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

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 (A/9021)

1. The CHAIRMAN: I call upon the Rapporteur of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, Mr. Charles Vella, to introduce the report of the Committee.

2. Mr. VELLA (Malta), it is a pleasure for me once more to present to the First Committee the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction [A/9021].

3. Before addressing myself to the work of the sea-bed Committee covered by the report, may I just say a few words on its technical aspects. This year the report is being reproduced in six volumes. The sheer quantity of material made it impossible to collect it all in one volume. Furthermore, it was imperative that at least the report itself, as distinct from annexes and other material, be in the hands of delegations as early as possible to enable the First Committee to accord the item the priority it deserves this year. The content of the volumes will be as follows.

4. Volume I contains the report of the sea-bed Committee and the reports of its three Sub-Committees which appear as annexes I, II and III. Annex IV contains the list of documents submitted to the Committee in 1973 and annex V the indexes to the summary records of the Committee for the same year. The list of documents submitted to the three Sub-Committees as well as an index

to their summary records are contained in appendices to annexes I, II and III. Volume II contains the texts of proposals submitted to the Committee in 1973 and appendices III and IV to the report of Sub-Committee I. Volume III contains the texts of proposals submitted to Sub-Committee II. Volume IV contains the texts of variants or alternative texts submitted by delegations. Volume V contains the tentative comparative table of proposals prepared by the secretariat for the working group of the whole of Sub-Committee II, and volume VI the consolidated texts which were also prepared for the working group.

5. Since it is likely that the General Assembly will decide to adhere to the schedule envisaged in its resolution 3029 (XXVII) and convene the first session of the Third United Nations Conference on the Law of the Sea sometime between now and the end of the current session, and since by that fact the sea-bed Committee will cease to exist, the report which I am now presenting may well be the last, and I therefore crave the indulgence of this Committee if I dwell for some time on the work of the Committee as a whole, mainly to bring into focus its mandate for those who were not members of it but who will have an important say, both in the decisions of the First Committee and in those of the future conference.

6. It is not my intention to cover here the history of the sea-bed Committee. That historical background has been rather fully covered in the report, and is to be found in paragraphs 3 to 31 of volume I of the report. But I think it is important to point out, especially for the benefit of those who rightly think that the title of the Committee is inappropriate vis-à-vis its mandate, that the history of the Committee is neatly divided into two periods. Up to the summer of 1970, the terms of reference of the Committee were determined by General Assembly resolutions 2467 (XXIII) and 2574 (XXIV), and they dealt exclusively with matters concerning the régime and machinery for the sea-bed and the ocean floor beyond national jurisdiction. At its twenty-fifth session, however, the General Assembly without changing the name of the Committee, entrusted it, in resolution 2750 (XXV), to what amounts to a reconsideration of the law of the sea in all its aspects and to act as a preparatory committee for a third conference on the law of the sea.

7. In my view, there are two methods of assessing the work of the Committee for the last three years and of establishing the stage of preparedness for the forthcoming conference on the law of the sea that we find ourselves in. One method, which many would consider rather pedantic, would be to consider how far paragraph 6 of resolution 2750 (XXV) has been implemented. In other words, how

many agreed draft treaty articles has the Committee prepared for the conference on the law of the sea, as distinct from draft articles submitted by delegations or drafts which have received one reading or more. Unfortunately, this method would lead us to a dead end. One must admit that no such draft texts exist, and against such a touchstone of performance one could consider the work of the Committee as a failure. But surely, this would be a wrong conclusion, which brings me to consider the second method of appraisal.

8. During the last three years, the Committee has, indeed, worked very hard, it has discussed and debated at length practically all issues relating to the law of the sea and it has brought into relief the political content of those issues. Above all, unmistakable trends have appeared, trends which are the real markers of progress within the Committee. Will all this activity, will all this study, will, in fact, all this preparation go by the board just for the reason that the Committee did not come to the point of agreeing upon draft treaty texts? If this were to happen, then we would have failed to understand the nature and functions of the Committee as they developed through the years.

9. Looking back at this development one could say that the Committee was an excellent debating forum, it was a place where the exchange of ideas evolved in utmost freedom and frankness. At its beginnings, it was small enough to bring into focus some of the most pressing problems facing humanity today in the seas. As its membership grew in number, the element of universal concern with these problems became the characteristic of the Committee. Unfortunately, however, one could sense that something was missing, that a function of the Committee never truly developed as one would have expected it to do and that function was the negotiating function. Perhaps it was symbolic of the Committee that agreement—which was not at the time a universal agreement—on the only document that has come out of it, that is, 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)*], was negotiated outside the formal context of that Committee. But, I hasten to add, lest I be misunderstood, that that agreement could never have been reached had members not been prepared for it by the work done within the Committee. I remember quite distinctly that, after that agreement was reached, a very influential member of the Committee, who had done his best to negotiate an agreement within the Committee, approached me and asked: "What did we agree to now, which we could not have agreed to during the Committee session itself?" He was wondering then, I still wonder now and ask myself why we practically find ourselves in the same situation. If I may draw a comparison with the human body, the sea-bed Committee became a fully-fledged being, with excellent mental faculties and great dexterity of movement, but, unluckily, with an undeveloped arm. This being could master all the musical theory in existence, he could even become a great conductor, but he could never become a pianist. The sea-bed Committee had developed into a great conductor, but what we need now is a great performer. That great performer will, I hope, be the conference on the law of the sea.

