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COMMITTEE ON THE PEACEFUL USES OF
THE SEA-BED AND THE OCEAN FLOOR
BEYOND THE LIMITS OF NATIONAL
JURISDICTION

STATEMENT BY THE CHAIRMAN AT THE TWENTY-FOURTH
MEETING OF THE COMMITTEE ON 6 MARCH 1970 1/

The general debate is over. I shall now try to give a summing up which would in no sense be a summary of our discussion but rather an indication of the procedure we might follow for the rest of our session.

The general debate has made it clear that the two main questions which are fundamental to our task are: (i) general principles; (ii) international régime, including institutional arrangements for its enforcement.

I have referred to general principles and not to legal principles.

During the last session considerable attention was paid also to the economic and technical conditions, rules and means for exploration and exploitation of the resources of the area. This question will receive further attention from the Economic and Technical Sub-Committee during this session.

In regard to machinery, further consideration must await the Secretary-General's report.

General Assembly resolution 2574 (XXIV), parts A-D, gives clear directions to the Committee regarding the Assembly's expectations. In our report to the twenty-fifth session we must be in a position to record definite progress, which means specific recommendations.

1/ Distributed in accordance with the decision of the Committee at its twenty-fourth meeting.

What requires attention at this stage is our approach to the two questions that are fundamental to our treatment of the problem and the priority to be given to one or the other. This priority must have one object and that is the advancement of action on the question. There appears to be no dispute over the need to give the highest priority to the declaration of principles although there seems to be some confusion between that aspect and the question of the international régime. I mention this because one proposal has been that the main Committee give the highest priority to the discussion of this issue on the basis of the eight propositions advanced by the United Kingdom in its Working Paper.

It has been my view that the first and indispensable requisite is agreement on a set of principles.

There are those who regard the declaration of principles as the main task of the Legal Sub-Committee basing their argument no doubt on paragraph 2 (a) of resolution 2467 A (XXIII) which has been assigned to the Legal Sub-Committee, namely, the elaboration of legal principles and norms for promoting international co-operation in the exploration and use of the sea-bed and the ocean floor and subsoil and to ensure exploitation of its resources for the benefit of mankind, having regard to the economic and other requirements of such a régime.

Here, the term "régime" obviously refers to the set of legal principles and norms, and it is for this reason that I should like to draw a distinction between the set of principles and the régime.

It has been correctly observed that the declaration is not an end in itself but a means to an end, which is the promotion of international co-operation in exploration and exploitation.

In fact, the declaration should have as its end the attainment of the objectives stated in the item itself, namely, reservation of the area for peaceful purposes and exploration and exploitation in the interests of mankind.

It has been stated that the discussions reveal two approaches to the question of a declaration of principles:

- (i) that the principles should serve as guidelines regulating activities in the area pending agreement on a detailed international régime;
- (ii) that the activities can be regulated only by a proper régime and that the statement or declaration of principles should be a step towards agreement on such a régime, namely, it should provide guidelines for discussion of such a régime.

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If we were to examine this diagnosis of the problem, we find that there is hardly any difference in the two alternative approaches.

According to the first, the statement of principles will be a provisional régime and have the force of a provisional régime until agreement is reached on a proper régime.

According to the second, it will constitute the first step towards the discussion of a régime and is more a declaration of intent than agreement on a provisional régime.

At this stage I am constrained to point out the need for getting our ideas, definitions and purposes clear, because it may be that we mean different things when we use the same term. Our first duty is to take the decisions relevant and conducive to the attainment of our objectives. This is essentially a political decision. It is when that political decision is taken that we must proceed to the next step of translating it into legal form and shape. This is what I understand by the elaboration of legal principles and norms. It is there that the legal implications of a political decision become relevant.

This definition of objects and purposes and this statement of political will together amount to the declaration of principles which we need as the foundation of this structure. Perhaps the use of the word "principles" is not entirely correct. For the present they might more appropriately be described as a statement of policy or declaration of intent.

