



CONTENTS

Agenda item 40:

Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea: report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction

Report of the First Committee ..... 1

*President:* Mr. Leopoldo BENITES (Ecuador).

AGENDA ITEM 40

**Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea: report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction**

REPORT OF THE FIRST COMMITTEE (A/9278)

1. Mr. de SOTO (Peru), Rapporteur of the First Committee (*interpretation from Spanish*): I have the honour to present the report of the First Committee on agenda item 40 [A/9278].

2. The First Committee examined the last report submitted by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction, in accordance with the mandate entrusted to it by resolution 2750 C (XXV) of 17 December 1970, which included the preparation of the work for the Third United Nations Conference on the Law of the Sea.

3. It will be recalled that the General Assembly decided in paragraph 5 of resolution 3029 A (XXVII):

“... to review at its twenty-eighth session the progress of the preparatory work of the Committee and, if necessary, to take measures to facilitate completion of the substantive work for the Conference and any other action it may deem appropriate”.

4. The result of this examination in the First Committee, pursuant to the decisions I have mentioned, is the draft resolution which is to be found in paragraph 20 of the Committee's report.

5. I believe it is unnecessary to go into greater detail with regard to the deliberations of the First Committee, which are contained in its verbatim records, or the draft resolution, which I believe is self-explanatory.

6. However, I should like to refer to paragraph 16 of the report, which contains the text of a gentleman's agreement concerning the rules of procedure for the Conference, including those governing methods of voting. The First Committee took its decision on the draft resolution on the basis of that gentleman's agreement.

7. In conclusion, on behalf of the First Committee, I commend for adoption the draft resolution the text of which is contained in paragraph 20 of the report that I have just presented.

8. The PRESIDENT (*interpretation from Spanish*): In accordance with rule 155 of the rules of procedure, I now call on the Rapporteur of the Fifth Committee, Mr. Garrido of the Philippines, to place before the Assembly the financial implications of the draft resolution that has just been presented.

9. Mr. GARRIDO (Philippines), Rapporteur of the Fifth Committee: I have the honour to present to the General Assembly the Fifth Committee's report on the administrative and financial implications of the draft resolution recommended by the First Committee in paragraph 20 of document A/9278 [A/9319].

*The speaker then read out the text of document A/9319.*

*Pursuant to rule 68 of the rules of procedure, it was decided not to discuss the report of the First Committee.*

10. The PRESIDENT (*interpretation from Spanish*): In accordance with rule 90 of the rules of procedure we shall now hear explanations of vote. The only representative who wishes to explain his vote before the vote is the representative of Cuba, to whom I give the floor.

11. Mr. Mr. ALARCÓN (Cuba) (*interpretation from Spanish*): Concerning my vote in favour of the draft resolution recommended by the First Committee I should like to stress some aspects of the Cuban position regarding the convening of the Third United Nations Conference on the Law of the Sea.

12. First of all, I wish to state our support for the choice of Caracas as the site of the Conference. We are gratified by that decision since it involves a Latin American country with which we are closely tied by many links of fraternity and also because it is a recognition of the positive contribution of Venezuela to the solution of problems to be discussed at the Conference.

13. I also wish to express our support for the decision the Assembly would take in accordance with operative paragraph 7 of the draft resolution to invite the Republic of Guinea-Bissau and the Democratic Republic of Viet-Nam to participate in the Conference.

14. I should also like to state that my delegation considers that the achievement of universality of participation referred to in operative paragraph 7 presupposes the Conference adopting the necessary decisions regarding representation of South Viet-Nam and Cambodia, giving rightful places to the only legitimate Governments of those two territories—namely, the Provisional Revolutionary Government of South Viet-Nam and the Royal Government of National Union of Cambodia.

15. The PRESIDENT (*interpretation from Spanish*): Before we proceed to the vote, I should like to draw the attention of representatives to paragraph 16 of the First Committee's report [A/9278], which contains the gentleman's agreement to which the Rapporteur referred when presenting the report. If I hear no objection I shall take it that the Assembly decides to approve that gentleman's agreement.

*It was so decided.*

16. The PRESIDENT (*interpretation from Spanish*): The report of the Fifth Committee on the administrative and financial implications of the draft resolution in paragraph 20 of document A/9278 appears in document A/9319 and has been submitted by the Rapporteur of the Fifth Committee. In paragraph 16 of its report the Fifth Committee recommends that, "should the draft resolution be adopted by the General Assembly, the States non-members of the United Nations to be invited to participate in the Third United Nations Conference on the Law of the Sea should be invited to give consideration to contributing to the expenses of the Conference on the basis of the rates determined for this purpose by the General Assembly". If I hear no objection I shall take it that the Assembly approves that recommendation.

