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

PROGRAMME OF WORK: STATUS, SCOPE AND BASIC PROVISIONS OF
THE REGIME BASED ON THE DECLARATION OF PRINCIPLES

Statement made on 20 March 1972, at the 40th meeting, by the
Chairman of Sub-Committee I, Mr. Paul Bamela Engo*

We have now concluded our debate on item 1 on the programme of work of our Sub-Committee entitled: "Status, scope and basic provisions of the régime based on the Declaration of Principles".

I believe that some attempt can now be made to summarize the discussions, in an effort to focus the various trends and open a door to more fruitful exchanges at the next stage of our consideration of the item.

This summing up can hardly, by its very nature, be an exhaustive account. My intention is neither to compete with nor to duplicate the summary records. I can only attempt to identify broad areas of agreement and disagreement within the Sub-Committee on the main aspects of the régime.

It is my view that the debates have been very useful. Delegations have responded co-operatively to the suggestion that they consider the whole question of the régime, including the details. They have set out their preferences and preoccupations with sufficient clarity. Some delegations made pertinent references to item 2, relating to the international machinery. Although this was useful, I do not propose to cover references of this kind in my statement today.

* Circulated in accordance with a decision taken by the Sub-Committee at the 40th meeting.

Turning to the substantive aspect of my summing up, I propose to make some general comments under three general concepts outlined in the programme of work, namely, "the status, the scope and the basic provision of the régime". I shall link these remarks with some further comment on what delegations have had to say about the Declaration of Principles contained in General Assembly resolution 2749 (XXV), including the role of the principles in negotiating a régime for the sea-bed beyond national jurisdiction.

With regard to the status of the régime, it would appear that the word "status" connotes the legal nature of the régime. In considering the discussion of this aspect, it would be important to note that principle 9 of the Declaration of Principles lays down that the régime "shall be established by an international treaty of a universal character, generally agreed upon". The view seems to prevail that the treaty should be open to participation by all States, and that this would be in accord with the Declaration of Principles.

The discussion on the scope of the régime revealed some divergences of view. Consideration of the scope of the régime appears to raise several questions, especially:

- (a) What area is to be covered by the régime?
- (b) What resources are to be covered by the régime?
- (c) What activities regarding the area are to be covered by the régime?

The definition of the area of application of the régime raises two individual questions for consideration. One is the problem of defining the area of the sea-bed that lies beyond national jurisdiction. The second is the problem of deciding whether the régime should apply only to the sea-bed or whether it should apply to all ocean space beyond national jurisdiction. These two problems are closely related and must be solved together.

The debate also centred on the important question of the freedoms of the high seas. It is to be noted in this regard that principle 13 (a) provides that nothing in the Declaration shall affect the legal status of the superjacent waters. In this context, it will be essential to find ways and means of harmonizing the exercise of the rights of States in the high seas with the activities of the régime, since some overlap between the two could occur.

The second of my three questions concerns the resources that are to be covered by the régime. This is clearly linked to the previous problem of deciding whether the régime is to apply to the sea-bed or to all of ocean space. Some discussion has taken place as to whether the régime should cover both living and non-living resources. There does not appear to be a common ground on this. The Declaration of Principles makes no distinction on this point. Some consideration was given to natural resources contained in article 2 (4) of the Convention on the Continental Shelf. However, the view was expressed that all living resources should be covered by a definition of resources in the régime.

Controversy exists on the inclusion of minerals in suspension in the sea-water and the living resources of the seas.

The third point I raised earlier concerned the activities related to the area and its resources that should be covered under the régime. The principles state that all activities regarding the exploration and exploitation of the resources of the area and other related activities should be governed by the régime. This matter will call for specific attention as the Working Group examines the general question of the peaceful uses of the area.

Under this heading also, the feeling was expressed that the régime should have appropriate powers in regard to preservation of the marine environment, including pollution emanating from sea-bed activities, scientific research on the sea-bed and other activities in the area.

The view was expressed that the régime should not have authority in regard to measures of arms control and disarmament applicable to the sea-bed. Contrary views also insisted that the machinery should have such authority.

As regards the basic provisions of the régime, I think it is accurate to say that delegations generally accepted that it would be necessary to identify basic concepts that were acceptable to the international community and which could be transformed into treaty articles for the régime.

The role of the Declaration of Principles was emphasized. In spite of reservations, there appeared to be general agreement that some at least of the principles could be transformed fairly easily into draft treaty language either verbatim or with perhaps only a few amendments. This settled, it may be expected that some common basis exists for drafting action in regard to them.

