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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

Statement by the Vice-Chairman of Sub-Committee I on
Item 2 of the Work Programme:
"Status, scope, functions and powers of the international machinery"
at the 55th meeting held on Friday, 4 August 1972

Distinguished delegates, that concludes our discussion of item 2 of the programme of work of our Sub-Committee, which deals under six separate headings with the status, scope, functions and powers of the international machinery.

Unfortunately, it seems that our Chairman will be unable to join us for some time. Before his accident, he had already announced that he would sum up the discussion on item 2 and he had prepared an outline of his statement. The Bureau, as was already stated earlier, has endeavoured to complete such a task. For this reason, in the absence of the Chairman and in furtherance of his wishes, the Bureau now presents the following summary of our discussion of item 2.

We would like to disclaim any ambition to compete with the summary records as a source of factual information as to the attitudes of delegations. This disclaimer is perhaps even more appropriate in the case of item 2 than it was with item 1, because of the large number of statements that have been made, both here in Geneva and during our first session this year in New York, and the detailed nature of the views expressed. It is our main objective now to try to identify broad areas of agreement and disagreement in regard to the machinery.

We have had a most interesting and useful discussion about the international machinery. Delegations have stated their views with precision and clarity, and many have combined these qualities with the further commendable attribute of brevity. It must be a source of satisfaction to us all that our Sub-Committee has managed, in the time available to us, to complete the initial consideration of the subject matter on its programme of work.

By way of introduction, it is perhaps worth noting the point made by several delegations that a close relationship exists between items 1 and 2 of our work programme, in the sense that the status, scope and basic provisions of the régime will have to reflect themselves in the status, scope, functions and powers of the machinery. The régime and the machinery, to put the proposition another way, will have to be compatible with one another. If we consider this proposition, we suggest that it will lead again to the conclusion that we shall have to deal with several basic questions before we can reach a more advanced stage in our work.

Among those are the areas which will be reserved for the régime and machinery; the resources which will be covered; and the range of powers and functions of the machinery.

Quite a few delegations argued that a decision on the area of the sea-bed that should be subject to international control was important and would influence decisions on machinery. They urged that work on this subject should be pushed ahead. Some delegations stated their views in regard to the limits of the area. On the other hand, referring to the agreement reached on the organization of work, some delegations also were of the opinion that the question of limits should be dealt with primarily in Sub-Committee II.

We turn now to the various matters identified in our programme of work.

(a) Organs of the international machinery, including composition, procedures and dispute settlement:

It appears to be a fairly common view that the international machinery should be the executive and administrative arm, so to speak, of the régime, and that both the régime and machinery should be established by an international treaty, or treaties. Many speakers argued that participation in the treaty, or treaties, and therefore in the activities of the régime and the machinery, should be open to all States. They considered that that would accord with the Declaration of Principles in resolution 2749 (XXV).

Some speakers considered that the machinery should have international legal personality and explained that by this they meant that it should have, for example, power to conclude agreements to own and dispose of property, and to conclude contracts.

Many speakers contended that the machinery should have strong and clearly defined powers to enable it to achieve the primary purpose of the régime which, as set out in the Declaration of Principles, is to provide for the orderly and safe development and rational management of the international sea-bed area and its resources, and for expanding opportunities in the use thereof, and to ensure the equitable sharing by States in the benefits derived therefrom.

It is fair to add in this regard that the differences of opinion concerning the scope of the machinery, which I mentioned earlier, in turn have given rise to differences in regard to the nature and functioning of some of the component parts of the machinery.

It would seem from many of the statements we have heard that consensus or near-consensus may exist as to the need for the basic machinery to consist of at least four kinds of main organs or procedures:

first - there would be an Assembly, or plenary body, which would be the main legislative and policy-making organ. Many speakers set forth their views on the powers that should be vested in the Assembly and it was possible here to note a degree of broad accord in the Sub-Committee. Many speakers, for example, argued in favour of giving each member of the Assembly one vote in its deliberations, but agreement does not seem yet to exist as to how decisions will be taken.

second - there would be a Council, or executive body which would execute the policy decisions of the Assembly. Agreement exists that the composition of the Council should be such as to enable it to be representative and to operate effectively. There are differences however in regard to the size of the council, the interests that should be represented therein, the manner in which the Council should be composed, and the decision-making process.

third - I could detect no dissent from the view that it will be necessary to establish an administrative service or secretariat.

fourth - many speakers said that it will be necessary to establish procedures for the settlement of disputes. Some considered that this should be in the nature of a separate tribunal, which would be part of the machinery to be set up. Others foresaw a rôle for the International Court of Justice; still others seemed to feel there might be a place both for a separate tribunal and for the International Court of Justice in the settlement process. Although quite a few speakers favoured a procedure (perhaps including conciliation and mediation) leading to compulsory settlement of disputes, this too is an area where consensus does not exist at present because other speakers favoured non-binding processes.