*The recommendation was adopted.*

17. The PRESIDENT (*interpretation from Spanish*): We shall now vote on the draft resolution recommended by the First Committee in paragraph 20 of its report [A/9278].

*The draft resolution was adopted by 117 votes to none, with 10 abstentions (resolution 3067 (XXVIII)).*

18. The PRESIDENT (*interpretation from Spanish*): I shall now call on representatives who wish to explain their votes after the vote.

19. Mr. TÜRMEŒ (Turkey): My delegation has voted in favour of the draft resolution. We have done so, primarily because our concern for perfection has been surpassed by the importance we attach to the adoption of the draft resolution which would convene the Third United Nations Conference on the Law of the Sea by as large a majority as possible. However, this vote of ours does not in any way prejudice the position of my delegation in the Conference on several issues contained in the resolution with which we are not in complete agreement.

20. A particular point with which my delegation is not in full concurrence is paragraph 3. We agree with the basic thinking underlying this paragraph. We share the view that the problems of ocean space are closely interrelated and they need to be considered as a whole, and we are pleased to see that this view is reflected in this paragraph. However, we do not deem it appropriate to make a choice at this stage between having a single convention or more than one convention, a choice which in fact belongs to the Conference rather than to the General Assembly.

21. This is an important subject and would have required a scrupulous examination before being decided upon. It is only obvious that a draft resolution of an organizational character does not provide the right framework to deal with this subject. It seems to us that the expression "comprehensive convention" has been utilized in the resolution with the sole aim of emphasizing the interrelationship between the problems of ocean space and without giving enough consideration to the consequences of having only one convention.

22. A single convention, in our view, poses some obvious problems. The wide number of the subjects we are dealing with varies so greatly in nature and character that it seems to us that one convention, which would encompass such a great variety of subjects, can hardly be expected to be an adequate instrument, and thus would inevitably sacrifice the effectiveness of the new law of the sea for the sake of establishing a close link among a wide range of subjects. For example, the legal rules concerning law of the sea questions need to be in force for a considerable period of time in order to establish a stable order in the sea; whereas rules pertaining to technical subjects should be allowed to have more flexibility so as to meet the requirements of rapidly changing technology. Then there would be matters of an administrative and organizational nature which may require a different treatment. In our opinion, these questions would better have been dealt with in annexes to the main convention.

23. It is also true that the "more than one convention" formula enjoys the advantage of ensuring a wider adherence. It is our sincere hope that the new law of the sea will not be the law of one group of States, but of the whole of mankind, and that it will enjoy universal acceptance.

24. However, it is not unlikely also that some States may have difficulties on some particular points of the new rules. In the case of having one single convention, a disagreement with one minor aspect of the convention may be the cause of the rejection of all the rules of the convention which might otherwise be adopted.

25. I do not think that at this stage it is proper to go into the details of the question of reservations. However, we are doubtful whether reservations would remedy the defects of a single convention notwithstanding the questions which reservations themselves would raise.

26. We therefore feel that other more propitious and flexible devices than a single convention formula may be worked out in the Conference.

27. It is with this reservation on the question of convention or conventions that my delegation voted in favour of the draft resolution.

28. Mr. KOLESNIK (Union of Soviet Socialist Republics) (*translation from Russian*): Mr. President, the Soviet Union has always been and remains an active supporter of United Nations measures for the progressive development of international law. It is sufficient to recall the initiative taken by the Soviet Union and the other socialist countries in the preparation of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, in the drafting, for the first time in the history of international relations, of a definition of aggression, and in all the codification conferences of the United Nations, notably the Vienna Conference on the Law of Treaties.

29. The past work of the United Nations on the progressive development of international law provides convincing evidence of the fact that successful results have been achieved in this sphere when every effort was made to ensure the comprehensive preparation of, and agreement on, draft articles containing new rules of international law. This is perfectly natural, for the legislative process in international relations has a number of special features. The rules of international law are created by States themselves, which, on the basis of an agreement, prepare and establish legal rules for co-operation in any given sphere of international relations, whether these rules relate to the law of outer space or the law of the seas and oceans.

30. Thus, the formulation of new rules is not a matter to be decided by any one State or by a majority of States. So, too, the principles and rules of the law of the sea, which we are dealing with in this case, cannot become a part of contemporary international law unless they are based on agreement among States which have different social and political systems. Without such agreement new draft articles on the law of the sea cannot obtain full, practical implementation, i.e. become vital rules governing the conduct of States in this important sphere of international relations.

31. Of course, the search for a sensible agreement acceptable to all States is a complicated process requiring meticulous preparation. At the present time, however, this is the only reliable way of preparing rules of international law. Unfortunately, this vital requirement has not been duly reflected in the draft resolution on the convening of the Conference on the Law of the Sea [A/9278, para. 20].