10. I have gone into this brief analysis of the Committee's work for fear that the report which is in the hands of representatives might be misread, I should like them to ponder on the amount of work that the Committee has gone through, which cannot be described otherwise but as work of preparation for the conference, while, at the same time, I should like them to see in its true nature the absence of agreed draft treaty texts.

11. In these remarks I have tried to be as objective as I could and I hope that they have been helpful for a correct interpretation of the report. It is up to this Committee now to handle the matter in the correct fashion and to recognize the real aspirations of the international community.

12. In a few minutes this Committee will listen to the inspiring words of leadership of the man who has ably guided the sea-bed Committee for the past six years. Ambassador Amerasinghe has had praise showered upon him before for handling responsible positions with fairness, rectitude and dignity, so that my words will not add anything to what is already well-known. On a personal note I should like to say that he has been my mentor since the day I began to work side by side with him as the Rapporteur of the Committee. Indeed, he has taken so much off my shoulders that I cannot but be extremely grateful to him. I should also like to congratulate the Chairmen of the respective sub-committees, Mr. Engo, Mr. Galindo Pohl and Mr. van der Essen for their unstinted efforts to put forward the work of their sub-committees. A word of praise also goes to the Rapporteurs of the sub-committees. Because of their conscientious devotion to their work they were a great inspiration to me, although, in lighter moments and in more jocular moods I sometimes called them companions in misfortune. The Chairman of the working groups were particularly instrumental in hammering out whatever provisionally agreed texts exist, and to them we owe our gratitude.

13. I have come to the end of my presentation but I would not give up the floor without first expressing my sincere thanks to the Secretariat. For the last four years I have had the opportunity to work closely with these people and I cannot but express publicly the respect that I have developed for them. To say that the last session in Geneva was particularly difficult for them is to state the obvious, but it falls short of what the situation was really like. At times it was a gruelling experience for them. I must, therefore, congratulate them for the excellent services rendered—the Under-Secretary-General and Legal Counsel, Mr. Stavropoulos and the Secretary of the Committee, Mr. Hall, both for what they have done personally and for the team of professional and general service personnel that stand behind them. It was a privilege for me to work with them, and I consider it an honour to have been treated by them as one of the family.

14. The CHAIRMAN: I now call on the Chairman of the sea-bed Committee, the representative of Sri Lanka.

15. Mr. AMERASINGHE: We owe a deep debt of gratitude to the Rapporteur of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, Mr. Vella of Malta, for the excellent report he has presented to us today. It would not

have been necessary for me to add to it, but I feel this is an occasion when it is necessary for me to place the work of this Committee in its true historical perspective, so that those who have not participated in its deliberations will have a clear understanding of what we have attempted to achieve. I shall unavoidably repeat much of what I stated at the conclusion of the summer session of the sea-bed Committee this year. I stated then that it was not a valedictory speech but I am more convinced than ever that both that speech and the statement I make today will be valedictory. I hope that will be so, because that is the only way in which we can approach the difficult question of working out a durable law of the sea.

16. I stated in Geneva in summer, at the end of the meeting, that this performance had had a run of six years, which had only been excelled by the famous musical, *My Fair Lady*, and the even more famous thriller by Agatha Christie, *The Mouse Trap*. I also warned members not to regard the new law of the sea which is to be formulated as comparable to a mouse trap. I hope you, Mr. Chairman, and the members of the First Committee will bear with me if I look back over the last six years and if in so doing I repeat much that the Rapporteur has stated today and has already alluded to in his report.

17. It is almost six years since the General Assembly took up a question of momentous significance that was introduced by Ambassador Pardo, the representative of Malta. It had momentous significance because it covered two of the principal preoccupations of the United Nations, namely, the question of peace and the question of economic advancement. Ambassador Pardo's item was described as the "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". This question was referred to an *ad hoc* Committee, which was required to prepare a study covering three aspects of it: first, a survey of the past and present activities of the United Nations, the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies with regard to the sea-bed and the ocean floor and of existing agreements concerning these areas; secondly, the scientific, technical, economic, legal and other aspects of the item; thirdly, the practical means of promoting international co-operation in the exploration, conservation and use of the sea-bed and the ocean floor and the subsoil thereof, as contemplated in the title of the item, and of their resources.

18. At its twenty-third session in 1968, the General Assembly converted the *Ad Hoc* Committee into a standing committee, consisting of 42 members, with a mandate that differed materially both in scope and in purpose from that of the *Ad Hoc* Committee [resolution 2467 A (XXIII)]. It was to make recommendations on: (a) the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole; (b) the ways and means of promoting

the exploitation and use of the resources of this area and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole; (c) the intensification of international co-operation and the stimulation of the exchange and the widest possible dissemination of scientific knowledge on the subject; and (d) measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of the area.

19. The Committee was also requested to study, within the context of the title of the item and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect and to make recommendations on this aspect of the question as well to the General Assembly.

