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Text of statement to be made by the Canadian Representative, Mr. L.H. Legault, in the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction on Friday, March 6, 1970.

Very nearly three years have passed since an initiative of the delegation of Malta added to the agenda of the United Nations a proposal calling for the reservation exclusively for peaceful purposes of the seabed and ocean floor beyond the limits of national jurisdiction, and the use of their resources in the interests of mankind. That proposal has since been studied in both the Ad Hoc Committee and the Standing Committee established for this purpose; it has been extensively debated in three sessions of the General Assembly; and one of its most important aspects has been the subject of exhaustive negotiations in the ENDC (later the CCD). In the course of these studies and these debates and negotiations, the political, legal, economic and military questions raised by the seabed proposal have been searchingly explored and a number of very useful documents have been produced. The Canadian delegation, agreeing as it does with our Chairman's recommendation in this regard, does not propose today to review all that has gone on before, nor to restate the positions it has adopted on various questions. Rather, we intend to touch on certain points of a largely political nature which hopefully may be of value in promoting a constructive approach to the work of the two sub-committees which are to begin their sessions next week.

The Canadian delegation believes that the Seabed Committee has in fact reached a substantial measure of agreement on certain fundamental principles as a result of the deliberations which have taken place in this and other bodies since 1967. Unfortunately, however, the Committee has not been able to concretize that measure of agreement. It has, so to speak, been unable or unwilling to agree that it does agree. It has not succeeded in formulating a declaration of principles reflecting the very real progress made; even though in our view such a declaration is basic to the mandate with which the Committee has been charged.

The Canadian delegation believes that perhaps the most useful task which might be undertaken during the present session of the Seabed Committee would be to identify and then to attempt to overcome the difficulties which have inhibited the Committee from giving form and

expression to the measure of agreement that so far has been reached. In this way it may be possible for the Committee to recommend to the 25th General Assembly a declaration of principles which will be comprehensive enough to serve as the foundation of an international regime for the seabed beyond national jurisdiction without, at the same time, attempting to be so comprehensive as to substitute either for the regime itself or for the subsequent international agreement which must give it force and effect.

If the Committee is unable to achieve this result, then all of us may find that our deliberations, even if continued, will be overtaken by events and become increasingly academic and unrealistic. Time waits for no man, and technological, economic, political and military developments will not await the pleasure of this Committee.

It would be invidious, in the view of the Canadian delegation, to suggest that the major factor inhibiting the progress of the Committee is some supposed "split" between various groups of states represented here, or between the forces of conservatism and nationalism, on the one hand, and the forces of progress and internationalism, on the other. The delegations assembled here undoubtedly share a common dedication to working out an international regime which will encourage, in the interests of humanity, the peaceful and orderly exploitation of the seabed and ocean floor beyond the limits of national jurisdiction. At the same time, of course, all states wish to ensure that the regime which eventually emerges will be consistent with their national interests, as they see them.

There is no need to be apologetic about this concern for national interests, if such interests are viewed in the broadest and most enligthened sense so as to include a proper concern for international cooperation and mutual assistance. Nor, in our view, is it helpful to mask particular interests by attempting, however sincerely, to equate them with the general interests of humanity as a whole. What is necessary, on the contrary, is for all delegations carefully and clearly to define their interests and then to seek a responsible accommodation of their particular interests with those of other states. It is precisely in that accommodation that the Committee will find and safeguard the interests of humanity, and will ensure the exploitation of the seabed beyond national jurisdiction for the benefit of mankind, having particular regard to the special needs and interests of the developing countries.

Perhaps, then, one of the major factors slowing the progress of the Committee has been the fact that important uncertainties do still exist concerning the balance of national and international interests relative to the seabed both within and beyond national jurisdiction. Many states do not yet have sufficient information concerning the resources of the areas adjacent to their coasts. Too little is known about the resource potential of the oceanic basins. More serious still is the lack

of a precise agreed boundary for the area beyond national jurisdiction, which makes it difficult for states to determine their position on the regime to be developed for that area. Conversely, of course, the present uncertainty about the nature of the regime which will apply beyond the limits of national jurisdiction also makes it difficult for states to decide what their position should be concerning a precise agreed boundary for that area. And, finally, to complicate an already complex situation, there exist also for many states serious unresolved questions as to how the ultimate decisions regarding the precise boundary and the regime may affect their whole range of interests in the defensive, economic, social and scientific uses of the sea.

