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**Statement made by Mr. P. B. Engo, Chairman of the First Committee, at the 38th meeting
on 25 May 1977**

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Statement made by Mr. P. B. Engo, Chairman of the First Committee,
at the 38th meeting on 25 May 1977

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As a compatriot in the good fellowship of a common aspiration to install in the ocean space a new and universally recognized international legal and economic order, I feel particularly gratified by the presence of such an assembly of friends, old and new, especially the distinguished heads of delegations among you. With the grave responsibilities that lie almost oppressively on my feeble shoulders, it is indeed comforting to know that with your presence I am not alone, and better still, that it is my privilege to play a modest role in this historic enterprise, which is truly led by a team of dedicated concerned men and women.

At the end of the fifth session, I gave to the Conference a report⁴⁸ in which I spared neither words nor space to analyse the nature of the grave task before us. In spite of the tremendous attainments to which we can proudly lay claim, we still have a deep and rocky valley over which we must consciously build a firm bridge to the final realization of our cherished dream—a consensus text which will constitute part I of the new convention on the law of the sea. My comments on that occasion were comprehensive and were made with all the frankness I could muster. I can usefully do no more now than draw your devoted attention to what I had to say then.

It may be useful at this stage that we concentrate our effort on reaching an agreement on a number of basic elements which could complete the over-all package deal. These in themselves appear to be contained in what may be described as packages. Although some may seem more difficult than others as material for negotiation, they all deserve distinct priority not only for practical reasons of preserving a certain continuity but also because we cannot conclude our task without a clear statement on the issues posed by them.

These elements appear to fall within the following three groups: (i) the issues of exploitation, notably the modalities of the system (including *inter alia* its duration), basic conditions for exploration and exploitation, the viability of the Enterprise and the resource policies of the Authority; (ii) the institutional questions; and (iii) the dispute settlement system.

(i) *Issues of exploitation*

It would appear to me that there is increasing interest in the idea to envisage the exploitation system in stages. The need to generate funds; the need to acquire technology and working experience; and the need to fulfil the major objectives of this part of the Convention, especially the central objective of letting mankind as a whole exploit the resources of the area for its benefit; meeting these needs makes it imperative that whatever the system we design, that system must ensure that the Authority has the capacity to go into the business of exploitation as soon as the decision is made that activities in the Area should commence.

⁴⁸ Official Records of the Third United Nations Conference on the Law of the Sea, vol. VI (United Nations publication, Sales No. E.77.V.2), document A/CONF.62/L.16.

It is fortunate that mankind already has at its disposal the technology with which it is about to launch a new era of productive endeavour in the deep sea-beds. The reality, however unfortunate, is that its distribution is neither equitable nor entirely within the power of the Authority and the control of States. It would appear that pragmatism has prevailed over idealism in this matter. There is common ground now, I believe, that a means must be devised to engage this acquired technology and their possessors in a special relationship with the rest of mankind represented by the Authority and the organs established under it.

This thought thus tends to remove the thorny problem of who will exploit, at least with regard to an initial period when the Authority makes its début. The major question now appears to be what in fact at all times constituted the fundamental preoccupation of our Committee. Mankind has a common heritage. How then do we organize exploitation for the benefit of mankind? I warned on a previous occasion that we are not assembled to share loot. We must go into business to generate substantial benefits for all of mankind.

The resource policy may well include the definition of certain basic objectives, which would ensure that the main purposes of the Authority as elaborated in a convention are not defeated, no matter what system is adopted in that special relationship.

Ideas as these may suggest solutions, when considering this issue. I am personally convinced that if a system works effectively in the initial stage, which is now being fixed as between 20 and 25 years, the necessity for a review conference may well disappear with experience and the passage of time. On the other hand, a review clause may well serve as a safety valve, and processes of adjustment may well be set in motion for the mutual interest of all.

Having expressed my personal views in this matter, I shall now speak about the negotiating effort.

