee had regarded that point as substantive, in view of the differences of opinion on it, and had not felt competent to make the change.

39. Mr. MÜNCH (Federal Republic of Germany) stated that his delegation understood article 74 as then worded to mean that any State could unilaterally submit a dispute to the Court, in accordance with the International Law Commission's commentary on its draft article 73.

40. The CHAIRMAN suggested that, since the drafting committee had not regarded the point as a drafting change, the Committee should respect the drafting committee's opinion.

The text for article 74 submitted by the drafting committee was approved.

The meeting rose at 12.35 p.m.

FORTY-SECOND MEETING

Friday, 18 April 1958, at 5.15 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

**Consideration of the draft report of the Committee
(A/CONF.13/C.4/L.67)**

1. Mr. DIAZ GONZALES (Venezuela), Rapporteur, presenting the Committee's draft report, explained that an account of the decisions taken at the 41st meeting, with regard to the report of the drafting committee (A/CONF.13/C.4/L.65), would be inserted in section V.
2. Mr. CAICEDO CASTILLA (Colombia) congratulated the Rapporteur on his excellent report.
3. Mr. BARROS FRANCO (Chile) recalled that the Spanish text of the proposal submitted by Canada at the 38th meeting—referred to in section VI of the report—had never been circulated. Moreover, in view of the importance of the question raised by the proposal, the original text should appear in section VI as well as the amended text proposed by the representative of the Union of Soviet Socialist Republics and finally adopted.
4. Mr. MOLODTSOV (Union of Soviet Socialist Republics), Mr. TAYLHARDAT (Venezuela),

Mr. URBINA ORTIZ (Ecuador), Mr. RUIZ MORENO (Argentina) and Mr. WERSHOF (Canada) endorsed that suggestion.

5. Mr. WERNER (Switzerland) suggested that the words "on a roll-call vote" should be inserted after the word "adopted" in the paragraph on article 73 in section IV of the report.

6. Mr. WERSHOF (Canada), supported by Mr. MÜNCH (Federal Republic of Germany), suggested that a sentence be inserted after the first sentence of the second paragraph on page 12 (section VII), to the effect that the Committee had decided, by separate votes, to exclude reservations on any article except article 72.

7. Replying to the representatives of Brazil and Switzerland, the CHAIRMAN said that the Committee's decision not to recommend the final denunciation clause (A/CONF.13/L.7) would be mentioned in the report. The other changes suggested would also be made.

The draft report, as amended, was adopted.

8. The CHAIRMAN declared that *the Committee had completed its work.*

The meeting rose at 6.10 p.m.