20. At its twenty-fourth session the General Assembly, realizing that the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf, the superjacent waters and the sea-bed and the ocean floor beyond the limits of national jurisdiction were closely linked together, adopted resolution 2574 (XXIV), one of the essential elements of which was ascertainment by the Secretary-General of the views of Member States on the desirability of convening at an early date a conference on the law of the sea to review those aspects of the law to which I have just referred.

21. In part B of the same resolution the General Assembly requested the sea-bed Committee to expedite its work of preparing a comprehensive and balanced statement of principles designed to promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether land-locked or coastal.

22. It will be noted that, through this complex web that the Committee was asked to weave, one woof ran clearly, and that was the interests of all mankind and especially the benefit to be derived by the developing countries of the world.

23. There are certain landmarks in the history of the sea-bed Committee of which special note deserves to be taken. In part D of the resolution I have just cited, resolution 2574 (XXIV), the General Assembly declared that, pending the establishment of the proposed international régime, States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; and no claim to any part of that area or its resources shall be recognized. This came to be known as the moratorium resolution. It was certainly not adopted unanimously. Very strongly divergent views were expressed in

regard to its validity, but perhaps the most precise, interesting and erudite assessment of the status of the resolution was given by Mr. Castañeda of Mexico at a meeting of the sea-bed Committee. Members would do well to study his wise words on that occasion.

24. At its twenty-fifth session the General Assembly adopted, on the recommendation of the Committee, a Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction [resolution 2749 (XXV)]. This represents the principal landmark in the work of the Committee during the last six years.

25. At its same twenty-fifth anniversary session, the General Assembly, in resolution 2750 C (XXV), enlarged the membership of the Committee to 86 and made very significant changes in its mandate. It decided in that resolution to convene in 1973 a conference on the law of the sea which would deal with the establishment of an equitable international régime, including an international machinery for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; a precise definition of the area and a broad range of related issues, including those concerning the régimes of the high seas, the continental shelf, the territorial sea, including the question of its breadth and the question of international straits and contiguous zones, fishing and conservation of the living resources of the high seas, including the question of the preferential rights of coastal States, the preservation of the marine environment, including, *inter alia*, the prevention of pollution, and scientific research.

26. The enlarged Committee was requested to prepare for the Conference on the Law of the Sea, first, draft treaty articles embodying the international régime, including an international machinery for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction, and, secondly, a comprehensive list of subjects and issues relating to the law of the sea, referred to earlier, which should be dealt with by the Conference, and draft articles on such subjects and issues.

27. The twenty-sixth session also saw an important increase in the membership of the Committee and an important addition to it through the inclusion of the People's Republic of China as a member of the Committee, along with four others.

28. At its twenty-seventh session, the General Assembly adopted resolution 3029 (XXVII). In paragraph 5 of that resolution it decided to review at its twenty-eighth session—that is, this 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 that might be appropriate. In paragraph 3 of that resolution the General Assembly

requested the Secretary-General to convene the first session of the Third United Nations Conference on the Law of the Sea in New York for a period of approximately two weeks in November and December 1973, for the purpose of dealing with organizational matters, including the election of officers, the adoption of the agenda and the rules of procedure of the Conference, the establishment of subsidiary organs and the allocation of work to those organs. In that resolution the Assembly also decided to convene a second session of the Conference for the purpose of dealing with substantive work at Santiago, Chile, for a period of eight weeks in April and May 1974 and such subsequent sessions, if necessary, as might be decided by the Conference and approved by the General Assembly, bearing in mind the fact that the Government of Austria had offered Vienna as a site for the Conference for the succeeding year.

29. In paragraph 6 of the same resolution, the General Assembly authorized the Secretary-General, in consultation with the Chairman of the Committee, to make such arrangements as might be necessary for the efficient organization and administration of the Conference and the Committee, utilizing to the fullest extent possible the resources of staff at his disposal. I have been in constant touch with the Secretary-General and his staff with regard to this important aspect of the matter.

30. In paragraph 7 of the same resolution the General Assembly decided to consider as a matter of priority at its twenty-eighth session any further matters requiring decision in connexion with the Conference, including the participation of States in the Conference. The most important question that we have to decide in this Committee is whether we are justified in making a recommendation to the General Assembly that it should adhere to the original decision to convene the Third United Nations Conference on the Law of the Sea during November and December this year. I should, for this reason, like to suggest that in this debate in the First Committee we confine our attention to procedural matters entirely, without embarking on questions of substance. Those questions of substance have been dealt with at great length and in great detail during the last few years and no useful purpose would be served by repeating these observations here.

31. I appreciate the fact that there are many members of the General Assembly that have not participated in the work of the sea-bed Committee and that there will also be others which the General Assembly will decide to invite to participate in the Conference that have not had an opportunity of stating their position on the substantive issues. However, I am sure they will have an opportunity to do so.

32. As I said earlier, the principal landmark in the work of the Committee during the last six years was the adoption of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor in resolution 2749 (XXV). The next most important landmark was the adoption by the Committee of the list of subjects and issues which should be dealt with by the Conference.¹ This list of subjects and issues was the result of strenuous negotiations and could well serve as the

¹ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21, para. 23.

basis of the agenda for the Third United Nations Conference on the Law of the Sea. It has been clearly stated that it is not necessarily a complete list, but is the result of a comprehensive approach and covers a wide range of possibilities. It does not present an order of priority and it should therefore serve as a framework for discussion and the drafting of various articles.

