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**FIRST COMMITTEE, 1936th
MEETING**

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Agenda item 40 (continued):

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 127

Chairman: Mr. Otto R. BORCH (Denmark).

AGENDA ITEM 40 (continued)*

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 (A/9021, A/C.1/1035, A/C.1/L.646 and 647/Rev.1)

1. The CHAIRMAN: The Committee has before it a revised draft resolution contained in document A/C.1/L.647/Rev.1.

2. Before I call on the first speaker on my list, may I say that it is my impression that there is now a fair chance that we may be able to bring our discussion and deliberations regarding agenda item 40 to a successful conclusion in the course of the day. At the same time, it is my impression that things are still in a somewhat tenuous balance, and I think we need everybody's co-operation in order to bring the discussions to a fruitful and orderly conclusion.

3. I would therefore suggest that at this morning's meeting we limit ourselves to an introductory statement by the representative of Canada and an explanatory statement of the situation by the Chairman of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. I understand that that is also the wish of the Chairman of the sea-bed Committee. This will, I hope, give the Committee a clear picture of how matters now stand.

4. I would, then, suggest that we take time off for quiet reflection and not hastily raise all kinds of problems, important or unimportant, but meet again at 3 o'clock when, I think, in the knowledge of what is to be said by the

representative of Canada and the Chairman of the sea-bed Committee, we should be in the best possible position to bring the matter to a successful close.

5. If I hear no objection, I shall take it that the Committee wishes this morning's meeting to proceed in that way.

6. Mr. BEESLEY (Canada): Delegations have already had some time to view the revised draft resolution, so all I shall do is summarize on behalf of the group of sponsors the changes that have been made in the original draft, in document A/C.1/L.647, which, it will be recalled, left open certain questions and contained blanks in certain of its paragraphs.

7. The first change we have made is to include a new fourth preambular paragraph. That paragraph was suggested by a delegation other than a sponsor, and the sponsors agreed to include it because it was submitted early enough for them to do so and still give adequate notice to all other representatives here. Since including it some questions have been raised, and as a result some very minor amendments have been agreed to, so I should like to explain orally, without bothering to submit another revision, the changes agreed to in the fourth preambular paragraph.

8. After the word "accomplished", the words "as far as possible" should be inserted. After the phrase "complete the drafting", the words "and adoption" should be inserted. A third change in that preambular paragraph is to end it after the phrase "Law of the Sea".

9. These are the changes with respect to that paragraph, and since they are relatively brief and easily understood, I do not propose to say anything more about them.

10. A second change is that, throughout the draft resolution, where appropriate, we have filled in the blanks concerning where we shall meet and when. It will be noted, for example, that in operative paragraph 2 we have inserted the dates 26 November to 7 December 1973. This change was made in response to the expression of view of a large number of delegations who all wished to have the inaugural procedural session occur as soon as possible, consistent only with giving adequate time for the invitations to be sent out. There was a very general disinclination to work into Christmas week. I understand that there may be some difficulty in providing conference facilities for the precise time requested, and I shall leave it to other people to deal with that. I wish only to make clear the reasons for the selection of those dates. They were chosen with a view to reflecting a time that would give enough opportunity to

* Resumed from the 1933rd meeting.

Governments to receive the invitations and still give an adequate chance to complete the work well before late December.

11. Another change that has been made, one of a similar nature, is that we have now written into operative paragraph 4 the information needed to complete the blanks. We have written in that there shall be a Conference for a period of 10 weeks, from 13 May to 19 July. Since submitting this revised draft resolution, we have been asked by the Secretariat to make that date 14 May, so as to conform with the widespread United Nations practice of beginning on a Tuesday and allowing the Monday for a number of discussions and informal arrangements that have to be made.

12. Then we have specified that, in response to the very kind invitation of the Government of Venezuela and in response to the very widespread wishes made known in this Committee and in the consultation group and by other means, we shall be meeting at Caracas for the first substantive session. We have also included in that paragraph a reference similar to that contained in last year's resolution, to the fact that the Government of Austria has also very kindly offered Vienna as a site for the Conference in 1975, should it prove necessary to hold such a conference. Of course I have taken into account our own decisions concerning the need for such a further meeting.

