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Chairman: Mr. Andrés AGUILAR M. (Venezuela).

AGENDA ITEM 25

- (a) Question of the 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 the use of their resources in the interests of mankind: report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (*continued*) (A/8021, A/C.1/L.536 and 542);
- (b) Marine pollution and other hazardous and harmful effects which might arise from the exploration and exploitation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction: report of the Secretary-General (*continued*) (A/7924, A/C.1/L.536);
- (c) Views of Member States on the desirability of convening at an early date a conference on the law of the sea: report of the Secretary-General (*continued*) (A/7925 and Add.1-3, A/C.1/L.536 and 539);
- (d) Question of the breadth of the territorial sea and related matters (*continued*) (A/8047 and Add.1, Add.2/Rev.1, Add.3 and 4, A/C.1/L.536)

1. Mr. PELL (United States of America): It is a great pleasure for me to join in the discussion of this item at the United Nations and at this particular time. I have followed the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of

National Jurisdiction since my distinguished friend and colleague, Mr. Pardo, first proposed discussion of the sea-bed problem three years ago. Like him, I had for some time been concerned that the advancing pace of technology, both military and industrial, would soon signal a new area of conflict on the ocean floor. In the fall of 1967, I introduced in the United States Senate the first proposals designed to encourage international action on this item, and the following year I presented to the United States Senate a draft treaty on ocean space. I have followed ocean matters closely in my capacity as Chairman of the Ocean Space Sub-Committee of the Committee on Foreign Relations of the United States Senate.

2. Looking back, I am sure there are many here who will understand when I say that there was a certain sense of loneliness then—the kind of loneliness that comes from the pursuit of a new idea which few appreciate and many are ready to criticize.

3. In these past three years I have participated as an adviser to our delegation to the sea-bed Committee in your work here at the United Nations. I have also taken an active part in discussions on these matters within my Government and with leaders of various other Governments represented at this table.

4. It was therefore a great satisfaction to me that the oceans policy announced by President Nixon last May, and the proposals presented to the sea-bed Committee in August based on that policy were not the fuzzy result of compromise but a bold venture into the future. I am very glad too that the approach and many of the ideas contained in my original draft treaty are included in these draft proposals.

5. It is my conviction that when we look back upon the decisions made here, what we do on this question will be seen as one of those crucial turning points at which either we choose the path of hesitation, delay, and finally conflict, or we choose a braver course which may speed not just the development of the resources of the oceans but the development of the new pattern of co-operation our world so badly needs today. We do not want to see a “flag nations” rush towards new colonial empires. Rather, we wish to see the ocean resources and usufruct available to all the world’s peoples.

6. President Nixon expressed this theme here in the General Assembly on 23 October 1970 when he said:

“It is in the world interest for the resources of the sea to be used for the benefit of all, and not to become a source of international conflict, pollution and unbridled commercial rivalry. Technology is ready to tap the vast,

largely virgin resources of the oceans. At this moment, we have the opportunity to set up rules and institutions to ensure that these resources are developed for the benefit of all mankind and that the profits derived from them are shared equitably " [1882nd plenary meeting, para. 66].

7. A great deal of useful work has already taken place. Of particular note is the work of the United Nations sea-bed Committee under the able and respected leadership of its Chairman, Mr. Amerasinghe of Ceylon. The work on sea-bed principles, on which he and others have laboured so industriously and with such a great measure of success in recent weeks, is particularly heartening. We are pleased that as the result of Mr. Amerasinghe's skilful and tireless consultations within the sea-bed Committee he has been able to submit a draft declaration of sea-bed principles to the First Committee [A/C.1/L.542], and I shall comment on that text at the appropriate time.

8. The sea-bed Committee and the General Assembly have helped to develop an increased understanding of the complex issues involved in developing an international régime governing the exploration and exploitation of the deep sea-bed, including appropriate machinery, reflected in the most recent report of the sea-bed Committee. The Committee has benefited from the Secretary-General's excellent report on international machinery [A/8021, annex III]. Mr. Galindo Pohl and Mr. Denorme have provided valuable leadership through their chairmanship of the Legal and Economic and Technical Sub-Committees.