We have covered so far four main organs or processes, on which some form of consensus seems to exist. Of course, other suggestions for the creation of major organs of machinery were made. One suggestion, for example, was for the establishment of an economic and technical commission, or similar body, which might have specific responsibilities in regard to the actual conduct of operations. Another suggestion was for the creation of an enterprise, which would have the power to undertake all activities relating to exploration and exploitation, either directly or through a system of contracts for services or joint ventures.

It is obvious, of course, that there were many suggestions, of a precise nature as to additional powers which the machinery should have and the bodies that might exercise these powers. Such powers would presumably either be exercised by certain of the major organs or delegated to certain subsidiary organs.

- (b) Rules and practices relating to activities for the exploration, exploitation and management of the resources of the area, as well as those relating to the preservation of the marine environment and scientific research, including technical assistance to developing countries:

This sub-item invited comments of delegations on the nature of the rules and practices, or the code to be adopted to regulate those activities in the sea-bed area that are to be under the control of the régime and machinery.

Several delegations expressed the view that the treaty should allow for flexibility in regard to the formulation of rules and practices, so that these could be modified to keep pace with technology. It was argued in this regard that the treaty should specify the general parameters of the system of control for exploration and exploitation, and that rules and practices could be promulgated as necessary within those parameters.

As noted previously, in the view of many delegations this brings in the question of the scope of the régime and machinery - that is, for example, the questions of whether the treaty will apply only to the sea-bed or to all of ocean space, what will be the limits of the sea-bed area, whether the treaty will apply to mineral resources only or to living resources as well, and whether it will be responsible for the other activities besides matters of exploration and exploitation. These are familiar problems and it is not necessary to deal with them in any detail again at this stage. But on their resolution would depend to some extent the rules and practices that will be applicable.

This, however, is a convenient point to raise a further question of fundamental importance to the type of code we shall have to negotiate. This could have been done under point 2 (a) but because of its direct relevance to the matter of rules and practices now would seem to be the appropriate moment. We refer, of course, to the difference of attitude that exists as to whether the machinery should be empowered to conduct exploration or exploitation itself or whether it should be a licensing body in this regard.

We use the word "fundamental" intentionally here, because we believe that if we could resolve this problem, the way would be open to the achievement of a broad consensus on one of the more important aspects of the international régime.

In this connexion, some representatives argued that the machinery should be responsible mainly for issuing licences to States for purposes of exploration and exploitation, as well as for certain activities associated with this function.

On the other hand another group of States contended that the machinery alone should have the power to explore and exploit in the international sea-bed area, for example, through a corporation or enterprise which would be part of the machinery and which could make use of contractors or participate in joint ventures.

A third group of States appeared to see a solution lying in a mixed system of some sort whereby the authority might both issue licenses and have the power to explore and exploit itself, either directly or through agents engaged for the purpose.

A few speakers, including some whose delegations favoured giving the machinery a power of direct operation, said that, in the initial stages at least, licensing would necessarily be one of the main functions of the machinery because it would take time for this machinery to develop the capacity to operate itself. They saw this matter of timing as a practical problem, however, and one that could be resolved within the authority at an appropriate stage.

Some speakers argued that States should be the basic entity authorized to take part in sea-bed operations, and that States in turn could sub-license operators to carry out exploration and exploitation, or undertake it themselves. The view was also expressed that the machinery ought to grant licenses directly to physical and juridical persons, and without interposing a State between itself and the individual operator.

Some speakers put forward views as to the types of licenses that might be issued for the areas and types of minerals they should cover; and how the rules covering the grant of licenses should be drawn up.

Some speakers stressed that a system of rules and practices, if it were to be satisfactory, would have to contain provision for security of title, so that operators could have a sound basis from which to work. Some also considered that such a system would have to provide adequate incentives for operators to undertake activities of exploration and exploitation.

Many delegations made useful suggestions as to additional or complementary powers which in their view the machinery should possess, and which might be embodied in agreed rules and practices, such as, for example, the questions of inspections and safety measures, preservation of the marine environment, scientific research, and dissemination of information.

The view was expressed that, in regard to the control of pollution, the machinery's powers should not be limited to pollution emanating from sea-bed activities, but should extend more generally to other related types of pollution. The view was also expressed that in considering the preservation of the marine environment a practical approach to formulating a system of joint responsibility as between States and the international community would be to draw on the experience of States in the development of anti-pollution measures arising from control of exploration and exploitation of the continental shelf.

