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AD HOC COMMITTEE TO STUDY THE PEACEFUL
USES OF THE SEA-BED AND THE OCEAN
FLOOR BEYOND THE LIMITS OF NATIONAL
JURISDICTION
Second session
Legal Working Group

STATEMENT BY THE CHAIRMAN OF THE LEGAL WORKING GROUP
AT THE FIRST MEETING ON 18 JUNE 1968

As Chairman of the Working Group dealing with the legal aspects of the work assigned to the Ad Hoc Committee, established by resolution 2340 (XXII) of 18 December 1967, I deem it my duty to present for the Working Group's consideration an objective analysis of the various legal aspects of the Committee's terms of reference.

Operative paragraph 1

With the omission of the names of the States members of the Ad Hoc Committee, operative paragraph 1 of resolution 2340 (XXII) reads as follows:

"The General Assembly,

"Decides to establish an Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction... to study the scope and various aspects of this item."

In spite of the incomplete wording, owing to the fact that the enumeration of the States constituting the Ad Hoc Committee is left out, it is clear that the Committee's function is "to study the scope and various aspects of this item".

Scope and various aspects of the item

The item consists of the following two main aspects:

(a) "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;

(b) "... and the use of their resources in the interests of mankind".

This division of the item into two parts is clear. The first is that an examination is to be made of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor underlying the high seas beyond the limits of present national jurisdiction, and the second that the resources of the sea-bed and the ocean floor underlying the high seas beyond the limits of present national jurisdiction are to be used in the interests of mankind. The former entails, mutatis mutandis, the prohibition of the use of the marine environment for military purposes; the latter means that the resources of this environment are to be used in the interests of mankind.

From the legal standpoint, both aspects call for an initial definition of the juridical nature of the area to which the item refers.

The following data, derived from an analysis of the item, are relevant to this definition: (a) resolution 2340 (XXII) refers to the sea-bed and the ocean floor and the subsoil thereof; (b) but it refers only to the sea-bed and the ocean floor and the subsoil thereof which are subject to two provisos: (i) that they underlie the high seas and (ii) that they lie beyond the limits of present national jurisdiction.

Juridically, "the high seas" means the surface of the seas beyond the limits of national sovereignty. Traditionally, this area, called "the high seas", is governed by the principle of freedom. However, in the light of modern requirements the high seas also include an area which, according to Gidel, falls within "specialized jurisdictions" and which is known as "the contiguous zone". But, in any case, it is beyond the limits of territorial waters.

Actually "the high seas" means the surface of the seas because of its historical origin. The question of determining the juridical nature of the sea-bed and the ocean floor underlying the high seas is obviously different from that of determining the juridical nature of the waters covering them and involves a preliminary problem, namely, that of determining whether this new area - the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas - is to be subject to the principles traditionally applied to the surface of the high seas.

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Again, it should be noted that the item refers to the sea-bed and the ocean floor underlying the high seas which are beyond the limits of present national jurisdiction. This introduces a new factor: jurisdiction over the sea-bed. In this connexion it should be pointed out that, so far as the high seas are concerned only the submarine area of States known as the "continental shelf" is under national jurisdiction - apart from some very restricted areas in which certain rights have historically been exercised.

Definition of the legal principles to which the item refers

It will be clear to all that to embark on a discussion of the limits of the continental shelf and even of certain matters on which it would be difficult to agree, such as the definition of submarine areas "adjacent to the coast", could quickly lead to controversy and divert us from our purpose, because the existence of submarine canyons, which sometimes cut through the continental shelf, could lead to a useless and dangerous discussion as to whether the term "adjacent" should be interpreted as "continuous" or "contiguous".

In the search for areas of general agreement, it might be advisable to postpone such a debate to some future date by one of the following procedures: by applying the provisions of the Geneva Convention on the Continental Shelf, by simply placing the item on the General Assembly's agenda, or by accepting the recommendation made by a standing ad hoc committee established by the Assembly to consider the matter.

The definition of the legal principles governing the sea environment to which the item refers, namely, the sea-bed and the ocean floor underlying the high seas beyond the limits of present national jurisdiction, need not give rise to serious difficulties if an attempt is made to establish a generally acceptable juridical régime for a geographical area to which no clear legal principles yet apply. I would point out, by way of example, that it would have to be determined whether the sea-bed and the ocean floor underlying the high seas are to be considered in the light of traditional principles of law or whether new concepts must be evolved to meet new circumstances. Far from being purely academic, a discussion of this nature could be the basic reference point for future discussions. Nevertheless, I am not proposing that we should tackle this question directly and immediately because I realize the great difficulties that will face the Working Group because of the lack of documents, the pressure of time and the complexity of the subject.

