

P R O L O G U E

I. THE MALTESE PROPOSAL

On 17 August 1967, Arvid Pardo, Malta's Representative to the United Nations, requested the inclusion of the following new item concerning the development of the seabed in the agenda at the 22nd Session of the General Assembly: "Declaration and treaty concerning the reservation exclusively for peaceful purposes of the sea-bed and of the ocean floor, underlying the seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

In an explanatory memorandum (A/6695), Malta stressed that, in view of the rapid progress of technology, there was fear that the area beyond the continental shelf would become subject to national appropriation. The result, Malta thought, would be the militarization of the accessible ocean floor through fixed military installations, and the exploitation of the immense resources for the national advantage of technologically developed countries. Malta considered that the time had come to declare the ocean floor to be the common heritage of mankind and proposed that immediate steps should be taken to draft a treaty embodying the principles: (i) the seabed and ocean floor beyond the limits of national jurisdiction are not subject to national appropriation; (ii) the exploration of the area shall be undertaken in a manner consistent with the principles and purposes of the United Nations Charter; (iii) the use of the area and its economic exploitation shall be undertaken with the aim of safeguarding the interests of mankind and the benefits shall be used primarily to promote the development of poor countries; and (iv) the area shall be reserved exclusively for peaceful purposes. Malta proposed, in addition, the creation of an international agency to assume juris-

diction over the area and to ensure that these activities conform to the provisions of the treaty.

II. DELIBERATIONS CONCERNING THE MALTESE PROPOSAL

The General Assembly adopted on 6 October 1967 the "Examination of 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" as agenda item 92, and allocated this item to the First Committee (A/PV.1583).

At the stage of the general debates at the Plenary Meetings, this item did not attract much attention from the representatives. The representative of Malta who proposed the item suggested that attention be drawn to the resources of the ocean floor as new resources for the progress of developing countries and that orderly and reasonable exploitation of these resources be undertaken by an international organization which would have jurisdiction over them (A/PV.1582). Only a few representatives, such as the delegate from Peru, showed interest in this item.

It is submitted that the UN Secretariat was somewhat embarrassed by Pardo's suggestion in view of its duplication of the activities already conducted by the United Nations. Prior to the discussion in the First Committee, the UN Secretariat distributed a note (A/C.1/952) to the effect that it was necessary to distinguish between questions of peaceful use, scientific activities, and those of resource exploitation. The note stated, referring to General Assembly resolution 2172 (XXI), that a report would be submitted at the 23rd Session on the field of marine science and technology. It was also noted that the Office of Legal Affairs was considering the issue in 1968

of a volume in the legislative series, bringing up to date certain earlier volumes on the law of the sea. Attention was also drawn to the fact that the Intergovernmental Oceanographic Commission (IOC) of UNESCO had decided on 27 October 1967 to establish a working group on the legal questions related to scientific investigations of the ocean. The Secretariat noted, as most relevant to this item, that the Secretary-General was requested under ECOSOC resolution 1112 (XL) to make some studies of this problem and that his preliminary work had led him to the conclusion that the legal status of the deep sea resources and ways and means of ensuring that the exploitation of these resources benefit the developing countries constituted two major gaps in law. It was suggested that the Secretary-General would examine various alternatives, including the advisability and feasibility of entrusting the deep sea resources to an international body, and that the General Assembly might consider it advantageous for the Secretary-General to prepare a more comprehensive report which would include a study of the legal framework, the administrative machinery and a possible system of licensing. It can be stated that a somewhat negative attitude was expressed by the UN Secretariat in the note by hinting at some duplications between this item proposed by Malta and the previous activities carried out by the United Nations.

The discussions on this item in the First Committee started on 1 November with the statement by Pardo which was to elaborate on the memorandum for the inclusion of the item and the statement at the Plenary Meeting several weeks before. The statement further noted, in particular, the necessity for the control of marine pollution due to the release of radioactive waste and other wastes into the sea. Malta proposed that the General Assembly should adopt at this session a resolution embodying the concepts:

- (i) the deep ocean floor is the common heritage of man-

kind and should be used for peaceful purposes and for the exclusive benefit of mankind as a whole; (ii) claims to sovereignty over the area should be frozen until a clear definition of the continental shelf has been formulated; and (iii) a body should be established to consider the security, economic and other implications of the establishment of an international régime, to draft a comprehensive treaty to safeguard the international character of the area and to provide for the establishment of an international agency (A/C.1/PV.1515, 1516).

In the discussions in the First Committee from 8 to 16 November (A/C.1/PV.1524-1530), the establishment of the above-mentioned body received general support. However, the United States seemed to favour a "Committee on the Ocean" which would assist the General Assembly in promoting long-term international co-operation in marine science. The Soviet Union advised that the creation of another new United Nations body might duplicate the existing organizations in view of the fact that the Secretariat and other existing international organs had been dealing with the problems of the sea, and suggested that the IOC be more effectively utilized. The observer from UNESCO also took a negative attitude toward the establishment of another committee in the United Nations.