The view was expressed that in any intermediate zone, the application of certain general international standards would be mandatory. Two examples of such standards would be the protection of the marine environment and the prevention of unjustifiable interference with other uses, such as navigation, in the superjacent waters.

Some other views expressed were that operations in the sea-bed must not result in any unjustifiable interference with other activities in the marine environment; that the machinery should have powers with respect to the maintenance of the territorial and jurisdictional integrity of the sea-bed area, and the harmonization of the various uses of the sea-bed and of these with the uses of the superjacent waters; that liability for damage was an important matter for consideration; that provision should exist to enlarge the powers of the machinery as its competence developed; and that powers would be necessary to control the effects of sea-bed production on land-based industries.

- (c) The equitable sharing in the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked

This subject clearly requires further attention. Many delegations discussed it in their statements, but for the most part what they had to say was of a general nature. Basing ourselves on the Declaration of Principles, we might take it that there is broad agreement, or very nearly broad agreement, that the régime to be established should ensure the equitable sharing by States in the benefits derived from exploration and exploitation. It might be argued, too, that equitable sharing is a logical extension of the principle of the common heritage of mankind. It is difficult, however, to take the matter much further than this.

In this regard, it is necessary to refer also to the Secretary-General's study in document A/AC.138/38 entitled "Possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction". This brought out clearly the difficulty and complexity of the task of arriving at an agreed method of sharing benefits, and demonstrated that certain basic decisions will have to be taken before we can accomplish that task. As if to illustrate this problem, the view was expressed that it is difficult to formulate meaningful detailed views on the distribution of benefits in the absence of more precise parameters relating as well to the international area and its resources.

A fairly common point made during the discussion was that the term "benefits" comprised more than financial benefits, or revenues, but it is still a matter for further discussion as to the precise nature of these benefits. A view was expressed that the concept encompassed raw materials and scientific information as well. The question of the provision of training and the transfer of technology was also raised under this general heading. It was argued, in addition, that revenues should not be distributed in the form of aid, but directly to participating States for use as they deemed desirable.

As to the criteria for distributing benefits, one position, which was fairly widely taken, was that the developing countries deserved special consideration. A view was expressed that benefits should be distributed to participating States according to their needs. It was argued also that the total benefits should be divided in the first instance into two portions, one for the developing countries and

one for the developed countries, and that the portion for the developing countries should be a substantial one. Some speakers suggested the use of combined criteria of population and per capita income; another view was that distribution should be according to the inverse ratio of contributions to the United Nations itself.

We must conclude, we think, that no consensus exists as to the criteria that should be used for distributing benefits, and that further study of this matter will be necessary. It is worth noting, however, that a view was expressed that the basis of distribution of benefits adopted for any period of time should be reviewed once every five years, to permit adjustment in the light of changing circumstances.

A further view put forward was that the land-locked and shelf-locked States, who considered this question to be of great importance, should have their particular interests borne in mind, in respect of distribution of benefits.

A view was also expressed that there could not be a truly equitable system of benefit sharing unless there were also some provision for revenue sharing from important areas of the continental margin that contained valuable deposits of petroleum and gas. The precise formula for determining the amount of international revenue from an intermediate zone was negotiable. It was further stated in this regard that it would be possible to rely on existing international and regional development organizations for purposes of distribution.

A contrary view was that it would be wrong to channel financial benefits to any international organizations of economic and technical assistance. Instead, some mechanism should be devised to ensure that the benefits should accrue directly to States.

One delegation recalled its country's readiness to contribute to the international community a percentage of benefits accruing not from an intermediate zone but from the whole of the territorial sea-bed and the continental shelf.

(d) The economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing

This, too, is a subject upon which there are divergent views and which will need further study.

Consideration of this item raised issues that were clearly important for many delegations, whose representatives expressed concern that sea-bed production might upset marketing patterns and create difficulties for land-based producers of the resources in question. Quite a few speakers urged that the machinery should have the power to control the production, processing and marketing of the resources of the area. Some representatives appeared to envisage that any machinery set up for this purpose would function with the interests of the developing countries concerned in mind. This category of speakers saw the machinery's powers in this regard as being extensive.

One suggestion was that, in addition to conferring such powers on the machinery, a small unit for price stabilization should be set up. A further view was that control of production from the area beyond national jurisdiction could be achieved either through limiting the number of concessions granted, by setting aside a certain proportion of production, or by a stabilization tax or by some means of compensation. Another suggestion was for the use of the device of international commodity agreements or for setting a ceiling for the production of minerals of which a surplus existed on world markets. It was stated that the methods and procedures used should be subject to constant review in the light of developments.