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Functions assigned under operative paragraph 2 of resolution 2340 (XXII)

Operative paragraph 2 of resolution 2340 (XXII), unlike operative paragraph 1, prescribes some precise and specific functions. The Ad Hoc Committee is requested, in co-operation with the Secretary-General, the specialized agencies, the International Atomic Energy Agency and other inter-governmental bodies, to prepare a study of some aspects of the item. In its juridical aspect, according to operative paragraph 2 (a), the study has to include a survey of "existing international agreements" concerning these matters. The other functions, described in sub-paragraph (b), would be included in the broad study I have just suggested, because it refers to the general legal aspects of the item, whereas the others (technical, economic, etc.) are outside the purview of the Legal Working Group.

Indication regarding practical means of promoting international co-operation

Operative paragraph 2 (c) of resolution 2340 (XXII) requires the Ad Hoc Committee to provide an indication to the General Assembly at its twenty-third session regarding practical means of promoting international co-operation. In my view, the major responsibility in this connexion lies with the plenary Ad Hoc Committee. The Legal Working Group might, however, be able to propose to the Ad Hoc Committee some of the principles established during its study of the legal aspects of the question as a basis for an international agreement on the two aspects of the question: firstly, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor underlying the high seas beyond the limits of present national jurisdiction; and, secondly, the legal basis for technical and economic co-operation.

I wish to make it clear, in enumerating these points, that it is not my purpose to invite premature discussion of controversial issues requiring careful and lengthy consideration, especially the military and political aspects of the question. It is my clear impression that, for the present and perhaps for some time to come, the approach to many of the points I have mentioned will have to be cautious and painstaking. But I do wish to say that it is impossible to separate the various aspects of the item - technical, political, economic, etc. - from the juridical relationship which must necessarily be established by the force of

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circumstances. One part of the work ahead will be the adaptation of existing norms, but a further major task will be the establishment of new norms to govern new relationships. This task may be a lengthy one, but we will have done our duty if agreement can be reached on some of the legal principles involved and if the Group's general study of the problem can serve as a point of departure for a serious approach to this question of vital interest to mankind.

With these provisos, and as a provisional measure, I venture to submit for the Working Group's consideration the following plan which is of a tentative nature and subject to the Group's decision:

1. Determination of legal principles relating to the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction;

(a) existing regulations in this field;

(b) consideration of legal principles which should govern international co-operation with a view to the preparation of an agreement on the use of the sea-bed and the ocean floor, and the subsoil thereof, exclusively for peaceful purposes;

(c) consideration of legal principles which should govern international co-operation in the use, in the interests of mankind, of the resources of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction.

2. Conclusions of a legal nature emerging from the reports on the subject submitted by the Secretary-General, the specialized agencies, the International Atomic Energy Agency and other inter-governmental bodies.

3. Consideration of practical legal means, which the Working Group might think fit to recommend to the Ad Hoc Committee for ensuring:

(a) the use 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

(b) the use of the resources of this area in the interests of mankind.

A final item would, I think, have to be added to the plan, namely, consideration of the other aspects of the question. It is possible that, as the technical study progresses, fresh legal problems may arise, and the plan must therefore allow for such possibilities and for the study of any other legal aspects that may transpire.

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I wish to make it clear that the plan I am suggesting and which I have just read out is purely tentative, as I said before.

In this connexion I wish to make the following remarks:

Firstly, the plan is not an exhaustive enumeration of topics but rather an attempt to set out methodically the scope and various aspects of the question from the legal standpoint. By the same token, it does not exclude detailed consideration of these legal aspects in which the Working Group may be particularly interested, nor does it imply that all the issues mentioned must be resolved.

Secondly, any suggestions regarding new legal aspects within the terms of reference laid down in resolution 2340 (XXII) can be included in the plan.

Thirdly, the Working Group may wish to study this plan and this statement more carefully, for which reason it might be advisable to postpone consideration of the plan and to try to maintain its flexibility.

The Working Group will not fail to notice that, owing to the complexity and novelty of the subject, we do not have sufficient material available yet for the study called for by operative paragraph 2 of resolution 2340 (XXII).

In conclusion, I wish once again to thank you for the honour you have bestowed upon my country in electing me to preside over this important Working Group and to express the hope that fruitful co-operation and goodwill will be shown by each and every member. I, for my part, can assure you that I shall at all times maintain strict objectivity and impartiality in the conduct of the Legal Working Group's deliberations. Finally, I wish to thank the Secretary-General for his co-operation and to express my firm conviction that the co-operation of the outstanding specialists who constitute the administrative part of the Working Group augurs well for its success.
