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RESERVATION FOR PEACEFUL PURPOSES OF THE SEABED AND THE OCEAN FLOOR

Text of statement to be made in the First Committee by the Canadian Representative, Mr. Allan Gotlieb, on November 15, 1967.

Mr. Chairman,

The question that the distinguished representative of Malta has taken the initiative of placing before this Assembly is one to which Canada attaches the greatest importance, not only because we are a state with a long standing interest in the resources of the sea and in oceanographic research but also because we recognize that this organization is now seized with what is probably the last remaining area of man's knowledge of his immediate environment still unexplored. This committee has already heard from the Representative of Malta and other participants in this debate of the important resources which modern technology may soon be placing within the grasp of mankind by making possible the exploration and use of the seabed and the sub-soil of the abyssal depths of the oceans. I do not intend to repeat what has already been said so

eloquently and so knowledgeably. Let me only say, Mr. Chairman, that Canada is conscious of the tremendous possibilities inherent in this new field of activities and that Canada regards the establishment of a peaceful, equitable and rational regime for the exploration and exploitation of these resources in accordance with the Charter as a task which requires the most careful and thorough examination by the United Nations. We are most grateful to the distinguished Representative of Malta for bringing this important matter before the United Nations at such an early date, since the complexities which this problem involves, particularly when one considers that our knowledge in this field is as yet only incipient, will undoubtedly retain our attention for many years to come.

The importance of the subject, its far reaching implications and the inadequate state of our present knowledge would seem to suggest, in the view of the Canadian Delegation, the need for an approach which is both imaginative and careful to the adoption of methods designed to permit the ultimate resolution by this Organization of the many complex problems involved.

I should like first of all, Mr. Chairman, to outline as briefly as possible some of the various aspects of the subject which we consider it important to place before this committee.

There will obviously arise a number of legal problems in respect of matters now before us. As of now, there exists only one international instrument dealing with the exploration and the exploitation of the resources of the seabed and the sub-soil of submarine areas. That is the 1958 Geneva Convention on the Continental Shelf. This Convention in principle is limited to submarine areas adjacent to the coast but lying beyond the territorial sea. However, while the inner limit of the immediately adjacent coast is adequately described in international instruments as "the territorial sea", the outer limits are at present subject to a definition based upon the test of exploitability - a definition which would eventually permit coastal states to explore and exploit the resources of the abyssal depths. But, if exploitation of the abyssal depths beyond the continental shelf were in fact to occur on this basis, this would inevitably result in the carving of the ocean floor into areas over which individual states would exercise or seek to exercise sovereign rights; it could eventually give rise to serious differences between states whose coasts are opposite one another; and it could also lead to a situation where less developed countries would be at a definite disadvantage. That is one of the problems which has to be faced. Before the United Nations can begin to seek to establish an international juridical regime for the deep seabed, capable of avoiding claims to national sovereignty and providing an

an equitable basis for developing deep-ocean resources, it will obviously be necessary to develop principles for delimiting the area over which such a system will apply. What are the present limits of national jurisdiction into the abyssal depths under existing law? Will these limits continue to be regarded as capable of being extended beyond the geophysical continental shelves of coastal states? Beyond the shelf proper, the continental slope, the rise? What of those coastal states that are not favoured with an extensive geographical continental shelf?

The present legal position regarding sovereign rights of the coastal state to the resources of submarine areas extending at least to the abyssal depths is not in dispute. The proposed study should, therefore, be confined to the problems of exploration of the resources of the deep ocean floor. In the absence of generally recognized principles of international law, such a study should, presumably, take into account and indeed begin with existing state practice. Exploration permits have already been issued over areas of the ocean floor in widely different geophysical circumstances. It is already a fact that exploitation is taking place at considerable distances from the coasts and that exploration is being carried out in areas where the water depth far exceeds 200 meters. There have, moreover, been a number of international agreements whereby states with opposite coasts have divided between themselves

wide expanses of the ocean floor adjacent to their coasts. Already there exist cases where deep trenches have been ignored and where exploration and preliminary exploitation measures have been initiated beyond them. Clearly it would be unrealistic to ignore these developments.

Mr. Chairman, my delegation believes that there are certain principles which can and should guide us in our studies. Perhaps the most important of these is that primary interest of coastal states in their off-shore resources which has been recognized in a number of international covenants and which most obviously should continue to be respected in International Law. It is clear from various statements made thus far in this debate that it is recognized that states cannot be expected to abandon rights which have been firmly recognized by international law and which are already being exercised on a world-wide basis. It is in fact well known that in many, and perhaps most coastal states, important sectors of the population may depend for their livelihood on the adjacent resources of the sea. This latter principle has been recognized both in a decision of the International Court of Justice and in the Law of the Sea Conventions.

Another principle which must obviously be maintained is that of non-interference with the freedom of the high seas, subject only to the strict requirements essential for effective

exploitation. At the present stage of the development of the law relating to the deep ocean bed such principles as peaceful usage, demilitarization, benefit sharing and abdication of sovereignty would be new principles requiring careful elaboration and development.