33. If the mandate of the Committee has been discharged in its ideal form, there would have been a consolidated text on the two main sections of its mandate: first, the international régime, including an international machinery and the question of limits and the equitable sharing of benefits derived from exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; and secondly, the other related issues to the law of the sea as specified in the list of subjects and issues. As I stated in Geneva, the ideal was impossible of attainment for the simple reason that, unlike the preparations for the previous two United Nations conferences on the law of the sea held in 1958 and 1960, which were entrusted to the International Law Commission, a body of professional jurists and legal technicians, the preparations for the Third United Nations Conference on the Law of the Sea had to be undertaken by a much larger group, a committee of 91, whose approach was essentially and unavoidably political.

34. This difference in approach reflects the changes that had occurred in the interval between the Second United Nations Conference on the Law of the Sea and the time when the United Nations first considered the question brought before it on the admirable initiative of Ambassador Pardo of Malta.

35. It is neither a matter of surprise nor a matter for criticism, therefore, that the results of this Committee's efforts bear no resemblance whatsoever to the final outcome of the International Law Commission's endeavours in relation to the previous two conferences on the law of the sea. The resolution implies that this Committee should assist the General Assembly at arriving at a decision when the preparatory work it has done was of such a quality and nature as to justify the General Assembly's adhering to its decision that an inaugural session of the Third United Nations Conference on the Law of the Sea should be held while the twenty-eighth session of the General Assembly is in progress.

36. For this purpose we must have a clear understanding of what was intended to be meant by preparatory work and also what was feasible having regard to the composition and character of the body entrusted with that work. It is my personal conviction that unless a start is made within the Conference framework, there will be no incentive to delegations to embark on the delicate and arduous process of negotiation in order to resolve or even narrow the differences that now exist within the Committee. The inauguration of the Conference would inject into the international community a sense of urgency in creating a momentum that would carry us towards the conclusion of a treaty.

37. There are delegations that state that we have not made sufficient progress and that the preparatory work must

continue, and that for this purpose the Committee's mandate must be reaffirmed. Such delegations feel that there should be an agreed text rather than an alternative text. That, in my opinion, is an impossible task, and however long we may continue with our discussions in the sea-bed Committee, with its present structure and its present methods of work, we will never reach that stage. If we were to try to attain that ideal and make that an essential prerequisite for the commencement of the Conference, we would, I fear, have to defer that happy consummation until the Greek Calends. It must be left to the General Assembly to make an assessment of the preparatory work so far done by the Committee and to determine whether it should adhere to the original schedule.

38. At this stage and before I get to some of the procedural matters, I should like to strike a personal note and to express my sincere appreciation of the confidence and trust that have been reposed in me by members of the Committee and which have permitted me to remain as Chairman of the Committee and its predecessors for the last six years. It has been a remarkable experience in what has been a fairly long career of public service. Not only has it been of highly educative value, as I have had the privilege of associating with some of the keenest brains in the international legal community, but it has also given me great personal satisfaction as I have been able to form personal friendships which I shall always cherish. These personal friendships count for much more in international life than any other factor. And as I have repeatedly said, it reminds me of Walt Whitman's memorable words where he referred to that fervent element of manly friendship that is more binding than treaties. If we could foster this relationship in our international dealings, we could progress much more rapidly towards the ideal of one world.

39. I have had in the last six years the extraordinary privilege of meeting at the conference table diplomats and international lawyers whose views may have differed very widely from the policies of my own Government, but that in no way impaired the personal relationship that existed between us. To those who have participated in the deliberations of this Committee and its predecessors since the *Ad Hoc* Committee of 35 was established in 1968, I wish to extend my sincere thanks and gratitude. It has been a most rewarding experience and has enriched not only my knowledge of the subject, but also my personal relationships. There are a few colleagues of mine who have been more closely associated with me throughout the years than others.

40. I refer in particular to the Chairmen of the three sub-committees of the present sea-bed Committee and their predecessors. I refer also to the members of the bureau, the Vice-Chairmen and Rapporteur of the main Committee, and the Vice-Chairmen and Rapporteurs of the sub-committees. To them I owe a sincere word of thanks for the unfailing co-operation, guidance and assistance they have extended to me. A special word of thanks is due to the Rapporteur of the main Committee and the Rapporteurs of the three sub-committees who have borne a very heavy responsibility and discharged it with exemplary devotion and efficiency.

41. One of the most revealing experiences during the last six years has been the position of the United Nations Secretariat, those members who have been associated with us closely during that time, and the representatives of the specialized agencies who have co-operated with us so willingly and spontaneously in our work. With singular zeal and conspicuous devotion, the Secretariat attached to this Committee has responded to the many exacting demands that have been made of it for studies which are often of a highly complex character. They have not flinched from their task and their duty.

42. I wish to express my sincerest thanks to the representatives of the specialized agencies, the intergovernmental organizations—and here I should like to make special mention of the Fisheries Committee of the Food and Agriculture Organization of the United Nations, the International Oceanographic Commission and the Intergovernmental Maritime Consultative Organization—for the valuable assistance they rendered to the Committee.