9. At the last meeting of the sea-bed Committee, several proposals were made regarding the preparation of an international régime for the sea-bed. I am particularly happy that one such proposal was made by my own Government in the form of a draft United Nations convention on the international sea-bed area [*ibid.*, annex V]. I believe this draft convention reflects the common interests of the international community in a sea-bed régime, interests which we already share, and which we will share more vitally in years to come. Among them are: preservation of the broadest possible precisely defined area of the sea-bed as the common heritage of mankind, open to use by all, with equitable sharing of benefits by all, particularly the developing countries; preservation of the area exclusively for peaceful purposes; creation of new and uniform rules of law; establishment of a new international organization with regulatory powers that permit it to adapt rules to changing situations and to ensure that rights and obligations are respected; protection of human life and safety and of the marine environment; protection of the interests of coastal States in the exploration and exploitation of resources; creation, for the first time in history, of an independent, substantial source of international revenues to be used for international community purposes, particularly to promote the economic advancement of developing countries.

10. Much remains to be done. The exploratory phase of our work is now ending, and the negotiation of treaty arrangements must now begin. This is not the time to attend to the substance of these negotiations, but it is the time to decide that the problems will be solved by prompt international negotiation. This moment, too, is a very fleeting one. The technology is now within our reach, and

now is the time we must decide whether those who possess the technology will work out their own means of accommodation, or whether we will plan ahead for the equitable sharing of benefits from what is truly the common heritage, and perhaps the most valuable remaining untapped heritage of mankind. In truth, this is the world's last new frontier, and its last frontier where we have a choice of developing sensibly and peacefully for the benefit of all mankind.

11. In stressing the importance of diplomacy keeping abreast of science and technology, I think this Committee's overwhelming commendation of the draft treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof is well worth recalling: that commendation evinced a strong conviction of the need to prevent the extension of the nuclear arms race to a whole new vast area. The wisdom of that decision cannot be contested. We must strive for a similar diplomatic ability to ensure the best use of advances in undersea technology which is now making the theoretical wealth of the sea-bed into actual wealth.

12. About 16 per cent of the world's oil is now produced off shore under water, and that percentage is rising. A few weeks ago, a producing oil well was brought in at more than 300 metres of water, and new technological developments will extend this frontier further. It is expected that commercial recovery of manganese nodules in the deep sea-bed could begin as early as 1973.

13. There are many unknowns in this question. We do not know just how valuable these untapped resources may prove to be, though it is certain that they are extensive. We do not know precisely what the economics of deep sea-bed mining may prove to be, but we do know that man's growing need for resources is already creating pressure to develop the technology to obtain those resources. It will avail us little to develop a co-operative plan for the development of these newly available resources if at the same time we revert to the most nationalistic "flag nation" approaches to the problems. The oceans will become an area for new clashes of national wills and ambitions, as a result of which all nations will suffer, unless we are determined to find solutions through international co-operation.

14. Some countries have recently made new claims of national jurisdiction over the oceans, which have the effect of reducing the area of the oceans beyond the limits of national jurisdiction by a great many thousands of square miles. These claims, if they expand and proliferate, would remove from any international régime vast areas of these ocean beds that may well contain the most valuable, and certainly the most easily exploitable, sources of wealth. Worse, such claims of jurisdiction may well extend to the sea the same conflicts that have attended the defence of jurisdictional claims on land and have led so often to wars. This is clearly not a bold step forward, and might well be a disastrous step backwards.

15. I fully understand the pressures on many nations to adopt unilateral solutions. Such pressures certainly exist right here in the United States. I can testify personally to the vigour with which certain interests have urged that the

United States extend its own jurisdiction unilaterally. But when States give in to those pressures, they undermine efforts to develop through international co-operation agreed and mutually beneficial arrangements that will accommodate the interests and needs of all States, whether they are land-locked or coastal.

16. We cannot provide for the orderly use of a common resource by unilateral action. On the contrary, I would suggest that, given the realities of power, the inevitable result of such an approach to law of the sea or the sea-bed will be that nations will share no more equitably in the economic benefit to be derived from ocean mineral resources than they have in the past in the exploitation of natural resources on land.

17. The international community must act before it is too late. Clearly, there needs to be a new international conference on the law of the sea, to meet as soon as possible, and we are encouraged in this regard by the wide support for such an approach as reflected in the replies [*A/7925 and Add.1-3*] to the Secretary-General's enquiry.

18. How, then, should we proceed? In our view, the first step that needs to be taken is for the General Assembly to decide that such a conference shall be held and to set firm dates for it. In the absence of timely conference arrangements, the development of international law will fail to keep pace with rapidly expanding technology, and all States will not share equitably in the full benefits that would flow from application of this developing technology. In fact, because of the speed with which technology is moving ahead, procedural delays can have the effect of filibuster, and can create out of our oceans and their sea-beds new colonial empires to be exploited for the sole benefit of the adjacent littoral States.