A related series of questions will arise in defining these legal principles which will regulate future exploration and exploitation activities in whatever international areas are agreed upon. Development of the world's mineral resources has been characterized so far by the retention on the part of states of all sovereign rights in respect of their exploration and exploitation. Generally speaking land-based exploration and exploitation are only possible with the permission of the state whose territory or recognized rights are involved. It is only by virtue of concessions they receive from the state that public or private interests can engage in such activities and derive benefits, possibly by way of taking calculated risks. It should be obvious that the possible establishment of an international regime relating to the resources of the abyssal depths may require fundamental departures from traditional concepts. The suggestion, seemingly implicit in the Maltese proposal, of the possibility of internationalizing these resources is thus a most interesting one, albeit one that will require thorough and careful consideration.

It would also, in our view, be premature to attempt to reach decisions as to how our essentially land-based principles should be transposed into appropriate under-the-sea rules. For example, it is difficult to imagine that what is possible within a single domestic legislative system would equally be a rational proposition under a complex international regime. Imaginative efforts will therefore undoubtedly be required before the United Nations can possibly arrive at practical approaches and solutions. Careful studies of particular conditions under which the exploration and exploitation of abyssal depths take place will have to be carried out. So far, our experience has been limited to relatively shallow depths and to the production of oil, gas, sulphur and a few other minerals. We can only speculate as to what will be required for the exploitation of other mineral resources. Surely it would be advisable to take a flexible but careful approach in seeking to solve problems which involve a variety of technical matters about which we as yet know little.

If we are to establish, as one of our main objectives at the present time, the examination of principles whereby the exploitation of the resources of the abyssal depths will be open to all, so that all countries, including in particular the developing states, will have opportunities of deriving benefits from such areas, economic considerations of a complexity yet unknown will play a very important part. On the one hand, the question will have to be examined of giving due regard to

the possible occurrence of large capital involvements on the part of those countries, agencies or instrumentalities which might actually carry out mining explorations or operations and to the consequent need for having a secure basis for planning and maintaining such activities. On the other hand, principles would need to be examined which would be designed to pay due regard also to the interests of countries which are likely to remain unable for some time to take an active part in such operations and which are accordingly unlikely to be in a position in the near future to participate in the exploitation of newly found wealth in the abyssal depths. Canada and, I am sure, other countries too have already had substantial experience with ways in which economically less developed parts of a nation are given the same opportunities as more developed areas to share in the prosperity of the nation as a whole.

Thus, Mr. Chairman, while an examination of the possible application, on a world scale, of principles which would provide a juridical framework for ensuring a fair and just basis for exploiting the deep-ocean floor would be an exceptionally challenging task, it should not be dismissed as impractical or unrealistic.

These are only a few illustrations, Mr. Chairman, of the sort of difficulties with which we are confronted. It is naturally easier to point out obstacles in our path than it

is to propose solutions. I would hope, however, that my intervention is not interpreted as negative in its intent. I hope instead that I have been able to convey our conviction that the approach we should take to this question should be both imaginative and yet cautious. At this stage it is too early, in our view, to consider treaties, conventions, enunciations of principles or recommendations. What we do require is a more intimate knowledge of all aspects of this essentially new area of human activity. Our interest in these matters is, after all, natural concommittant to the fact that Canada has a most extensive coast line.

It has been suggested that a study group or a Committee of experts be established and given the task of gathering the information that will be necessary for future work and of examining the need for cooperation and regulation in this area and the planning that should be carried out. Canada believes that this is basically a sound proposal and, in our view, it is a satisfactory course of action in the circumstances. Canada considers that the mandate of such a Committee as may be established should not be of such wide scope as would draw it into contentious disputes. We are concerned also to avoid any kind of rigid institutionalization which could impede progress in this area. We see merit in the Committee undertaking, at least as a first step, the more limited but no less essential task of ascertaining in a precise fashion the extent of the problems at hand, the extent of our knowledge in this field, the need for

further studies, and the forms of cooperation which will have to be established with other agencies or organizations already involved in the study of these problems, such as the Inter-Governmental Oceanographic Commission of UNESCO, the Fisheries Committee of FAO and the WMO Advisory Committee on the application of science and technology to development. After the Committee, with appropriate assistance from the Secretary-General, has reported to the next session of UNGA we should then be in a position to take further measures to pursue our work in this field.

I have refrained, Mr. Chairman, from engaging in a discussion of other fields of activities directly or indirectly related to the question of the exploration and exploitation of resources of the abyssal depths. It is obvious that current and future studies in respect of fisheries, pollution, navigation and oceanography will sooner or later have to be coordinated with our efforts. However, the preliminary reaction of my delegation is to tend toward the view that we might be best advised, for the time being to defer any formal discussion on the scope of such a committee's work until that committee has itself carried out a preliminary survey of what has been done and what needs to be done in relation to the Maltese proposal.

So far as the arms control aspects of the Maltese proposal are concerned, I need hardly state that Canada firmly

believes that the exploration and the exploitation of resources of the ocean depths should be carried out in a manner consistent with the Charter and with the maintenance of international peace and security, and that we therefore favour adoption of measures capable of ensuring the maintenance of peaceful conditions at the bottom of the ocean. If however any new machinery is to be created, to deal with questions relating to the ocean depths, my delegation would wish to examine carefully any proposals that this machinery should deal specifically with arms-control questions arising in that context. Our attitude would be governed by the need to consider whether the ENDC or a body of a type patterned after the Outer Space Committee would be the more appropriate forum for dealing with such questions.