43. Many other intergovernmental bodies have participated in our work and I should like to extend to them, too, my sincere thanks. The various resolutions of the General Assembly in the last six years relating to our Committee and our work have requested us to co-operate with the specialized agencies, the International Atomic Energy Agency, and other intergovernmental organizations, and have in turn requested those bodies to co-operate with us. The most recently established of these organizations is the United Nations Environment Programme whose activities cover an important area falling within our mandate. Resolutions of the General Assembly have required us to ensure that there is no duplication of effort and no overlap. This Committee has consistently and conscientiously tried to avoid any such duplication and overlap, and I am sure that it is the policy of those other bodies also to do the same.

44. It remains for me now to reflect on the prospects for a successful Conference on the Law of the Sea. If we are to have a viable and durable law of the sea, we must recognize the supremacy of one rule, the rule of justice and equity. As I had occasion to state in the general debate in the General Assembly on 9 October 1973,

“The members of the international community will soon face their severest test in co-operation and compromise for the establishment of a stable and viable law of the sea when the third United Nations law of the sea conference is convened. We shall be called upon to review existing international law and transform it, especially that part of it that derives its authority from custom, to suit the moral values, ethical standards and political principles of the twentieth century. These are entirely different the values, standards and principles of the generation of Grotius and Selden. Any law or custom governing the conduct of nations in their relations with one another must be based on principles of equity and international social justice. If a genuine and durable reform of the law of nations, whether it be in regard to the law of the sea, or other aspects of international law is to be achieved, there has to be a willingness on the part of the powerful and affluent to accommodate the interests and aspirations of the less privileged nations of the world. A law which

will ensure order as well as justice must be free from extravagance and must take into special consideration the interests of the land-locked countries, if they are to be treated as equal partners with an equal right to the common heritage of mankind.” [2145th plenary meeting, para. 178.]

45. It is with regard to some of the procedures which we shall decide to adopt in the Conference on the Law of the Sea that the special demonstration of goodwill and co-operation will be required. I am quite certain that those who have the power but not the numbers will realize their weakness, and that those who have the numbers but not the power will also realize that they cannot rely merely on their numerical strength. There is an urgent need for negotiation and that negotiation should proceed not necessarily on the basis of geographical groups, but also on groups of those who share common interests and concerns. Negotiation and compromise offer the best hope of success. We should not fritter away this opportunity, because, if we do so, it will be many years before we may meet again to draft a consolidated law of the sea which would be enduring and which would bring peace and harmony, the offspring of justice. That is why I feel convinced that we should proceed to the next United Nations Conference on the Law of the Sea in accordance with the decision already taken by the General Assembly and which it is expected to review this year. We must not delay because technical advances will overtake us. Already, massive investments for the exploitation of the mineral resources of that area that is unquestionably beyond national jurisdiction, namely, the abyssal plain, have been made by private investors who seek official support from their Governments regardless of the moratorium resolution.

46. We must define the law clearly and prescribe the precise limits of private or State activity and intervention. I saw this because we must not allow the common heritage of mankind to become the exclusive heritage of Howard Hughes.

47. May I turn now to the questions that I feel this Committee should settle. Here, in an effort to co-operate with you, Mr. Chairman, and to ensure that this item is disposed of with the utmost expedition, I have already appealed to the geographical groups to consider certain proposals that I put to them in regard to the debate in the First Committee and in regard to organization. I myself convened a very useful body that we set up in Geneva during the summer session, namely the Consultative Committee, consisting of contact groups of the various geographical groups. The first question on which this Committee would have to advise the General Assembly is whether we recommend that the conference be convened, and that the inaugural session be held in November and December of this year; if such a decision is taken, the exact dates of the inaugural session would have to be specified. I have also suggested that during 1974 it would be essential, if the work of the Conference is to proceed with all dispatch, to have two sessions: a spring session of four weeks' duration in March and April of next year, either in New York or in Geneva; and a summer session of eight weeks' duration at a venue to be determined, and to be held during July and August of 1974.

48. We all are aware of the problem that has arisen in regard to the venue of the summer session, but we hope that that problem can be solved in a spirit of accommodation and understanding, without embarrassment to anyone.

49. The question of invitations is perhaps the most crucial one that will face the General Assembly. There are those who wish all States to be invited; but we cannot merely, in a resolution of the General Assembly, say that all States are invited because it would be an invidious responsibility to impose on the Secretary-General, and one that he cannot possibly assume, to determine what a State is.

50. My suggestion, therefore, is that in any draft resolution which this Committee adopts and presents to the General Assembly, we should, first of all, determine one point; and that is that the Vienna formula settles the participation of one set of members. We should, in addition, have a paragraph in the draft resolution under which the General Assembly will specify those States that are to be invited. This would have to be a matter of negotiation and informal consultation between the various groups in the interval between presentation of the First Committee's draft resolution to the General Assembly and its discussion in the Assembly. It is not absolutely necessary that the First Committee itself should determine what those other States are going to be. That is a matter that could be left, as I said, for negotiation.