19. We are convinced that final conference decisions cannot be put off beyond early 1973. The requirement that States have sufficient time for adequate preparation must also be balanced with the urgency of attaining our goals of peaceful and stable development. To ensure that the conference will be successful, we must also provide for the necessary preparatory arrangements, including elaboration of draft treaty articles on the principal issues that should be considered by the conference.

20. If final conference decisions are to be made in early 1973, it is important to schedule the conference in two sessions, so that a preparatory session could be held early in 1972, a year earlier. This would enable broad participation at a sufficiently early stage and give all delegations an opportunity to focus on and further develop their positions in the interim between the two sessions, so that final decisions could be successfully negotiated at the second session of the conference.

21. It is desirable that all of the outstanding issues come before both sessions of the conference. Therefore, substantive preparation of these issues needs to be undertaken as soon as possible, in other words in this coming year, in 1971.

22. The principal issues that need to be considered at the conference are familiar to all of us. There is the need for

treaty arrangements on an international régime for, and definition of, the area of the sea-bed and ocean floor that is beyond the limits of national jurisdiction, including appropriate machinery. In addition, there is the question of the breadth of the territorial sea, related questions of international straits and conservation and management of the living resources of the high seas, including the interests of coastal States with respect to fisheries on the high seas. We and many other delegations also recognize the importance of taking conference action to secure effective regulation of marine activities to prevent pollution, taking due account of the forthcoming Conference on the Human Environment to be held at Stockholm and the work of interested bodies such as the Inter-Governmental Maritime Consultative Organization. If there are other matters which may be ripe for action, the conference should be free to consider them.

23. We recognize that nations give different weight to the importance of various issues that should be considered by any future law of the sea conference. The best approach, in our view, is for the General Assembly to enumerate those matters on which there is now a broad measure of agreement as to the desirability of their consideration at a conference, but leave the conference free to take up other related matters.

24. To ensure adequate preliminary preparations for the first session of the conference, the sea-bed Committee should meet early next year to prepare actual draft treaty articles on sea-bed matters. We are hopeful that this session of the General Assembly will reach agreement on a declaration of sea-bed principles which will provide the framework for the preparation of treaty articles on these matters. For the preliminary preparation of draft treaty articles on the breadth of the territorial sea and other matters, we would think it desirable to create a new preparatory committee, which would also meet early in 1971. During the time remaining between now and 1973, we should be able to prepare international agreements successfully on all of these equally important subjects, and conclude them together at the final session of the conference.

25. With those considerations in mind, we have put before the Committee a draft resolution calling for a new conference on the law of the sea [*A/C.1/L.536*]. Although much thought and much work have gone into the draft, it is by no means a final product. We hope and expect to improve upon it in the light of the comments and suggestions of other delegations here and to discuss the draft resolution in more detail at a later point in the debate. But let me stress now that the time has come to take definitive, forward-thinking, forward-looking actions leading towards a new law of the sea conference, and that we should act in the conviction that agreed international solutions can and will be found. To be sure, we must act carefully as well, but let us not heed the counsels of delay.

26. The General Assembly can delay progress on international solutions, but it cannot delay technology; it cannot delay the problems; and it cannot delay the pressures for unilateral solutions to these problems and the conflicts that will inevitably result afterwards if unilateral actions are taken. In brief, with every year that passes, unilateral actions will reduce our options and prejudice our decisions

until the opportunity will be lost to provide for the common benefit of all. A few technologically advanced States will be wealthier. A few States with long coastlines will take false comfort in the thousands of square miles they have claimed as their own. But the international community, of which we are all an indivisible part, will have a substantially reduced source of independent income.

27. It is important to act with urgency to establish internationally agreed rules which will ensure the harmonious use of the seas and the sea-bed for commerce and transportation, for the production of food and the development of other resources and to ensure, too, that man's marine activities are regulated to prevent pollution. We have seen about us the effects of greed, of indifference to the future, of disregard for the waste of resources and the indignities to nature which may be irreparable. Surely it is not necessary to repeat the mistakes of the past.

28. The future compels greater unity as our global interests increasingly outweigh our individual differences. It is often hard in this forum to imagine a time of such unity, but imagine it we must because there is no real alternative. This is one of the times when we have within our grasp the means of dealing with a problem which has no national history and which knows no national boundaries, and of resolving it in the kind of global framework that we must construct for the future.

29. Every day that we delay reduces our opportunity for choice. I urge each one of you here who shares my personal concern with this problem to enter into this effort with renewed determination, to ensure harmonious use of the oceans and their riches for the benefit of all.