I am particularly pleased that consultations held in various fora during the intersessional period appear to have been based on the questions I posed at the end of last session. After consultations in Geneva in March this year, at the laudable initiative of the Norwegian delegation, Minister Jens Evensen has been good enough to circulate quite informally certain personal ideas, which he informs me have emanated from that meeting. Undoubtedly we shall also benefit from the result of other efforts during our negotiations.

On the basis of these informal consultations, the basic issues that we must tackle are quite clear. These issues are related, in my view, to the tenure of contract concluded during the period of 20 or 25 years, and the mandate and decision-making processes of the review Conference. A number of ideas had already been suggested during the informal consultations. They may serve as a basis for further negotiations. It seems to me that the application of the initial exploitation system must be considered together with the conditions of exploration and exploitation, and the viability of the Enterprise, be-

cause of their interrelationship. If we were going to accept an exploitation system of a temporary nature, it would be consistent with that spirit to lay down the conditions of exploitation and to find the means to sustain a viable Enterprise. It seems to me that many of the basic problems facing us stem from the differences in the concept of the exploitation system. Conceivably, different conditions and means might be envisaged in the light of the system adopted. We should concentrate at present on finding those conditions of exploitation and financial means that are most appropriate for the initial system. In this manner, we would not only save a great deal of time, but also would not prejudice which are the more appropriate for the future system. Regarding the conditions of exploitation, we will need to deal with, in particular, the qualifications and methods for the selection of applicants, and the rights and obligations of the contractor. Some helpful suggestions from the informal consultations now exist. There is a need to distinguish clearly items of fact from those which are subject to negotiation. We also need to stipulate clearly the precise data that will be required in connexion with an application.

We need to deal with the question of financial arrangements with the contractor. A number of useful ideas will be found in the report prepared by the Secretary-General in this respect in response to the request of this Committee (A/CONF.62/C.1/L.19).

The commercial viability of the Enterprise cannot be separated from the system of exploitation. We must continue our search for feasible financial means for the Enterprise. Again, we should bear in mind the time frame that these means are intended to serve. Some means might be more appropriate for the initial purposes—others for a different stage. I believe that some delegations have come armed with interesting ideas in this field. I can only urge that we avoid too much detail which may prove unrealistic in the uncertain future. Economists seem perpetually to be at work, and the many theories they propound for the future seem to collapse under the stress of ever changing circumstances.

During the last session, Nigeria's distinguished Attorney-General and Commissioner for Justice suggested that we consider adopting the joint-venture approach in place of the various systems then under review. He spoke, he said, from the experience of his fast developing nation—one which I believe has dominated the policies of many young nations during the first phase of their economic development. The new Authority may need to take a cue from that experience. We may wish to seriously consider that proposal together with what is generally referred to as the "banking system". It would appear that a kind of joint-venture arrangement might provide a practical means of dealing with the financial and technological aspects of an initial system.

In discussing the viability of the Enterprise, we must also pay attention to its statute. The revised single negotiating text has provided some basis for negotiations. To be truly commercially viable, the Enterprise needs, apart from finance and technology, a quick decision-making process, authority to recruit competent technical staff, capability to implement decisions and a qualified operations manager who has the power to ensure efficient operation. We may wish to consider if the present statute meets these and other requirements. Thus far, our focus has been on the financial and technological aspects. The adequacy of the statute to meet the institutional need should also be considered.

The question of the resource policy is a controversial one. It appears to me that the essential elements have already been included in article 9 of part I of the revised single negotiating text. This article is not without shortcomings as we have seen. Article 9 of the text as it stands represents a small package in itself. It would be difficult to seek further improvement as long as the other chief areas of disagreement trail behind the progress we made in article 9. Since the central issues are interrelated, one presumes appropriate movements in all areas. Our deliberations in the last three sessions were predominantly on the system of exploitation. Little attention was given to the institutional aspects and settlement of disputes. It seems to me that any improvement in article 9 could only come after compromise has emerged in the other areas of disagreement. We may wish to bear in mind those areas where improvements are still needed, while continuing the process of identifying the essential elements to a subdivisinal package deal.