Some delegations, cautioned, however, that the purpose of the Declaration of Principles could not be achieved if they were to be simply repeated in the treaty in their present form. While agreeing that some of the principles could form the basis for treaty language, these delegations felt that the language of other principles were more in the nature of guidelines for the purpose of drafting articles. It was considered further that some of the concepts contained in the principles should be expressed with greater clarity and that others should be amplified in certain directions. These are questions which would be of particular interest to the negotiating processes, and should be noted by the Working Group.

I shall now turn to the individual principles. As I said at our last meeting, there could be no substitute for the summary records. My comments here are only an attempt to bring into readable focus my view of the emerging trends in the expressed opinions of delegations. We must recognize the fact that not all delegations took the floor. All previous comments made by delegations, as well as all draft proposals, will be relevant in the negotiations ahead. The debates we have just concluded serve the useful purpose of indicating the view points of delegations, and will undoubtedly guide future consultations. The Declaration of Principles must be recognized as forming the basis for negotiation.

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Principle 1

It would appear that this principle provides the cornerstone for the régime. On it must hinge the rest of the provisions of the régime. There would seem to be no objection emerging from the debates to the concept of common heritage itself. Detailed provisions flowing from the principle are to be worked out.

Principles 2 and 3

Some delegations saw a link between these principles and I shall deal with them together. Again it would seem that agreement exists that the language of these principles is acceptable as a basis for drafting. However, although some delegations felt that they might be used verbatim in the treaty, others saw a need for clarification of some of the legal concepts employed. A further point raised concerned the desirability of inserting a provision for the non-recognition of claims.

Principle 4

This principle raises questions concerning the terms "activities", "resources" and "other related activities" on which substantive consideration may be necessary in an effort to resolve existing divergence of views.

Principle 5

There would seem to be agreement under the basic concept of this principle, that the area shall be open to all States without discrimination. Some States, however, saw difficulties, deriving from differences in levels of economic development, when practical effect is given to the principle in the form of a treaty article. The view was expressed that this principle was of importance from the standpoint of the land-locked States.

Principle 6

It was generally felt that this principle constituted a basis for a treaty language article, perhaps with some minor elaboration.

Principle 7

This principle was not the subject of extensive comment. As far as I could see, the discussion revealed common grounds, in spite of some comment that the concept of the term "benefit for mankind" might require some amplification.

Principle 8

This principle was extensively discussed. The question was raised whether all of its terminology was appropriate for inclusion in a treaty. Most speakers felt, however, that some explicit reflection of the important principle of the reservation of the area exclusively for peaceful purposes would be necessary. Some points of drafting were raised.

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Principles 9, 10 and 11

Some delegations felt that these principles had more relevance to item 2 of the work programme and for that reason elected not to comment on them at this stage. However, because they were the subject of detailed comment, and indeed criticism, from other delegations, I shall make a few remarks on them.

As regards principle 9, the view was expressed that the first sentence was not wholly appropriate for inclusion in a treaty, although it did raise the question of universal participation which many delegations regarded as being important. The second sentence raised numerous problems of definition and elaboration relating to the scope of the régime, in particular concerning such terms as "rational management of the area and its resources", "equitable sharing by States in the benefits". The position of land-locked countries, upon which no consensus appears to exist will also need further consideration.

Principle 10: Several delegations felt that this principle was inadequate. Great importance was attached to the subject of scientific research. A divergence of view existed on the adequacy of the formulation of this principle. The Working Group will have to give to it serious consideration.

Principle 11: Delegations seemed generally to agree that the subject matter of this principle was appropriate for regulation by the régime to be established and that rules should be drawn up for this purpose. Some delegations considered the principle to be adequate as a statement of objective but added that it would require further elucidation.

Principle 12

The question of the rights and legitimate interests of coastal States was the subject of some comment, particularly by coastal States. The point was raised concerning the obligations to consult coastal States. It was proposed that it should be a broad one and that specific provisions should be made on it in the treaty articles. Little debate, however, took place on it. The Working Group will have to consider it in a greater depth and produce some realistic provisions.

Principle 13

It was recognized that both parts (a) and (b) contained important ideas. The view was expressed, however, that these ideas might be better expressed in separate articles and, in parts, amplified somewhat. Many speakers attached particular importance to part (a) and argued that the legal status of the superjacent waters and the freedoms of the high seas should not be affected. As mentioned, there was a proposal that the régime should apply to the whole of ocean space. As regards part (b) the view was expressed that, in transforming this into treaty form, a positive approach should be adopted.