30. Mr. EVENSEN (Norway): Agenda item 25 is composed of four main questions which, though closely related, raise somewhat different aspects pertaining to the law of the sea. These questions are important and many faceted; they deserve our fullest attention. At the present stage of our debate I shall confine my observations to one aspect of item 25 (a). The special question on which I shall now focus attention is document A/C.1/L.542, submitted to the First Committee yesterday [1773rd meeting] by the Chairman of the sea-bed Committee, Mr. Amerasinghe.

31. It is superfluous to remind this Committee that for three whole years the task of hammering out a set of principles for these vast and important areas of our globe has been undertaken by the sea-bed Committee and its predecessor the *Ad Hoc* Committee. For three years we have, in those Committees, discussed every possible aspect of that task, tried every possible formulation and endeavoured to reach every possible compromise formula. Last summer the representatives of the sea-bed Committee met at Geneva for five weeks in a final attempt to agree on a set of principles. We met with high hopes and a will to achieve results, but our hopes were shattered. Even so, our obligations remain as formulated for our sea-bed Committee by the twenty-fourth session of the General Assembly in resolution 2574 B (XXIV)—namely, that “the Committee [shall] expedite its work of preparing a comprehensive and balanced statement of these principles and submit a draft declaration to the General Assembly at its twenty-fifth session”.

32. It is not only this twenty-fifth session of the General Assembly that has a right to entertain such expectations from our work; the whole world is following our endeavours in this respect and nourishes the hope that we, in a spirit of co-operation and understanding, will be able to reach this first goal on the road to regulating in a sensible manner and in the interest of mankind these enormous areas which are potentially very dangerous from the political point of view.

33. Yesterday we listened with great admiration and interest to Mr. Amerasinghe introducing the document on a comprehensive and balanced set of principles. I take this opportunity of expressing my delegation's sincere thanks to him for the tremendous task he has performed in the few months since the Geneva meeting and for the results he has achieved. I also wish to express our gratitude to the representative of El Salvador, Mr. Galindo Pohl, chairman of the Legal Sub-Committee, for his tireless efforts in pursuit of the same aims.

34. My delegation has studied with great interest the compromise formula contained in document A/C.1/L.542 and the accompanying letter. The Government of Norway is willing to support and endorse this compromise set of principles fully.

35. In the accompanying letter Mr. Amerasinghe states that the compromise formula, worked out during the last few months, “reflects the highest degree of agreement attainable at the present time”. As Vice-Chairman of the sea-bed Committee, I have followed the work for three years and I humbly support that assurance. Mr. Amerasinghe also points out fairly that the text does not represent a consensus of all the members of the sea-bed Committee but that it commands wide support—I dare say overwhelming support—among the members. Of course we are all fully aware that the document represents a compromise.

36. It follows from the very nature of things that none of us will be fully satisfied with all the details of the draft; on the contrary, I am convinced that many, or perhaps almost all of us, find formulations we would have liked to see drafted differently, sentences we would have preferred to see deleted, holes we would have liked to see filled.

37. At the Geneva session in August, Norway presented a draft set of principles, which are set out in appendix II to the Legal Sub-Committee's report [A/8021, annex I]. Of course, the compromise formula is far from adopting or accepting the Norwegian draft set of principles; but that is in the nature, and one of the merits of a compromise formula: in satisfying nobody fully, it should satisfy all and should be accepted and welcomed by all of us as a noble effort and as the most constructive and positive fulfilment of the task with which the sea-bed Committee has been entrusted.

38. I shall not enter into details about the principles contained in the compromise formula. We welcome and accept them as a package. There are, however, a few points I should like to emphasize.

39. First I wish to compliment Mr. Amerasinghe for the wisdom with which he has found the balance between the

issues to be included in the preamble and those to be laid down as principles in the operative part of the document. For the three years of the sea-bed Committee's existence many hard battles have been fought over those issues. My delegation deems it essential that at least it has been stressed in the preamble that there is an area of the sea-bed and the ocean floor to which the draft set of principles applies.

40. With regard to the principles proper, enumerated in points 1 to 15 of the compromise formula, I believe there are two main facts that should be borne in mind. The first is that those 15 principles constitute a whole. In Mr. Amerasinghe's tireless efforts to work out a compromise formula a very delicate balance between principles has been found. Let us not disturb that balance, because if we do the whole important edifice may fall apart. The second main fact is that the 15 broad principles here laid down are indications—if I may use that word—of the rules and the provisions of international law, present and future, applicable to the domain of the ocean floor and its subsoil. To make them applicable and enforceable in the hard light of human realities, we shall have to hammer out detailed legal provisions in one or more international treaties later; a detailed agreement has to be reached and the final instruments will have to be ratified by the various Governments of the world.