(ii) *Institutional arrangements*

After having dealt with the basic issues connected with the exploitation system, we should then move to the second major area of disagreement. This concerns the institutional arrangements. There is first the financial costs of the Authority. The document of the Secretary-General will give us some indications as to the magnitude of expenses that could be incurred. We may wish to re-examine those relevant provisions and see whether some of the functions could be combined in the interest of economy. It seems to me that we should not begin with an elaborate organization, particularly when no income from sea-bed exploitation could be expected in the initial years and other sources of financing would have to be found.

The decision-making processes of the Assembly should also be examined. It has been suggested that the Assembly might find itself in a position where it would be difficult to reach a decision given the present procedure under article 25 and the required procedure could conceivably be used in such a way as to paralyse the Assembly. If that were the case, such a procedure would not be in anybody's interest. To modify it would require finding alternative measures to take care of the underlying fears which partly inspired it.

The power and functions of the Assembly and the Council should also be examined. A comparison of their respective powers and functions seems to indicate the need to find the necessary balance. Because of the non-interference provision specified in paragraph 4 of article 24, the independence of the Council is guaranteed. It is extremely important, if only for this reason, that the composition of the Council should represent the divergent interests so as to ensure that the Council would take decisions in the interests of all parties concerned. In my statement at the end of the last session, I expressed the view that we could spend decades in fruitless dialogue if we continued to accept that the interests of this Conference could naively be classified as those of the developed versus those of the developing countries. Neither group is without diversity of concrete interests given the factor of uneven development within each. We should bear in mind the manifold, the divergent interests, and abandon the false assumption of a bipolarized situation. As long as its composition is conceived in terms of a bipolarized situation, it would appear extremely difficult to find an acceptable solution.

We should also pay attention to the structure and powers and functions of the subsidiary organs such as the

Technical Commission, the Economic Planning Commission and the Rules and Regulations Commission. They are very important to the actual operation of the Authority. The qualifications of the members of the three commissions are provided in articles 30, 31 and 32 respectively. They require highly specialized personnel. Doubts have been expressed as to the availability of such personnel from developing countries. If this is the case, we must find a way to ensure the independence and impartiality of the members of the commissions.

(iii) *Settlement of disputes*

The third group of elements for this subdivision of the package deal covers the settlement of disputes. The distinctive nature of disputes with which we are concerned should be borne in mind. Two major categories of disputes may be envisaged. First, those which relate to the implementation of this part of the convention, and second, those dealing with the rights and duties of States parties under this part of the convention and the interpretation of the provisions of the convention. In the former case, examples include legality of measures taken by the organs of the Authority, lack of jurisdiction, infringement of fundamental rules of procedure, or misuse of power. This kind of dispute may arise amongst the applicants, contractors and organs of the Authority. The nature of this kind of dispute is therefore primarily contractual and administrative, unlike the second category of disputes which involves primarily the interpretation of the provisions of the convention. We may wish to distinguish these two categories of dispute and provide a more simplified and expeditious procedure for the former. Juridical safeguards for adjudication of disputes arising from a contract or an administrative decision are essential to proper administration and, in turn, may serve to reduce possible political influence. Such juridical safeguards may readily provide the balancing element for a possible compromise in the institutional arrangements, particularly regarding the powers, functions and composition of the principal organs.

At the end of the fourth session, we had only a brief discussion on the settlement of disputes. We may wish to devote more time to this important subject at the present session. We need to examine in particular the organization of the system, and the competence and jurisdiction of the Tribunal.

This is my view of how the package could evolve. These three groups of issues are interrelated and interlocking. Progress of one group of issues is dependent on the others. Accordingly, we should strive for a parallel movement in all directions; while we are discussing one group of issues, we should bear in mind the trade-offs and compromises which may be expected in the other groups of issues. Only in this manner may we progress faster and be successful in our endeavour to meet the urgent international needs.

