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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 MADE ON 5 APRIL 1973, AT THE 68TH MEETING, BY THE
CHAIRMAN OF SUB-COMMITTEE I, MR. PAUL BAMELA ENGO*

It is not our practice in this Sub-Committee to prepare a report concerning our work at the spring session each year. We leave this task for the summer session, when we prepare a consolidated report dealing with all of our work for the year in question. You will be aware, too, that I have adopted the practice of presenting to you, at the conclusion of important stages in our work, summaries in which I have tried to give my appraisal of the current results and a perspective for the future. It is pursuant to this custom that I propose now to make a statement about our work and that of our Working Group at this first session in 1973.

I should like to emphasize, as with previous statements, two disclaimers: firstly that nothing that I say in this respect is intended to compete with the summary records as a source of factual information; and secondly that the views which I express are personal.

Distinguished delegates will recall that we began this session without the services of two of our three Vice-Chairmen, Mr. Fekete of Hungary and Mr. Ranganathan of India. I should like to extend my thanks to Mr. Banyasz and Mr. Rao respectively for assuming these positions so willingly.

In the Sub-Committee we availed ourselves of the opportunity to discuss general as well as specific questions relating to our mandate. During these debates, a number of delegations explained their views on issues of interest. It was agreed in the course of these discussions, at the suggestion of the delegation of Chile, that the Secretariat be requested to carry forward the work it had already initiated, pursuant to General Assembly resolution 2750 A (XXV), concerning the economic implications of international sea-bed mining. The Secretariat will

* Circulated in accordance with a decision taken by the Sub-Committee at its 68th meeting.

undoubtedly prepare a brief interim report on economic and technological developments relating to sea-bed resources, on the basis of information available to it, in time for our summer session. A more detailed report on this subject is expected to be submitted at a later stage for consideration at the Conference on the Law of the Sea.

The United States delegation introduced a proposal, inviting support for the idea of provisional entry into force, of aspects of the régime and machinery at the time when a new Convention relating to the Law of the Sea is ready for signature. Their proposal also called for a study of precedents on the subject, to enhance fruitful examination of such a proposal by the Sub-Committee. With regard to the latter, we approved a recommendation to the main Committee, now contained in document A/AC.138/SC.I/L.20, that the Secretary-General be asked to describe factually, for the Sub-Committee's use at its summer session in 1973, examples of precedents of provisional application, pending their entry into force, of all, or part of, multilateral treaties, especially treaties which have established international organizations and/or régimes. The Rapporteur will present the Sub-Committee's recommendation to the main Committee for approval later this week. The wording of the recommendation was carefully chosen to avoid dubious interpretations.

Following the acceptance of the list of subjects and issues at the second session of the Committee in 1972, the subject of archaeological and historical treasures on the sea-bed and the ocean floor beyond the limits of national jurisdiction was added to our mandate. The Sub-Committee discussed this subject and the delegation of Greece described the provisions of the working paper (A/AC.138/SC.I/L.16) which it had submitted last year. The delegation of Turkey also tabled a draft article under this heading, which is contained in document A/AC.138/SC.I/L.21.

As indicated previously, I arranged for the Working Group to have as much meeting time as possible during this spring session to further enhance the chances of progress in its difficult task. I was greatly encouraged by the enthusiasm with which both Members and non-member States representatives attended the open-ended deliberations. I deeply regret that circumstances arose which made it imperative for the Chair to insist on the exclusion of all but accredited representatives of States from the meetings of the Working Group. The non-strict-enforcement of rigid rules relating to closed meetings had been induced in the past by the desire to encourage all sections of the international community to follow our historic effort. The unfortunate incidents that were brought to my attention posed a question mark on the security of the delicate and frank discussion that can only come from informality and behind closed doors.

I requested the Chairman of the Working Group to render very detailed accounts of the progress in that Group. This was intended to acquaint all members of this Sub-Committee, as well as the world at large, with the extent of that effort. I am particularly pleased that Dr. Pinto responded with characteristic wisdom and expertise in this field and thank him on your behalf and mine. I sincerely hope that the members of the press and the NGOs will also profit by those reports, as have the Members here present. The value that we all attach

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to such reports was manifest in our decision to have them reproduced in extenso in the summary records.

Following representation made to me by some members, and also after consulting Dr. Pinto on the subject, I am of the opinion that it is the general wish of members that the document to which the Chairman of the Working Group referred constantly in his last report, be circulated as a Sub-Committee document. It emerged from the second reading on the reading of item 1 of our programme of work, relating to the status, scope and basic provisions of the régime. There appears to be a general awareness that it is indispensable for the study and fullest possible understanding of Dr. Pinto's report. If my impression is correct, and I find no serious objection, I shall take it that the Sub-Committee approves this.