Principle 14

There appeared to be common ground on the approach to the problems involved in the ideas embodied in this principle. The feeling was expressed that further consideration and codification would be necessary in regard to the concepts of responsibility and liability for damage.

Principle 15

Delegations generally seemed to feel that this was a good beginning and that the language represented an acceptable statement of objectives. As part of the process of reducing it into treaty articles, specific procedures for settlement of disputes would need to be examined. A view was expressed that use should be made of the International Court of Justice in this regard, with the aim of avoiding the creation of new judicial institution or machinery.

In coming to the end of this summary, I would like to stress that my objective has been to help the Working Group to discharge its task and that for that reason I have concentrated largely on the main points of agreement and disagreement as regards the issues posed by the Declaration of Principles in the elaboration of treaty articles. Other important questions of a broader nature were also raised and will have to be considered in their proper place. A good example is the generally supported view that the need to bridge the gap between the developed and the developing countries should be kept constantly in mind. As one means to this end, the question of the transfer of technology deserved emphasis.

I sincerely hope that the participants in the next stage of our work will examine all such proposals.

I shall now return to our programme of work, especially the aspect touching upon the next stage of our work. With the devoted members of the Bureau, I have had further consultations with various delegations and regional groups.

It would appear to the Bureau that there is widespread feeling that a Working Group be established to deal with the deliberations on the first item: i.e. the status, scope and basic provisions of the régime based on the Declaration of Principles /resolution 2749 (XXV)/.

In view of some apprehensions strongly held in some quarters, I propose that the next stage of our deliberations on item one should be dealt with according to the following procedure:

- (a) Set up a Working Group with a mandate to draw up, in the first instance, a working paper showing areas of agreement and disagreement respectively on the various issues. The Working Group shall thereafter attempt to negotiate questions of substance on the points where no agreement exists. The aim here will be as much as possible to produce a set of agreed ideas.

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- (b) I propose that the Working Group shall submit an interim report to the Sub-Committee on the first results of its deliberations and a fuller report at the conclusion of these at a later stage. The first may be at the beginning of the meeting of the Sub-Committee in Geneva in the summer and the second no later than 10 days thereafter.
- (c) The Sub-Committee, if it feels that the preparation is sufficient would, after a short debate, decide to commit the item to the drafting stage. The aim then would be to produce draft treaty articles, which if adopted by the Sub-Committee would be submitted to the Main Committee.

A few notes:

- (i) The Working Group will be open ended at this stage, to enable non-members to present proposals or those who have already done so to join in their examination.

However, it is to be noted that the ends of efficiency and despatch will not be served by too many speakers from the same delegation. The Working Group may wish to adopt its own rules on the question.
- (ii) The Chair urges that all concerned should be mindful of the desirability for consulting of all shades of opinion. Yet, it should also be noted that the Working Group will need maximum co-operation from delegations.
- (iii) The Working Group meetings, even though under a chairman, will be held without summary records and be as informal as discretion will permit.

After consultations, I propose that the Working Group should consist of a membership of 31, to be appointed by the Chairman of this Sub-Committee on the basis of equitable geographical distribution, and after the usual consultations with regional groups.

The only question on which the Chair has no specific and formal proposal at this stage concerns the chairmanship of the Working Group. I am of the view that one of the three Vice-Chairmen of this Sub-Committee could head it. There is also the possibility of leaving this matter to the Chair to appoint one after further consultation with the newly appointed members.

We shall now proceed with the second item on our agenda: Status, scope, functions and powers of the international machinery in relation to six specific points.

As indicated it is the intention of the Chair that we hold a short debate on the specific issues involved as a whole. Delegations may wish also to discuss the next stage of our work on this item: for instance whether one or more working groups be set to deal with them; or the type of grouping of topics that procedurally may facilitate our work.

I should like to remind the delegations that our time is very limited. We should aim at closing the debates in 10 meetings, bearing in mind the fact that general statements have already been concluded on previous occasions. We need now to discuss specific subjects on the basis of proposals. As much as possible, preferences should be mentioned and comments made on new as well as old proposals. The aim should be to facilitate the identification of view points in specific terms.

Finally, I wish to apologize for the length of my statement. It was difficult to curtail it more than I have done. I must, however, remind members that the Chair makes statements most infrequently!!