13. The next change is of a different order, and it is in operative paragraph 7. It is a change of a formal nature which more correctly reflects United Nations practice concerning the role of the Secretary-General in issuing invitations to conferences under the aegis of the United Nations. Instead of requesting the Secretary-General initially to do a particular thing, we make a decision and, in so doing, recognize the desirability of achieving universality of participation, and in the light of that we would have the draft resolution "request the Secretary-General of the United Nations to invite States Members", and so forth.

14. These are the changes that it has been possible to discuss and agree to and to incorporate in this draft resolution. I would like to stress once again, as I have done and as others have done on behalf of the sponsors' group, that there was no suggestion, no intent and certainly no desire on the part of any of the group of sponsors to attempt to prejudge this matter of a series of questions in a particular way; it has been our wish, rather, to try to crystallize the issues and present them for decision in order to enable ourselves to have adequate time to make our decisions here and in the plenary Assembly, have the invitations issued and get on with the Conference.

15. I think I should leave it to others to raise connected questions, but I should like to express the view that has been expressed by many other delegations, that, if possible, *it would be desirable that the draft resolution be accepted without the necessity of a vote*. If this does not seem possible, then we shall of course respect the wishes of those delegations that feel they must have a vote on this draft resolution. Our own strong preference, however, would be that the draft resolution, as now presented, be accepted without a vote. It may be that there will be proposals on one side or another concerning votes on possible amend-

ments or with respect to the manner in which the one remaining blank may be filled in, namely, the blank in operative paragraph 7 concerning the States that should be invited.

16. Mr. AMERASINGHE (Sri Lanka): Mr. Chairman, may I express my deep sense of gratitude to you for having given us so much time to conduct informal negotiations on a crucial issue, the gentlemen's agreement regarding the decision-making procedure that the Third United Nations Conference on the Law of the Sea should adopt. I think the First Committee owes a great debt of gratitude to the sponsors of this draft resolution for what they have produced, and I share with my friend Mr. Beesley the hope that it will be possible to adopt the draft resolution without a vote and thus create the best possible auspices for the Conference itself.

17. I should like now to draw attention to operative paragraph 2 and the dates that have been suggested for the first session of the Third United Nations Conference on the Law of the Sea. When this draft resolution went in, the dates were 20 November to 7 December 1973, and that took account of a widespread desire of the members of the Committee itself. However, we had to face the fact that the General Assembly was in session and that we would have to accommodate our own requirements to those of the General Assembly itself. I therefore had a series of consultations with the President of the Assembly and the Under-Secretary-General in Charge of General Assembly Affairs. The period 20 November to 5 December is perhaps the peak period of activity in the General Assembly's session. However, the Secretariat has bent every effort to accommodate the inaugural session, bearing in mind the decision taken by the General Assembly last year in resolution 3029 A (XXVII). I must also express my highest appreciation for the co-operation that the President of the General Assembly has extended to us.

18. In view of all this, it was found that the dates that would satisfy everybody, in other words that would enable the General Assembly to proceed with its work without disruption, would be 5 December to 18 December. There is no possibility whatsoever of changing these dates, and I feel, also, that the change to 5 December gives all those who are to be invited to the Conference ample time to make the necessary arrangements for attending it.

19. May I be permitted, Mr. Chairman, to make a suggestion in regard to operative paragraph 7. It is not unusual for a resolution to go from the Committee to the General Assembly with blanks to be filled in before the resolution is finally adopted in the plenary. My proposal is that in this Committee we adopt the resolution without filling in the blanks, but that we ask delegations or groups wishing to have particular States invited to the Conference to make their proposal in time for consideration before the First Committee's report goes to the General Assembly. Those proposals will be treated individually; they will not be regarded as amendments to the draft resolution. Therefore, they will not in any way impair the sponsorship of the resolution. I trust we shall be able to reach agreement on that point.

20. Mr. Chairman, may I take about 10 minutes to refer to the most crucial issue of all, one that has exercised the minds of members of the Committee, engaged much of their attention and occupied much of their time during the past few days, that is, the gentlemen's agreement regarding the formula that should be adopted in regard to decision-making at the Conference. There is a universal desire that this Conference should produce a durable and viable law of the sea. If that is to be so, then it is also clear that we must try to get the widest possible acceptance of any convention that is adopted at the Conference on the Law of the Sea.