If you will bear with me, I now wish to turn to some general aspects of our work. Of the questions posed in my report of last session, to which I alluded earlier, perhaps the most fundamental was, then as now, whether or not there exists the necessary political will to pursue the negotiations to a successful conclusion. I asked that this question, along with other more specific ones, also of a broad political character, be contemplated over an inter-sessional period covering eight months.

Having travelled on a long and gruesome road, this Committee is desperately in need of the fuel of positive

political will to bring a desirable historic venture to a successful conclusion.

When grappling with the novel ideas that the mandate of the First Committee dictates, while attempting to reconcile irreconcilable interests and seeking new areas of mutual accommodation for the common good, there comes a point at which so-called normal logic and concepts of technical feasibility must give way to the demands of new realities. At that point, the strongest ally of success is the dominating factor of political will.

It is probably too much to expect it where no common objective exists. Yes, an identifiable common objective for all concerned! It would appear to me, however, that, in itself, the broad mandate which history imposes on this Conference provides such an objective for us all, a joint response to the need to bring a new legal order to the ocean space; and in that process to enhance the order which is imperative for the attainment of peace and our very survival as an international community.

It is for this reason that, at the end of the last session, I sought to remind the distinguished delegations of these common objectives and appealed for the political will that seemed necessary for the attainment of a universal treaty. It is clear, that in the past, we have had an abundant lack of political will.

I also implored delegations to make definite efforts to consult as actively as possible across interest lines and to keep me informed of their efforts. The reasons for this were obvious.

I then made the appeal that the issues before the First Committee be negotiated at this sixth session at the level of heads of delegations, the reason being that the present situation called for important political decisions by those representatives with plenipotentiary powers to commit their Governments. It had become clear that no significant solutions could emerge from growing confrontation among technocrats, who by the very nature of their missions, could do no more than advocate a national position dictated to them during the initial stages of our deliberations.

If my judgement can be relied upon, I would venture to say that you have all given encouraging indications so far that the basic all-important question as to political will has been, or is about to be answered in the affirmative. There appears to be an air of hope and a new spirit to our endeavours. I would like to call this the Spirit of 77 but refrain from doing so because of the disruptive psychological emotions it could provoke. Yet such is the atmosphere I see in the year of our Lord one thousand nine hundred and seventy-seven. It is a spirit which induces the hope that a favourable response from you will be forthcoming, regarding the broader appeal for clear and unequivocal resolutions to the outstanding problems before this Committee.

It is also clear from the reports many of you have made to me that valuable consultations took place in various forms during the intersessional period. I wish to thank and congratulate those nations which undertook bilateral consultations. I warmly salute the chairman and members of the group of African States and the Group of 77 for assembling to take a fresh and productive look at the issues before us. I am also profoundly gratified by the initiative taken by the Norwegian delegation in Geneva to bring together the various interest groups in a preliminary effort to seek fresh avenues of mutual accommodation and compromise.

I wish to express special gratitude to Mr. Jens Evensen for the formal and informal reports he has given to me. His assessment of a new mood among delegates to resolve the outstanding problems in the over-all package seems to be confirmed by representations made to me by the vast majority of delegates these past days. I am persuaded to believe that with the prevailing mood we shall have no room, indeed no time, for procedural questions. Our joint resolve appears to be that we get down to work immediately and throughout the period allocated to us.

It is my hope therefore, that, with common resolve, we will make this a session devoid of confrontation and one in which we jointly seek a final solution to each problem. I look forward to the fruits of your labour, which should yield the content of what I take to be the compilation of the so-called composite text of the Conference. This endeavour demands the active participation of all of you.