The Canadian delegation believes that some at least of the difficulties created by the uncertainties just discussed can be obviated or reduced in a number of ways.

The first step in this process would be to adopt a gradual but positive approach which does not insist upon the elaboration in one single exercise of a full blown legal regime and attendant apparatus or machinery. Only in this way, we believe, will it be possible to achieve agreement in an area involving such basic uncertainties with respect to decisions of such far-reaching consequences. The proposal is not original; it has been made before by Canada and by other delegations, and it was reflected in much of the debate during the Committee's last session. However, the need for such an approach stands out with far greater cogency today in the light of the Committee's experience thus far. This does not mean that the Committee must content itself with only the lowest common denominator; but let us at least begin from that lowest common denominator. Let us concentrate our efforts on the synthesis of legal principles achieved in the Legal Sub-Committee last year. Let us proceed from these to the adoption of a statement of fundamental legal principles which is sufficiently balanced and comprehensive to provide the foundation for an international regime, while at the same time remaining flexible enough to admit of further development under various forms, without material prejudice to differing positions and points of view. Let us, while making this step with respect to principles, consider basic propositions with respect to the regime itself and then the machinery required to give it effect.

In this connection, Mr. Chairman, the Canadian delegation is in general agreement with the propositions enunciated by the distinguished representative of the United Kingdom in the First Committee on November 4, 1969. We also agree that these propositions should be considered in the Plenary Committee with a view to securing a concensus on the nature of the international regime. Perhaps these goals may seem too modest to some delegations. If our past experience is an accurate yardstick, however, then the immediate choice before us is not between half a loaf or a whole loaf, but rather between no loaf at all or half a loaf now with a promise of more to come.

Mr. Chairman, the proposal made yesterday by the distinguished delegate of Italy is consistent with Canada's view of the limits of national jurisdiction. We recognize, however, that the hypothesis proposed by Italy may present some difficulty for some other delegations. In the circumstances, there is a second suggestion which the Canadian delegation would like to make as a possible means of helping us to find a way around the difficulties we face. We referred a few moments ago to the intimate interrelationship between the determination of the limits of national jurisdiction and the determination of the regime which will govern the area beyond. Recently the Secretary of State for External Affairs of Canada described this interrelationship as being of the "après vous, Alphonse" variety. What may result from this routine, of course, is that the exaggerated courtesy of Alphonse and his companion may leave them both bowing at the door ad infinitum, neither one of them being willing to precede the other. The Seabed Committee, however, has little choice in the dilemma as between the question of the boundary and the question of the regime. Although it is beyond the powers of the Committee to establish the precise limits of national jurisdiction, it is within our powers and indeed an essential part of our mandate to elaborate and recommend principles which will form the basis of a regime for the area beyond.

Accordingly, the second suggestion which my delegation wishes to make is intended to help clarify the uncertainty arising out of this relationship between the boundary and the regime, so that the Committee can more readily address itself to the elaboration of fundamental legal principles underlying the regime. My delegation made this same suggestion previously, in the First Committee of the 24th General Assembly, but it is one which could most appropriately be considered in the Legal Sub-Committee of the Seabed Committee. Let us in that forum study the possibility of accepting the principle that every ocean basin and seabed of the world shall have a percentage of its area reserved for the benefit of mankind. Let us ensure that in our future discussions the interests of all our countries are involved in an equal degree. It may be that we could not only move forward in the elaboration of legal principles but also establish some useful guidelines for the eventual redefinition of the limits of national jurisdiction by adopting a new approach in which we would proceed landward from the centre of every ocean and sea in the world and reserve out of each some considerable percentage of the underwater acreage for exploitation under a regime dedicated to the interests of humanity as a whole. In terms of providing immediate benefits to the developing and land locked nations, this approach would be infinitely more effective than any now being considered since it would encompass areas in smaller and shallower seas which are already being exploited. Under other approaches these areas would not fall within the region beyond national jurisdiction but would remain for the exclusive benefit of the riparian nations.