When these political decisions are taken, the next stage is the drafting of the necessary international legislation which will cover the creation of institutional arrangements required to administer and enforce the régime, which in our parlance is described as "international machinery".

In the Ad Hoc Committee we did attempt to follow this procedure by concentrating initially on the principles. We had the principles known as Set A and Set B and referred to in paragraph 88 of the Ad Hoc Committee's report (A/7230). We had other sets of principles, too, which are annexed to that report.

In the Standing Committee we altered the procedure somewhat by requiring the Legal Sub-Committee to deal with operative paragraph 2 (a) of resolution 2467 A (XXIII) and study the elaboration of legal principles and norms, namely,

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the régime. This had its merits because it cleared the ground for the adoption of political decisions.

It was not that we lost sight of the need for a statement of principles but that we allowed its identity to be absorbed in the set of legal principles and norms. It is necessary, in my opinion, at this stage to restore to the statement of principles its separate identity and that, again, in my opinion, is a political matter that falls strictly within the purview of the main Committee. The separation would not entail a limitation of the functions of the Legal Sub-Committee.

It would, on the other hand, facilitate the Legal Sub-Committee's work if this agreement on principles could be reached first. That is necessarily a political decision.

If we were to examine some of the principles, the political character of the decision that is necessary would become quite apparent.

States have to take the political decision:

That there is an area beyond national jurisdiction, the precise delimitation of which is necessary;

That the area should be reserved exclusively for peaceful purposes;

That the area shall not be subject to national appropriation and no State shall exercise or claim sovereignty or sovereign right over any part of the area;

That the resources of the area shall be exploited for the benefit of mankind and the proceeds applied in an equitable manner with the object of reducing economic disparities and promoting balanced economic growth;

That freedom of scientific research shall be allowed in the area.

Some of the propositions contained in the United Kingdom working paper on the nature and scope of an international régime could also appropriately be included among these political decisions. I refer to items 1, 2 and 4.

As distinct from these, the legal status of the area, the need to conduct activities with due regard to the interests of all States, the observance of proper operational norms, including those designed to prevent pollution and to ensure efficient and orderly exploration and exploitation, and the law applicable to the area, are all matters of an essentially legal character which

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require precise formulation and would go into the body of legal principles and norms. These principles and norms should be consistent with the political decisions and calculated to give effect to them.

A very important element in the régime would be the provisions relating to the economic and technical conditions of exploitation and the distribution of resultant benefits, where the Legal Sub-Committee would need to work in close consultation with the Economic and Technical Sub-Committee and take note of its recommendations. If we agree with this approach, it would seem that propositions 1, 2 and 4 of the United Kingdom working paper get absorbed in the political decisions: items 3 and 5 have to be considered among the ways and means of promoting explorations of the resources of the area, which is the task of the Economic and Technical Sub-Committee and items 7 and 8 fall appropriately within the Legal Sub-Committee's purview.

This brings me to my final observation that what is needed at the moment is a meeting of minds in regard to the political decisions that have to be taken and, in my opinion, it is the duty of the Chairman to endeavour to bring about that meeting. I would, therefore, propose, if the Committee agrees, that while the Sub-Committees are in session, the Legal Sub-Committee to continue its examination of legal principles and norms and the formulation of recommendations thereon, and the Economic and Technical Sub-Committee to continue its examination of the economic and technical conditions for international co-operation in the exploration and exploitation of the area's resources and the related important matter of distribution of benefits, the Chairman should conduct informal negotiations in regard to the political decisions to ascertain the area of agreement. The extent of the agreement attainable will be reported to the Committee when it meets in plenary session in the last week. The Chairman will keep in close touch with the Chairmen of the two Sub-Committees and will bring to their notice at regular intervals the progress, if any, that is being achieved, as this will facilitate the work of the two Sub-Committees.

If there is no objection to the proposal, I should like each Group to nominate two or three of its members to constitute an informal consultative group with which I could deal. It would be advantageous if countries that have made definite proposals in this regard were among the nominees. As it is an informal group, others could, as the need arose or according to the wishes of individual members, be co-opted.