21. In fact, the draft resolution itself draws attention to this point when it refers to the fact that the problems of ocean space are closely interrelated and need to be considered as a whole. It further goes on to state that the mandate of the Conference is to adopt a convention dealing with all matters relating to the law of the sea. Therefore, if we are to succeed in getting a convention that will secure the widest possible acceptance, we must be extremely careful as to the manner in which we take decisions.

22. That is why there is a widespread—I think almost universal—feeling that we should proceed by consensus, but only as far as possible. Even those who attach the greatest importance to reaching a consensus recognize that they cannot avoid the adoption of the classical voting system. It is in the search for common ground that while stressing the need for consensus they say that when all efforts at consensus have failed we shall have to resort to a voting procedure.

23. The exact formula that is to be adopted has been the subject of strenuous negotiations, but I am happy to say that we have arrived at some basis of discussion. We have a formula which we should like to present and, although it has been discussed in the consultative group, I know that at least one group would wish to have further time to consider it.

24. I shall now read out that formula, which in substance is the same as the one appearing in the blue-type document which has been circulated. However, there are certain changes that should be made. It should now read:

“Recognizing that the Third United Nations Conference on the Law of the Sea at its inaugural session will adopt”—the word “determine” has been changed to “adopt” and the word “recognizes” to “recognizing”—“its procedures, including its rules regarding methods of voting and bearing in mind”—we are merging the two sentences into one—“that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a convention on the law of the sea which will secure the widest possible acceptance, the General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus; that there should be no voting on such matters until all efforts at consensus have been exhausted; and further expresses the view that the Conference at its inaugural session will consider devising appropriate means to that end.”

25. As members will note, there are many matters which have been left vague. There are two reasons for this. As I

said earlier, a gentlemen's agreement, by its very nature, must be vague. We must proceed in a spirit of mutual trust and mutual confidence and mutual goodwill. But there is another reason, that is, that we must not appear to be issuing a directive to the Conference and that the Conference must be left to determine what its procedures should be. It is for that reason that certain suggestions that were made in regard to a reference to the General Committee could not be accepted, and I am grateful to those who made those suggestions for the spirit of compromise they displayed in agreeing that this formula could go forward in this form.

26. Just as the form of the formula itself must be vague and should not give the impression that the General Assembly is usurping the authority and the functions of the Conference, there is also need for flexibility. But flexibility is something that we cannot write into any formula or into rules. It is an attitude we should adopt throughout the Conference, and I think we should be encouraged to be flexible.

27. The present formula, as I said, is a compromise which seeks to accommodate different positions, allay misgivings, dispel doubts and suspicions and afford the fullest opportunity for the demonstration of mutual trust, goodwill and co-operation.

28. It may be said of a compromise that it does not satisfy anybody, though it is acceptable to all. Compromise, even if embarrassing at times, can also be quite satisfying. I hope this formula will satisfy that norm.

29. I appreciate that we cannot proceed to consider this immediately because at least one regional group wishes time to consider it. But I would appeal not only to that group but also to all groups to adopt this formula without change, as the least change might make it necessary for us to renew once again the whole process of negotiation and so delay the adoption of the draft resolution.

30. The CHAIRMAN: I thank the representative of Sri Lanka for his statement. I too feel that we have had two very useful and constructive statements and that we may now safely adjourn for this afternoon's meeting.

31. Members have heard the views of the Chairman of the sea-bed Committee as to how he visualizes we should deal with the blank in operative paragraph 7. I just want to say that there will appear in the course of the afternoon meeting one amendment to operative paragraph 7, dealing with General Assembly resolution 2758 (XXVI). The exact wording of that amendment and the place in which to put it in operative paragraph 7 will be decided later.

32. But I thought, in order that all members will be aware of this problem—which as you all know was raised some time ago by the representative of the People's Republic of China—I should inform you that it will be presented to members this afternoon.

33. I take it that, as it is only a matter of taking into due consideration a resolution already adopted by the General Assembly, it should give rise to no problem for this

Committee. It is therefore a problem different in character from that of filling in the blanks.

34. Lastly, I have been asked—and I apologize to the two countries for not having done so before—to announce that Pakistan and Jamaica have been added to the list of

sponsors of draft resolution A/C.1/L.647/Rev.1. May I add my wish to those who have spoken this morning that we shall have a brief meeting this afternoon and bring our deliberations to a successful conclusion.

The meeting rose at 1 p.m.