At the same time there was also a variety of opinions among the delegates with respect to the legal principles applicable to the deep ocean floor. The Soviet Union regarded as premature the declaration of any legal principle. Canada and Italy were also of the same opinion. However, there was agreement among the delegates that claims to sovereignty should be suspended. The United States, Sweden, Japan and others supported this idea. Sweden in particular proposed that claims should be frozen, and this received the support of countries in Asia and Africa. The idea that the resources of the deep ocean floor should be exploited for the benefit of developing

countries was naturally supported by Asians and Africans. The Soviet Union gave full support to the idea that the deep ocean floor should only be used for peaceful purposes, while the United States considered its use in terms of the effective control of armaments. With regard to the military aspect, however, developed countries, including the Soviet Union, were of the opinion that the matter might be considered by the Eighteen-Nation Disarmament Committee.

III. THE ESTABLISHMENT OF THE AD HOC SEABED COMMITTEE

A working group of 27 nations, informally set up in accordance with the request of Malta, prepared a draft resolution (A/C.1/L.410) which was afterwards introduced by Belgium. The number of co-sponsoring States, which increased finally to 43, included those of the Western and Eastern blocs and the developed and developing countries. The membership of the ad hoc committee referred to in this proposal was left open, but the Chairman of the First Committee suggested the names of 30 countries. This proposal was agreed upon but, at the request of some States, the Chairman suggested the addition of 5 more members. Thus, a resolution which recommended the establishment of an ad hoc committee of 35 nations was approved on 8 December by the First Committee, 93 to 0 with 1 abstention.

On 18 December 1967 the General Assembly unanimously adopted resolution 2340 (XXII), "Examination of 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". It:

1. Provided for establishment of an ad hoc committee

to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction (hereafter referred to as the Ad Hoc Seabed Committee) of 35 nations; and

2. Requested the Ad Hoc Seabed Committee to prepare a study which would include, (a) a survey of the past and present activities of the United Nations, the specialized agencies, the International Atomic Energy Agency (IAEA) and other inter-governmental bodies, and of existing international agreements, (b) an account of scientific, technical, economic, legal and other aspects, and (c) an indication regarding practical means to promote international co-operation.

IV. PREPARATION OF THE AD HOC SEABED COMMITTEE

Prior to the convening of the Ad Hoc Committee, the Secretary-General sought the views of all member States on the subject of the study to be prepared by the Committee, and 27 governments replied (A/AC.135/1 and Add.1-10). Among the opinions submitted by the governments, the following were the most salient.

First, the States which had not yet ratified the Continental Shelf Convention did not challenge the validity of this Convention as international law. One of the very few exceptions was Japan, which argued that the provisions of the Convention should not be regarded as established rules of international law.

Second, the phrase "beyond the limits of present national jurisdiction" in resolution 2340 (XXII) refers to areas beyond the continental shelf, but the limits of the continental shelf are not clearly defined in Article 1 of the Convention. It was suggested that the limits be precisely specified in figures.

Third, it was pointed out by many countries that the

deep ocean floor should not be an object of possession by any country. Sweden urged that the present situation should be frozen until the work of the Ad Hoc Committee had been successfully concluded.

Fourth, the use of the deep ocean floor for peaceful purposes only and the prohibition against military uses were suggested by almost all countries. The United States seems to have understood the peaceful uses of the deep ocean floor not in terms of the prohibition of military uses but in connection with arms control.

Fifth, although the preservation of the use of the seabed for all mankind was indicated in resolution 2340 (XXII), many countries reiterated this point. However, there were governments which insisted on the special status of the coastal States and stressed the interests and security of the coastal States.

Sixth, several States advocated international management of the deep ocean floor. Some States advanced the idea of an international agency to regulate exploitation of seabed resources, and it was the hope of several States that such regulation would benefit developing countries. In particular, the Netherlands proposed a concrete plan by which the United Nations itself would grant concessions for exploitation. On the other hand Belgium supported the principle of exploitation by private enterprise, rather than by the United Nations, and Japan argued that the work of the Ad Hoc Committee should not impede exploitation of the deep ocean floor. Also, Denmark argued for freedom of exploration and use of this area by all States and for prior rights in the case of the States which had already begun exploitation.

Seventh, the United States suggested that the Ad Hoc Committee recommend development of a broad international programme covering all aspects of the marine environment, including its living resources.

Finally, Belgium proposed that the term of "natural

resources" in the Continental Shelf Convention should be clearly defined.

Reply of Japan of 20 March 1968 (A/AC.135/1/Add.3):

1. Japan favours the principle that the seabed beyond the limits of national jurisdiction should be preserved from national appropriation and that its exploration and use should be conducted for the benefit of all mankind.

2. The study and discussion in the Ad Hoc Committee should be confined to the seabed so that the long-established principle of the freedom of the high seas should not be affected in any way.

3. The provisions of the Continental Shelf Convention should not be taken as customary international law.

4. Deliberations in the Ad Hoc Committee should not have the effect of discouraging or delaying exploration and exploitation of the seabed resources by States, including those who have advanced marine technology.

5. It will be appropriate and desirable to include in the subjects of study the prohibition of utilization of the seabed for any military purposes.