32. Mr. President, this substantial short-coming is only partly corrected by the gentleman's agreement reached in the First Committee, to which you have just referred, to the effect that there should be no voting at the Conference until all efforts at consensus have been exhausted.

33. The Soviet delegation shares the view expressed in the gentleman's agreement itself that the Conference at its organizational session should approve an effective procedure to ensure that the requirement that decisions should be prepared and taken on the basis of consensus becomes an immutable rule of the work of the Conference.

34. A second point: the forthcoming Conference is required to prepare a convention on the law of the sea which will be an international agreement of universal, comprehen-

sive significance. The Declaration on Universal Participation in the Vienna Convention on the Law of Treaties,<sup>1</sup> adopted by the Vienna Conference in 1969, states explicitly that this kind of convention on the progressive development of international law, "the object and purpose of which are of interest to the international community as a whole, should be open to universal participation". This is another important requirement which has not been duly reflected in the draft resolution, for, in spite of an indirect acknowledgment of the universal nature of the Conference on the Law of the Sea, it does not contain a provision to the effect that the Conference is open to universal participation, i.e. to all States. In this connexion, we are in favour of inviting to the Conference not only the Democratic Republic of Viet-Nam and the Republic of Guinea-Bissau but also the Republic of South Viet-Nam. That country is fully entitled to take part in the work of such conferences as the Conference on the Law of the Sea.

35. The draft resolution just adopted has other shortcomings which the Soviet delegation has already taken the opportunity to point out when the draft was discussed in the First Committee.

36. For the reasons just stated, the Soviet delegation was obliged to abstain in the vote on the draft resolution in the General Assembly.

37. I feel I must say a few more words about the report of the Fifth Committee [A/9319], which, incidentally, was not even circulated in good time—a clear infringement of the procedure for the adoption of General Assembly resolutions. But if we overlook that important point and refer only to the content of the report of the Fifth Committee, we cannot fail to draw attention to the obviously unjustified financial implications of the draft resolution drawn up by the First Committee. We cannot agree with the method of calculating appropriations employed by the Secretariat in connexion with the holding of the Third Conference on the Law of the Sea.

38. The report of the Secretary-General [A/C.5/1541] proposed a clearly excessive sum, and no cogent arguments whatsoever were adduced to justify it. The Under-Secretary-General, Mr. Stavropoulos, stated frankly in the Fifth Committee that neither the Secretariat nor he himself had an accurate idea of the requirements for financing the Conference.

39. In these circumstances, it seems more than strange that the Fifth Committee should decide not to approve the recommendation of the Advisory Committee on Administrative and Budgetary Questions, clearly the competent organ in such matters, which made substantial adjustments to the report of the Secretary-General.

40. The PRESIDENT (*interpretation from Spanish*): Before I call on the next speaker I shall read out rule 155 of the rules of procedure:

"No resolution involving expenditure shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of

<sup>1</sup> See United Nations publication, Sales No. E.70.V.5, p. 285.

expenditures prepared by the Secretary-General. No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary Committee (Fifth Committee) has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations."

The Rapporteur of the Fifth Committee has given the Assembly that information.

41. Mr. GRUNERT (German Democratic Republic): The delegation of the German Democratic Republic regrets that it was unable to support the resolution just adopted. What was especially decisive for us in abstaining was that the state of the preparations for a successful beginning of the Conference on the Law of the Sea is not sufficient and that the resolution provides for participation in that Conference on the basis of a slightly modified Vienna formula.

42. The Vienna formula was never in line with the requirements of world-wide international co-operation and today is an anachronism. For many years the German Democratic Republic had to put up with the discriminatory effects of that formula. The Vienna formula was clearly aimed at preventing certain States from participating in international conferences and conventions. It cannot be denied that the inventors of the Vienna formula were really motivated by political aims which are contrary to the principles of the United Nations Charter. The delegation of the German Democratic Republic cannot support the practice of the same discrimination against any State, discrimination from which the German Democratic Republic suffered for more than two decades.

43. The fact that no positive decision was taken regarding the invitation of the Republic of South Viet-Nam, for which the delegation of the German Democratic Republic has striven, underlines that the debate concerning the Vienna formula is not a theoretical one but will have direct, practical consequences.

44. The German Democratic Republic has for a long time taken a resolute stand in favour of the principle of universality, since that is a logical consequence of the principle of the sovereign equality of States. The delegation of the German Democratic Republic therefore advocates explicitly the view that the Third Conference on the Law of the Sea should be open to all States. This is an important prerequisite if the Conference is to be able to motivate obligations acceptable to all States.