I request the Secretariat to circulate the said document accordingly. 1/

It will greatly facilitate our task, especially during the crucial summer meeting if all members will make that extra effort to understand the nature of the outstanding problems. In Geneva, our task will be to remove as many of the existing square brackets and alternatives as possible. Even the feature of "foot-notes" has crept into our devices. They too must disappear unless they are merely explanatory of concepts. Up to the present stage, these devices have aided the Working Group in their attempt to assemble points of agreement and areas of disagreement. They have in this way served their uses. Our duty will now be to seek ways of narrowing the areas of disagreement. The results of our endeavours so far, viewed against the report of the Geneva session last year, have been encouraging; but the distance and the nature of the road ahead demand the strongest sense of purpose and urgency in us all.

It is my intention to call on each one of the delegations to demonstrate that sense at its highest. I shall ask of you some individual sacrifices, both in personal comfort and philosophy. It cannot be otherwise if we are to provide the type of fuel that will, and must, sustain capacity for success of the Plenipotentiary Conference. That Conference is barely 12 months away and we have only one session to go.

So far, the Working Group that we set up has finished its second reading of the norms and principles relating to the régime - part one of our programme of work. In most cases the draft texts as now presented, with or without square brackets or alternatives, appear to be far better descriptive of the differing views within the Working Group. We may yet improve on this, thus enhancing our effort to present draft articles for consideration at the Conference. Yet up till now, we do not yet appear to have quite reached the stage where we can expect to negotiate far-reaching accommodations of differing views. If I may do so, I would express the opinion that the Working Group has taken its work on the principles relating to the régime as far as it can and as far as we can expect of it at this stage.

1/ This document is being circulated under symbol A/AC.138/SC.I/L.22.

There are a number of problems that will have to be considered and hopefully solved before work on the régime can be carried substantively further. The priority or importance attached to various problems by different delegations continue to haunt our efforts. It would appear to me that the discussions in the Working Group have demonstrated more than ever that, along with the question of the limits of the area, two matters are imperative for resolution if progress is not to elude us. One relates to the functions of the proposed Authority: that is, the range and nature of the activities for which it will be responsible. The second is an equally pertinent question, which the Working Group's paper headlines: "Who may exploit the area?"

I could perhaps add a third problem, which might also be regarded as falling within the ambit of the two basic matters that I have just mentioned, and which is now dealt with under the heading "General norms regarding exploitation". This is the question whether, among its powers, the Authority should have the power to act with a view to minimizing price fluctuations for relevant minerals - the question of economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing.

These subjects must be faced squarely by this Sub-Committee at the summer session, perhaps at a different level, in an effort to bring the views of delegations closer together.

Looking ahead briefly to consideration of the machinery, I would urge distinguished representatives to reflect, between now and July, on an important problem that arises immediately and on which opinions do not coincide - the composition and decision-making procedures of the Council. If an accommodation could be reached here, it would open a door towards final agreement.

I have mentioned these matters because of my belief that they are crucial to success. We must endeavour to request from our respective Governments sufficient flexibility to enable us to embark on serious negotiations in Geneva. I cannot over-emphasize the need to seek for and to reach basic accommodation that would assist in the preparation of articles designed to bring into force a generally acceptable régime and machinery.

Consequently, in Geneva, while the Working Group must spend the opening weeks pressing on with an examination of the machinery, we shall have to commence a serious consideration of the crucial points relating to the régime, to which I have alluded. Certain aspects of the problems under item 2, the machinery, obviously take their breath from aspects of the principles of the régime. Failure to resolve the latter may well breathe futility on efforts with respect to the former. It is my fervent hope that accommodations will emerge from the negotiations.

At the same time, if at the end of the day attitudes remain such that it is not possible to resolve certain important differences, our work as a Sub-Committee will be done when we have gone as far along that path as it is

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possible for us to do and when, for the rest, we have set out for consideration by the Conference, in as clear and concise a form as possible, the range of alternatives in regard to various subjects that emerged during our work.

It would then be for the Conference, as the final arbiter, to take the necessary political decisions or to consider what action to take. In other words, distinguished delegates, although it is my clear preference - as I am sure it is also yours - to send forward a more or less agreed set of articles to the Conference, I would not necessarily regard it as a dismaying end to our work if we were unable to do this in all cases. After all, we are 90 nations in this Preparatory Committee and we shall be reporting to a world community which numbers considerably more and which will want to make, indeed must make, its own independent assessment of what we have done.

In conclusion, I would like once again to extend my congratulations to the Working Group for the progress it has made at this session. I am satisfied that they have applied their minds to a difficult task with a sense of responsibility. In Geneva the Group will take up immediately where it has left off in regard to the machinery. There being only eight weeks, the Working Group will have only about four weeks to conclude its work. We shall look for progress reports during the session and for a final report some three weeks before the end of the session. We shall then want to consider in the Sub-Committee what action we should take to solve problems that may be susceptible of solution, and finally to decide how we should present the results of our work to our parent committee for onward transmission to the General Assembly.