51. Another matter that would require very close consultation and negotiation and which, as I said, would call for a statesmanlike approach and mutual understanding, is the decision-making procedure that should be incorporated in the draft resolution, a proposal which the Conference would have to consider. Many opinions have been expressed about this, but, if I may express my personal opinion, I do not see any reason for departing from the established practice of previous codification conferences—the First United Nations Conference on the Law of the Sea and the Conference on the Law of Treaties. There, the majorities required were, in the committees, a simple majority, and in the plenary, a two-thirds majority. But far more important than the rules themselves or the majority that we consider appropriate would be an understanding, a gentlemen's agreement, as I have called it, that at all states we should endeavour to arrive at decisions through a consensus. But we cannot possibly write into the rules of procedure a rule to the effect that there should be a consensus, because a consensus is beyond definition; it is impossible of definition. Much stronger than rules is the convention itself, that we should try to arrive at decisions through a consensus.

52. Here it is also necessary to state that, in regard to the work of the committees and the submission of their reports to the plenary session of the Conference, a simple majority is all that is necessary, because the final decision would be taken in plenary. But in the committees themselves, before that simple majority vote is taken, there should be every effort to reach a consensus. In the interval between disposal of the question of its terms of reference by each main committee and their consideration in plenary, there again should be unofficial negotiations aimed at arriving at a consensus. Even in the plenary session itself, these same efforts should be pursued.

53. These are the principal matters to which we should devote our attention, and on which we should hold consultations while this Committee is considering this item.

54. There was also the suggestion made that in any resolution we should not only refer to the one or two sessions which we shall decide to be necessary during 1974, but, in order to ensure that the work of the conference is not interrupted or does not cease in 1974, make provision for a further session or sessions in 1975, as necessary.

55. I have, in an effort to focus attention on the main issues which should be considered by the First Committee, already circulated, in an informal, unofficial manner, a draft resolution the provisions of which have already been considered at one meeting of the Consultative Committee. I shall pursue those consultations, and I have been assured that the geographical groups will themselves meet separately to consider the terms of the draft resolution.

56. One matter is of paramount importance, and that is the arrangements for the servicing of the Conference. While I refer to the resolution which requests the Secretary-General, in consultation with the Chairman of the Committee, to make the necessary arrangements, I feel that in any resolution we adopt here we should take the decision that the Secretary-General of the United Nations should be the Secretary-General of the Conference and should have the authority to appoint a special representative for that purpose.

57. I also feel that it is vital that when the inaugural session of the Conference is convened, it should have before it a draft set of rules of procedure. There is only one body competent to prepare such a draft set of rules of procedure, and that is the Secretariat. For that reason I have suggested that the Secretary-General be requested to prepare for the Conference such appropriate draft rules of procedure.

58. It would also be necessary in that draft resolution to invite all States which are to participate in the Conference to submit their views, including draft texts, by a particular date—I would suggest 1 February 1974—so that there would be time for those drafts to be considered, along with all those that have already been presented to the Committee, before the second session of the Conference is held, which, as I have suggested, should be in the spring of 1974. But this deadline would be without prejudice to the right of any participant to submit any text, at any time, while the Conference is in progress.

59. That is all I have to say; I hope this Committee will deal with this matter in a business-like way so that you, Mr. Chairman, will be able to go on to the next item on Monday, the 22nd.

60. The CHAIRMAN: I thank the Chairman of the sea-bed Committee for his full and learned exposé of the endeavours of the Committee, but no less for his very clear advice and guidance to this Committee on our future work.

61. There are a few members inscribed on the list, and it is of course for everybody to decide how he wants to address the Committee on this issue. I may, however, perhaps be allowed to recall what the Chairman of the Committee said

when he urged this Committee to address itself primarily to the procedural aspects, and not to take too much time by going into substantive problems that had been dealt with, he felt, over the last six years, and on which he would doubt that we could make any useful progress during this week of discussion.

62. I may perhaps also be allowed to recall the separate points which the Chairman of the sea-bed Committee mentioned in his speech on the procedural aspects—that is, the matter of this year's Conference, the question of the two sessions of the Conference next year, the question of invitations, the questions of voting procedures and the various organizational problems, including rules of procedure and a possible session in 1975.

63. I thought, without in any way restricting members in their statements to this Committee, that it was well just briefly to recapitulate the advice of the Chairman of the sea-bed Committee in order that we may have as efficient a debate as possible.

64. Mr. ARIAS SCHREIBER (Peru) (*interpretation from Spanish*): At the meeting of the informal advisory committee which the Chairman of the sea-bed Committee, Mr. Amerasinghe, called last Friday, while thanking him for his further contribution to the work we have before us, I said I felt it necessary to hold consultations among the regional groups before we could make any comments on the draft resolution he had submitted.

65. Although some delegations did give their views in a preliminary fashion, and even made some interesting suggestions, my delegation will refrain from making known its views ahead of time until the consultations have been held.

66. However, in the course of Friday's debate, a number of comments were made that called for a reply from us and which, in the light of their importance and gravity, I believe it imperative to stress here for the benefit of those representatives who were not present at that meeting and so that those comments may be duly reflected in the record.

67. First of all, it was hinted that the results of the forthcoming Conference on the Law of the Sea would have international validity only if they safeguarded the interests of the major Powers, which would be in a very special position vis-à-vis the will expressed by other nations. On that basis, following the same logic, we may gather that if the new norms of the law of the sea were to be supported by the great Powers, they would be binding on all nations, even if they did not respect the rights of other countries, because the latter are apparently unimportant until they become major Powers.