I invite you all to come on a great crusade with me and with the members of the Bureau. We need a dedicated volunteer corps for seeking solutions. I need each one of you to consider yourself an active member. I charge you, my dear friends, to seek out and talk with those whose positions and preoccupations have been different from yours. Take pencils and papers in hand. Ask what the real preoccupations are and seek together what the solution can be.

We must not seek to impose our ideas on others, directly or indirectly. We must ask ourselves, as we ask others where the best solution lies, especially the benefits than can accrue to the whole of mankind, while at the same time leaving some margin of profit for any who may invest at the crucial early stages.

A productive approach at meetings could be that each speaker on a subject outlines briefly his problem with, for instance, the provisions recommended in the revised single negotiating text, concluding with what he considers a happy solution for everyone and stating clearly the objective grounds for his viewpoint. Succeeding speakers would then outline the basis for any identifiable difficulties they may have with such a suggestion. This could conclude with suggestions as to what other elements could bring a solution satisfactory to all. This type of concrete dialogue would generate greater understanding and pave the way to a successful quest for the means of solving one another's difficulties. The excessive reiteration of national views and positions, which brilliant advocacy has introduced into our deliberations over the years, can only provide undesirable irritants in our endeavours at this stage.

As a volunteer corps we must work night and day, conscious of the fact that the mission of this Conference depends on it and conscious even more of the fact that the whole future of unborn generations depends on what we achieve here. The alternative to success is too horrible to contemplate. The United Nations system has played a leading role in the maintenance of peace; the institutions we set up here must provide for the opening up of new vistas of realistic international co-operation for the attainment and thereafter the maintenance of lasting peace.

Let us not treat the new Authority like a monstrosity from outer space. It is designed to represent mankind assembled; assembled to exploit a common heritage on behalf of all beneficiaries. We should protect, not fight it either directly or indirectly. There is room for profit to accrue to investors—that is how, in my view, it should be—but let us not forget the capacity in which they come. They must not rival the Authority.

It would be grave folly to lose our sense of perspective. This is an hour of decision. Let us not delude ourselves into thinking that time is on our side.

We cannot be above admitting that the indignation of Governments with respect to our protracted negotiations, no matter how justified the protraction, is virtually universal. If the press may be said to express to some degree the sentiments of the public they serve, it would appear that the international public opinion has been infected by the same agitated impatience. With this obvious menacing cloud hovering above, it would seem that the responsibility rests squarely on the shoulders of all of us here who enjoy the select privilege of having been granted plenipotentiary powers to commit our Governments on the issues before this Conference in general and this Committee in particular. It would perhaps be anachronistic to speak at this time of the unchangeable position of one's Government. I am of the opinion that it would be equally irresponsible and obstructive to condemn whoever refuses to negotiate merely because a national position is not accepted.

If we fail, it will, in my view, be due either to our delinquency or at best to our culpable negligence. No one else can justifiably be blamed, not even our Governments who have spared neither financial nor human resources to bring us here. It would be hypocritical to place the blame on Governments; for their decisions are conditioned for the most part by the recommendations which we make.

This is not intended to exonerate the Governments either. I seize this opportunity to appeal to all Governments again as I did in Caracas on behalf of my country's delegation. I renew that appeal here.

I call on the United States, a nation born in revolution and which thrives on revolutionary growth. Refreshing sounds come out of the new leadership in Washington speaking of a new morality consistent with the expressed dreams of your founding fathers. They draw princes and heads of State to Washington as enthusiastic listeners. This new morality speaks of strengthening the framework of international co-operation. It talks of the common touch with the plight of the ordinary people. It speaks loudly of fundamental human rights. I invite you to give an understanding ear to the plight of the institutions we seek to build. The exploited poor nations of the world who cry for economic survival are like those who suffer deprivations within a nation. Come help strengthen the Authority's capacity to organize peace by giving sustenance to a cherished hope. Through the Authority the rich and poor alike will benefit.