Other speakers saw a role for existing international organizations, such as UNCTAD, in minimizing any harmful effects of sea-bed production. The view was expressed in this connexion that the machinery should adopt, in consultation, and, where appropriate, in collaboration with the competent organ or organs of the United Nations and the specialized agencies concerned, measures designed to minimize and eliminate fluctuations of prices of land resources and any adverse economic effects caused thereby. It was pointed out in this regard that the difficulties of establishing a system of international production or price control were likely to be formidable.

Another view was that, with minor exceptions regarding cobalt, which were hypothetical, the projected expansion of world demand for minerals was such that we could not contemplate any significant adverse impact on land-based production. The implications of trying to set up an international system of production or price controls were so weighty that any attempt to do so could only have an adverse effect on the achievement of our objectives.

Some speakers referred to reports of exploratory activities being conducted in areas beyond national jurisdiction. Following discussion of this question, the Sub-Committee asked the Secretariat to gather and make available to it recent material on the subject. We now have before us some useful information in this regard, in document A/AC.138/73, which has been the subject of a separate debate during the current session of our Sub-Committee.

In this general regard a number of delegations argued that States which have companies engaged in exploratory activities should give assurances that they would not undertake commercial exploitation of sea-bed resources in the area beyond the limits of national jurisdiction prior to the establishment of the régime. It was suggested in this context that the Committee might unanimously reaffirm resolution 2574 D of the General Assembly.

Although it was not directly connected to item 2 of our programme of work, the view was expressed that if it proved impossible to get early agreement on the régime and machinery it might be desirable to create transitional machinery which would have responsibility for regulating activities in respect of exploration and exploitation on the sea-bed beyond national jurisdiction pending the entry into force of the régime itself. Arguments against this view were expressed on the ground that no consideration should be given to this matter prior to certain decisions being taken on the nature, scope and powers of the machinery.

(e) The particular needs and problems of land-locked countries:

Quite a few speakers commented on this item. Many of them considered that the particular needs and problems of land-locked countries deserved sympathetic consideration. Some speakers made the point that many of the land-locked States were also developing States, and that developing land-locked States deserved special consideration in this context.

Some speakers also linked the problems of shelf-locked States with those of land-locked States. They argued that shelf-locked States, because they shared to a certain extent the problems of land-locked States, also merited special sympathetic consideration.

Various suggestions were put forward for dealing equitably with the problems of land-locked, and also shelf-locked, States. One was that land-locked States deserved special consideration from the point of view of representation on the organs of the

machinery; some speakers added that shelf-locked States also deserved special consideration in this regard. A further view was that land-locked States, and perhaps shelf-locked States, should be accorded some preference in the sharing of benefits.

Some speakers made more specific suggestions as to the means of approaching and handling the problems of land-locked countries. One view was that the international machinery should provide opportunities for training in marine technology and for those States to conduct activities of exploration and exploitation - either individually, in partnership with another State, as a member of a group of States, or in co-operation with the sea-bed authority.

It was argued, too, that the problem could be approached in a regional framework as well as at the global level, but that this aspect could not be usefully discussed until some agreement on limits had been reached. In this context the view was expressed that joint or regional ventures were subject to political arrangements which might not be feasible in all regions.

Some speakers, in considering the particular difficulties of land-locked States, saw these as falling under several headings: first, right of access to the international sea-bed area, including the transit of persons, minerals and equipment to and from coastlines, and adequate means of transport and communications; second, transit through the inland waters and territorial seas of coastal States; and third, the need for facilities on coastlines to permit activities of exploration and exploitation.

A view was expressed that the proposed treaty should declare that land-locked States had a right of transit through the territory, internal waters and territorial seas of coastal States to the international area for purposes of exploration and exploitation, leaving the precise manner of the exercise of this right to be worked out bilaterally. Coastal States, however, should be under an obligation to conclude such bilateral arrangements on a reasonable basis. A further view was that the principles of the Convention on the Transit Trade of Land-Locked States should be incorporated in the law of the sea as eventually negotiated.

(f) Relationship of the international machinery to the United Nations system:

Perhaps the main point made under this item, which attracted only a limited number of comments during our discussion, was that most if not all speakers seemed to envisage that the régime and machinery would be established through an international treaty or treaties, which would thereby create a separate entity in the international arena.

Some speakers took the view that the authority should be in the United Nations system; others argued that it should remain outside that system. The latter category of speakers seemed to consider that the authority could not be subordinated to the United Nations or form part of the United Nations system as commonly conceived, but that some formal link should exist.

It was also suggested that certain rules and procedures employed in the United Nations General Assembly might be suitable for use by the authority.