68. That sort of reasoning is behind the attempt to return to the concept of discriminating between first-, second- or third-rate States and the establishment of the veto as a privilege of the first group as a *sine qua non* for international law. Thus we would in fact have a new type of international law, but this time based not on principles of justice, the legal equality of States, mutual respect for their sovereign rights, or norms to promote the common welfare, but rather on the will of a minority of privileged nations,

whose Governments still consider that their economic interests and political ambitions must prevail over the fate and future of the rest of the nations of the world.

69. Well, I believe those who think thus are turning their backs on the present-day world. When discussing that type of hint or suggestion I precisely stated that one of the most important achievements of the new law of the sea would be putting an end to the criterion of hegemony that has so damaged mankind. I said then, and repeat now, that it is high time for the aspirations to development and welfare of the most needy peoples—and not only those of the most able or wealthy peoples—to be met and satisfied in order to put an end to the system of exploitation and injustice of which those with less economic resources are the victims. Their lack of economic resources makes them no less respectable or human than the citizens of the more materially developed countries, who in some cases it seems are spiritually underdeveloped because they think only of their own prosperity even at the expense of frustrating the rest.

70. If the consensus formula is to be invoked as the condition for achieving an agreement that is generally acceptable, that concept of general acceptability cannot, then, refer only to the inclusion of the interests of the major Powers located, if I may so put it, at one end of the spectrum. It must also include the interests of those States located at the opposite end of the spectrum. Otherwise, we should be measuring the concept of general acceptability with different yardsticks, accommodating some and excluding others, as though the peoples and persons comprising them had a different value. That would create an intolerable division between the privileged and the non-privileged or forgotten, and the sacrifice of the latter would then become legitimized in order to benefit the former.

71. The interests at play are equally important, but perhaps they are even more important for the people of a nation which is not a great Power, whose men and women daily face greater privations than those usually met with in developed countries. They have the same right to subsist and enjoy a decent life and a certain degree of well-being.

72. It is therefore understandable that we must justifiably and inevitably reject any type of criterion which implies placing countries in the order of their interests. That would undermine the concept of equal treatment being extended to all peoples in the question of protecting their individual and respective rights. If any difference is to be admitted, it should be to place the unbridled enrichment of those who seek luxuries after the development of those who still see their primary needs unfulfilled.

73. At the advisory committee meeting it was later said that it is unnecessary to complete the preparatory work for the conference on the law of the sea, whether at an additional meeting or at the conference itself, and that the 50 States that have not participated in the work of the sea-bed Committee should not be entitled to revise the few results obtained. I am not aware of the thinking of other delegations, but I must confess that as yet I have been unable to overcome my amazement at the two opinions expressed. To start the substantive talks and work of a conference of the kind foreseen without completing the

preparatory phase and without having a draft convention—not necessarily a single text; there could be different alternatives in that draft convention; there should at least be a draft convention on which governments can, knowing all the implications, pronounce themselves—would be to expose the conference to a renewed and extremely serious failure. Furthermore, denying States not members of the sea-bed Committee their right to take part in preparatory work for the conference and to review and perhaps complete the draft articles that have thus far been elaborated would be an inexplicable and inadmissible arbitrary act, not only so far as the matter of principle is concerned but because the rules to be adopted might seriously affect interests paramount to the countries of that group. That is how my delegation feels, and that is what we stated at last Friday's meeting with our usual frankness.

74. I apologize for having spoken longer than I expected in a debate that is presumably of a procedural nature but it is obvious that the statements to which I have referred have far too many substantive aspects to be set aside.

75. Once the necessary consultations have been held, and once we meet again, my delegation will be very happy to give its views on the valuable draft resolution submitted by Mr. Amerasinghe, whom we wish to thank again. We shall also address ourselves to proposals made by other delegations. I trust that will allow us to reach a satisfactory agreement for ultimate submission to the General Assembly.

76. Mr. ÅLGÅRD (Norway): On behalf of my delegation I should like to express sincere thanks to the Rapporteur for his dedicated work and valuable contribution and to the Chairman of the sea-bed Committee, Mr. Amerasinghe. In my delegation's view, no one could have carried out the enormously difficult task of chairing the sea-bed Committee in its capacity as preparatory organ for the Third United Nations Conference of the Law of the Sea better than Mr. Amerasinghe. He has displayed superb diplomatic skill and a devotion to his task that has impressed us deeply.

77. Turning to the problems before us, there is, of course, a double basis for our efforts. The first one is General Assembly resolution 3029 (XXVII). And the second is the report of the sea-bed Committee on its work in 1973 [A/9021].

78. As far as General Assembly resolution 3029 (XXVII) is concerned, it decided, *inter alia*, in its paragraph 5 that this present session of the General Assembly should review the progress of the preparatory work of the sea-bed Committee and, if necessary, take "measures to facilitate completion of the substantive work for the Conference and any other action it may deem appropriate".

79. Now, the first question which faces us in carrying out this review is, of course, whether the preparatory work as reflected in the report of the sea-bed Committee is sufficiently advanced to justify the holding of the Conference along the broad lines envisaged in last year's resolution, that is, with an opening session later this year followed by at least one substantive session in 1974. In answering this question we will not have the benefit of a

specific recommendation from the sea-bed Committee. This Committee decided, "that assessment of the preparatory work should in the circumstances be left to the General Assembly" [*ibid.*, vol. I, sect. IV]. The Committee worked, as we know, on the basis of the consensus principle and there was at the end of its deliberations in Geneva in August no complete agreement on the question of whether its work had achieved that minimum result that would justify the holding of the Conference on schedule. However, unlike the sea-bed Committee, this Committee will have to reach a definite conclusion on the question of whether the Conference should now be held.