41. When we read the 15 principles contained in document A/C.1/L.542, it becomes obvious that we have before us a comprehensive and balanced set of principles attuned both to present needs and to future aspirations.

42. Paragraph 1, for example, lays down the notion of a "common heritage for mankind" so essential to our survival as a whole.

43. Paragraphs 2 and 3 define the important principles that those areas are not subject to appropriation by States or to other undue acquisition of exclusive rights. It is essential to the cause of world peace to avoid an occupation race in those areas.

44. Paragraphs 4 and 5 of the compromise formula presuppose that an international régime has to be worked out regarding the exploration and the exploitation of the resources of the area and that such peaceful activities may be carried out without discrimination by coastal and land-locked countries alike. No basic disagreement ought to exist as to these features of our principles.

45. Paragraph 6 of the draft declaration refers to a question on which a wide diversion of views has been manifest in the sea-bed Committee, namely, the question as to the applicable principles of international law. My delegation feels that Mr. Amerasinghe has succeeded, on this difficult issue, in formulating a compromise which expresses as far as is humanly possible the views and concepts of the various factions. The experiences we have had in the sea-bed Committee strongly discourage any attempt to disturb the balance found here by the Chairman.

46. The concept in paragraph 7 to the effect that the use of the area and its resources "shall be carried out for the benefit of mankind as a whole . . . taking into particular

consideration the interests and needs of the developing countries" expresses thoughts that, in my humble opinion, should be generally acceptable.

47. Paragraph 8 refers to the crucial question of reserving those areas exclusively for peaceful purposes. That is a topic which has been the subject of thorough analysis and debate in the sea-bed Committee. A whole range of opinions exists as to how this fundamental concept should be drafted. In view of our latest extensive discussions in Geneva, I firmly believe that our Chairman, in his compromise formula, has achieved the utmost in trying to blend the various considerations. We should abide by those results.

48. I have no special observations to make on paragraph 9, concerning the international régime; on paragraph 10, on international co-operation in scientific research; or on paragraph 11, on the adoption and implementation of international rules and standards for the prevention of pollution and the protection and conservation of the natural resources of the area.

49. Paragraph 12 contains a concept which was discussed at length at the Geneva session of the Committee, namely, the general reference to the obvious obligation of States to pay due regard in their activities to the rights and the legitimate interests of other States, coastal as well as land-locked. It further contains a general reference to consultations, especially with the coastal States concerned. Here again I must express my admiration for the highly skilful and elastic result arrived at. It contains, in my humble opinion, the best possible compromise formula.

50. As one of the main seafaring nations of the world, Norway wishes especially to express its thanks for the introduction into the principles—in paragraph 13—of a reference to the effect that the legal status of the superjacent waters and the air space above shall not be affected.

51. Paragraph 14 refers to the responsibilities of States. It ought to be acceptable to all as a reasonable compromise on a very complicated question. It obviously presupposes that further details be worked out in a specific international instrument.

52. The arbitration clause contained in paragraph 15 constitutes the principle on which the greatest degree of consensus as to the formulation existed in general in Geneva. It is entirely acceptable to my Government.

53. Before I conclude, may I make one final appeal to the members of this Committee. I honestly believe that the compromise set of principles presented to us yesterday will eminently satisfy our need for a comprehensive and balanced set of principles. It represents our only hope for achieving our task and fulfilling the obligations placed upon us to present an acceptable set of principles to the General Assembly at its twenty-fifth session.

54. Obviously, no delegation in this room will be fully satisfied with all the details. But let us show restraint and the will to make compromises for the common good. Of

course, we all have amendments or changes we would like to make and, obviously, we should state our positions clearly in making oral observations or reservations. But if we, on the other hand, open the gates for formal amendments, we must in all sincerity realize that our compromise efforts will fall to pieces. There is such a delicate balance struck in the compromise formula that we have elaborated from the various views and the various principles that any formal amendment would seriously endanger the whole structure.

55. That is why I humbly appeal to all delegations to refrain from proposing such amendments but, instead, to

make their reservations orally to be included in the verbatim records.

56. It is equally important that the compromise formula should receive the general support of the General Assembly and that delegations which feel that they have to make reservations should refrain as far as possible from casting negative votes.

57. Finally, may I be allowed to reserve the right of my delegation to revert to other aspects of agenda item 25.

The meeting rose at 12.5 p.m.