Moving on, Mr. Chairman, we wish to refer very briefly to two concepts which have occupied much of the time of the Legal Sub-Committee in the past. The first is the concept that the seabed beyond national jurisdiction has the same status as the superjacent waters and that the freedoms of the high seas apply to the seabed below. There is, as delegations are aware, a theory of so-called "creeping jurisdiction"

which holds that coastal state jurisdiction over the resources of the continental shelf has tended to creep upwards and be translated into claims to comprehensive jurisdiction over the superjacent waters. Conversely, with respect to the freedoms of the high seas, there appears to be some tendency to have these freedoms creep downwards and apply to the subjacent seabed beyond national jurisdiction. There are a number of reasons why such a process would be inappropriate, in our opinion. Although the Canadian delegation is firmly of the view that the seabed beyond national jurisdiction does not represent a legal vacuum, and although there is obviously an interplay between activities on the seabed and the freedoms which prevail in the superjacent waters, this does not mean that a traditional concept related largely to activities on the ocean surface can be made applicable to new activities on the bottom. That traditional concept of the freedom of the seas is currently undergoing a difficult transformation in response to new situations which have created new needs and problems. Its essential features must, of course, be preserved but in a form which will provide greater flexibility for the protection of the interests not only of coastal states but of the international community as well.

What is needed, however, for the new regime for the seabed beyond national jurisdiction is a new concept, in the same way that a new concept was required in developing the regime of the continental shelf. One such new concept has been advanced in this Committee, to the effect that the seabed beyond national jurisdiction represents the "common heritage of mankind". Mr. Chairman, this concept is in many respects an attractive one to the Canadian delegation. We must admit, however, that as a legal principle it presents certain difficulties for us, particularly regarding its possible implications for other areas and other resources. Nevertheless, we are willing to explore it further with other interested delegations in an attempt to resolve those difficulties. And we invite all delegations to approach the concept of the common heritage in such a way that it need not be viewed as necessarily and automatically pre-determining the nature of the proposed regime for the seabed beyond national jurisdiction.

Mr. Chairman, there are only a few additional remarks I should like to make before concluding. Delegates may be aware that since the last session of the Committee the Canadian Government has ratified the Geneva Convention on the Continental Shelf. I wish to emphasize that my Government's position has always been that the Convention generally represents accepted principles of customary international law. This was made clear, for instance in the 1967 reference to the Supreme Court of Canada with respect to jurisdiction over the continental shelf off the coast of British Columbia. Domestic considerations have delayed Canada's ratification of the Convention until this year, but that ratification in no way represents a change in policy on the part of the Canadian Government and is rather the formal act confirming earlier policies.

Canadian delegations on previous occasions have referred to the ever-increasing pace of exploration activity being undertaken on Canada's continental shelf. One of the most promising areas, and certainly the most forbidding one, is the shelf adjacent to the Canadian Arctic archipelago. The exploitation of Canada's Arctic shelf poses special problems and involves special dangers which the Canadian Government is determined to avoid. This Committee, unfortunately, has not yet been able to give sufficient consideration to the threat of marine pollution, and it is that threat which is of particular concern to my Government in respect of the Canadian Arctic. In this connection, Mr. Chairman, I should like to quote briefly from an address on this subject by Prime Minister Trudeau in the House of Commons on October 24, 1969. On that occasion the Prime Minister said: "Canada regards herself as responsible to all mankind for the peculiar ecological balance that now exists so precariously in the water, ice and land areas of the Arctic archipelago ... We do not doubt for a moment that the rest of the world would find us at fault, and hold us liable, should we fail to ensure adequate protection of that environment from pollution or artificial deterioration. Canada will not permit this to happen. It will not permit this to happen either in the name of freedom of the seas, or in the interests of economic development. We have viewed with dismay the abuse elsewhere of both these laudable principles ... In saying this, we are aware of the difficulties faced in the past by other countries in controlling water pollution and marine destruction within their own jurisdiction."