45. The PRESIDENT (*interpretation from Spanish*): I now call on Mr. Amerasinghe of Sri Lanka, the Chairman of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

46. Mr. AMERASINGHE (Sri Lanka), Chairman of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction: I speak here today in my capacity not as representative of Sri Lanka but as Chairman of the sea-bed Committee, which is just about to be buried. I thank you most sincerely, Mr. President, for extending me the courtesy and indulgence of addressing the Assembly on this occasion.

47. The General Assembly has just taken a decision of momentous significance for the entire international community: it has finally resolved to convene the Third United Nations Conference on the Law of the Sea on 3 December 1973 on the recommendation of the First Committee contained in its report [A/9278] which has just been presented to us by the Rapporteur of that Committee, Mr. Alvaro de Soto of Peru.

48. At the same time, the General Assembly has decided to dissolve the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction which, in one form or another has been in existence for the last six years. For me personally the occasion is fraught with a feeling of regret mingled with relief. An association of six years has come to an end. It is not easy to forget such a long, happy and fruitful association. It was a period marked by moments of exaltation, as when the General Assembly approved without dissent the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil thereof beyond the Limits of National Jurisdiction [*resolution 2749 (XXV)*] and the exploitation of their resources for the benefit of mankind. It was in many ways an epoch-making Declaration.

49. This period of six years has not been without its moments of frustration: there have been occasions when we almost despaired of reaching agreement. But there were colleagues whose very differences of opinion seemed to forge between them a bond of fraternity and friendship the like of which I have rarely witnessed in international negotiations or international bodies.

50. If I may use the words of a famous war-time leader, used in the context of a struggle to the death, we have reached the end of the beginning, and are now at the beginning of the end.

51. There are many to whom the international community, and this Organization in particular, owe a deep sense of obligation and a great debt of gratitude. Having been so closely associated with them over the last six years, and having enjoyed their unfaltering confidence and trust, and also having benefited by their knowledge and experience, I feel no sense of presumption in mentioning them. Foremost among them is my friend Ambassador Arvid Pardo of Malta who, with the courage and initiative of a true pioneer, brought the question before the Assembly and set us on the road that we hope will lead to the establishment of a body of international law that will transform international relations in a vital area by infusing into those relations not a spirit of rivalry and competition but one of co-operation in the search for equity and justice.

52. There are also those colleagues of mine who showed exemplary leadership and conspicuous ability in their official positions as chairmen of sub-committees, as rapporteurs, both in the main committees and in the sub-committees, and as officers of the sea-bed Committee and its sub-committees.

53. But, above all, there are the members of the United Nations Secretariat—the Committee Secretary and the members of his team, the Under-Secretaries-General concerned with our work, and that vast band of international

civil servants—whose anonymous dedication to our work constitutes their proud claim to our appreciation and gratitude. To them all, on behalf of the sea-bed Committee, I should like on this occasion to express our high appreciation and warm thanks.

54. Finally, there are those colleagues of mine who, without enjoying the privilege of office but bearing solely the arduous responsibilities of representation, made their invaluable contributions to the discussions that have brought us to the point that we have reached today and throughout displayed a refreshing spirit of cordiality, co-operation and, at the most difficult of all times, compromise.

55. The road before us is going to be long and rough. We must not harbour any illusions on that score. We shall all be called upon to display liberalism where formerly rigid conservatism was almost Holy Writ. We shall be called upon to decide between insistence on the unattainable and recognition of the feasible. We shall be called upon to compromise without sacrifice of principle or surrender to superior power, with justice and fair treatment as our lodestar. If we resolve to act in that spirit I am sure that, to use the slogan of a great fighter for human rights, we shall overcome.

56. It is in that conviction and in that belief that as from the inauguration of the Conference on the Law of the Sea, in accordance with the infelicitously numbered operative paragraph 13 of the draft resolution that has just been adopted, I

shall step down from the office of Chairman of the sea-bed Committee, which during a period of six years has taught me so much and, throughout, given me, despite all the stresses and strains, an ineffable feeling of personal satisfaction. That, together with the warm companionship of my colleagues, has been a handsome reward for my modest effort.

57. Mr. ÅLGÅRD (Norway): The resolution which the General Assembly has just adopted brings to an end the Committee which has been chaired for many years by Mr. Amerasinghe and I think I am speaking for everyone in this hall when I extend to him our most warm thanks for the work he has been doing in these years and for the dedication he has shown. The resolution just adopted is, I would say, a monument to the success he has achieved in this field.

58. The PRESIDENT (*interpretation from Spanish*): Speaking as President, I feel I am interpreting the feelings of all representatives in the hall in addressing our congratulations to Mr. Amerasinghe on his effective work, which has been wound up today and which he summed up in such a precise and masterly way in the statement we have just heard.

*The meeting rose at 4.35 p.m.*