80. In the view of my delegation, this Committee should answer that question clearly in the affirmative. Though the preparatory work carried out by the sea-bed Committee has not, in the main issues confronting us, resulted in agreed recommendations—agreed sets of draft articles—it has led to a clarification of the respective opening negotiating positions. Under the circumstances, this was all that we could expect realistically. To expect a preparatory committee comprising 91 States—States representing widely different interests—to reach agreed solutions on substance in an area of such key importance as the law of the sea and to do this while adhering strictly to the consensus principle would, in the view of my delegation, have been totally unrealistic.

81. I said that in the view of my Government the preparations for the Conference are sufficiently advanced to justify the holding of that Conference under a time-table following the lines established in last year's resolution. In reaching this conclusion we have taken into consideration the clarification of the respective opening negotiating positions that have emerged from the many statements in the sea-bed Committee and also from the specific proposals submitted there. We have taken into account that on some issues, though admittedly not on the most controversial ones, the Committee has managed to narrow down the alternatives reflected in the various national positions and, in some cases, even to reach consensus recommendations of particular solutions. In the view of my delegation these results, when judged against the consensus strait-jacket under which the Committee has operated, merit not derision but appreciation.

82. After these remarks regarding the situation of the adequacy of the preparatory work I should now like to turn to a closer examination of the immediate task that is before this Committee in drawing up a draft resolution for the General Assembly. We are working here, as we all know, under pressure. It is essential that we define our job as precisely as possible so that no time is wasted on discussion of issues that are extraneous to the immediate task of the General Assembly. This immediate task, as my delegation sees it, is to draft a resolution covering four main questions only: first, the scope of the mandate of the Conference; secondly and thirdly, the timing and the venue of that Conference; and fourthly, the question of participation in the Conference. It is these four main questions that must be covered by the draft resolution that should emerge from the efforts of our Committee. In view of the short time available it is essential that other organizational matters of importance, such as the committee structure and procedures for the Conference, should be left for the Conference itself to handle. Also, of course, matters of

substance must be left now to the Conference itself. I would expect to find there is full agreement in this hall that this is not the time and place to pursue the substantive discussion which we had in the sea-bed Committee.

83. As to the precise content of the draft resolution on the points I mentioned, it would be premature to go too much into detail at this stage. Informal consultations have been initiated, on the regional level as well as on the more general one, and my delegation is confident that from these consultations will emerge a balanced text which we hope will be acceptable to all Member States. The fact that the Chairman of the sea-bed Committee is himself playing a leading role in the consultation process augurs well for its conclusions. My delegation would like to express to him, through you, Mr. Chairman, our appreciation for the timely initiative that he has taken in this matter, and also to thank him for the clear exposé of the situation which he has given us here this morning.

84. Though I shall not, at this stage, go into details on the context of the resolution which must result from our work, I should like, in conclusion, to express the views of my delegation on two of the main issues: first, on the question of the time-table, and secondly on the question of participation in the Conference.

85. On the first question, we believe that it would be useful for the Conference to have two sessions in 1974 in addition to a short opening organizational session in November/December this year. The main reason for having two sessions in 1974 is, as we see it, that this will enable the Conference to take full account of the views of those delegations which have not taken part in the preparatory work of the sea-bed Committee, to enable their views and proposals to be properly integrated in the negotiating process. Also, of course, there would be, during the first of the two sessions, possibilities for refining further the presentation given us in the sea-bed Committee's report of the options which the Conference would have on each

substantive issue, hopefully even to reduce the number of alternatives from which the final choices will have to be made.

86. On the second issue which I mentioned, that of participation, no problems should arise as far as States Members of the United Nations, the specialized agencies, the International Atomic Energy Agency and the parties to the statutes of the International Court of Justice are concerned. It is, however, clear that participation should not be limited to States falling under any of these categories, and the difficulties might arise at the stage when we have to decide the precise content of our decision in this respect. As it is essential—in view of the short time available before the proposed opening session in November and December—to have a resolution adopted by the General Assembly as quickly as possible, my delegation would favour a formula which for the time being keeps open the question of exactly which States, other than the ones falling under the categories I mentioned, should be invited to the conference. We therefore recommend at this point a two-stage procedure by which the General Assembly would first decide to invite States Members of the United Nations, of the specialized agencies, of the International Atomic Energy Agency and the parties to the Statute of the International Court of Justice, adding at the same time the phrase “and such other States as the General Assembly may decide to invite”. The second stage, after the passing of the basic resolution, would then be for the General Assembly to decide just which additional States should be invited. Naturally, this question will have to be dealt with by the present General Assembly. A two-stage procedure such as suggested would, however, have the merit of allowing such preparatory work as can be done on the basis of the first resolution to go forward without hinging on the solution to intricate questions which might arise when the list of additional States to be invited is drawn up by the General Assembly.

The meeting rose at 12.15 p.m.