I call on the Soviet Union, also born of a historic revolution of thought and system. Your socialist revolution brought into being a system that met the basic needs of the ordinary man in your great nation. You have risen to great heights of wealth and technology as a people in less than a century. You are well endowed with the capacity to understand the role that the new revolution of ideas, as exemplified by this Conference, can play for international peace and security. Come, play your vital role.

I call on France and Great Britain, whose systems and language have set standards of international conduct. Your involvement with peoples across the globe undoubtedly makes your knowledge and understanding of global problems probably stronger than any. We ask you to bring along your experience.

I call on the economic and technological giants of our era, the Federal Republic of Germany, Japan and others to show understanding.

We need the wisdom of the Chinese nation. Their membership in the third world must enhance the quality of our dialogue here.

To my brothers and friends in the third world, I can only appeal to you to maintain your capacity for understanding. Let not the might of our numbers lure us to the arrogance for which we condemn others.

We need you, Canada, Australia, Scandinavia, the Arab and Asian world, the Latins, the Eastern Europeans, all of you. Come let us work together.

The hour of decision is now. The stern warning of William Shakespeare's pen, through the character of Mark Antony haunts us. He speaks of failure:

"A curse shall light upon the limbs of men, domestic fury and fierce civil strife shall cumber all" the oceans and our cities if we fail. "Blood and destruction shall be so in use and dreadful objects so familiar, that mothers shall but smile when they behold their infants quartered with the hands of war."

We could also give a response to a question that a great thinker in my own nation, Cameroon, Dr. Bernard Fonlon, has posed: "Shall we make or mar?"

As indicated at the end of the last session, I shall regard the conduct of the negotiations in this Committee at all levels as my personal responsibility, as Chairman. The Bureau of this Committee was elected to organize the negotiations. We do not intend to shirk our responsibility. We are reassured and encouraged by the overwhelming expressions of desire that we perform our function.

However, in the discharge of that responsibility, I ask for assurances that I can call on the services of any of you at will, and especially of those who by their imagination, experience, skill and standing will commend themselves as instruments of our common design. In spite of this, I shall remain fully and solely responsible to you collectively and to the Conference as a whole for the results that our mandate dictates. Having said that, you must all be constantly reminded that yours is the arduous duty to negotiate. Negotiation must have a finality in view.

In the light of all I have said, I propose that we take as our target the three groups of issues that I have enumerated. For the sake of continuity and organization, we could commence with the first, the issues relating to the system of exploitation. At appropriate moments we shall take on the other two.

I propose further to set up an informal Chairman's working group of the whole to commence work immediately. As I said, I shall call on some of your members to help me and this Committee in my task. I appeal to all of you to be ready to take on such responsibilities whether or not they meet with your personal convenience. On this occasion, and in the light of the effort he has already begun, I wish to draw on the experience of Minister Jens Evensen to be my special co-ordinator for this first subject. He has very kindly indicated his willingness to assume the responsibilities. He will represent me personally and report to me directly every day. I reserve the right and duty to ensure that the conduct of the negotiations for a package remains mine and that of my Bureau.

If there are no serious objections, I shall take it that we are determined now to proceed.

DOCUMENT A/CONF.62/C.1/L.21

Statement made by Mr. P. B. Engo, Chairman of the First Committee, at the 39th meeting on 14 June 1977

[Original: English]
[16 June 1977]

The three weeks allocated by the Conference almost exclusively to the work of the First Committee ended with the meeting of the Chairman's working group last Saturday. As our endeavours have taken place informally behind closed doors, I consider it my duty to give to you periodically a frank appraisal of the progress of our work. I have chosen to do so this morning, partly because we ourselves must, together with the Conference as a whole, assess the use to which we have put the past three weeks, and partly because the conclusion of a significant aspect of our work provides a convenient milestone.

I do not wish to do more than report briefly to you on the current situation. It will be a review of only a limited area because I have had little more than 24 hours in which to study and digest the reports reaching me. In the near future, it is my intention to offer modest leadership and guidance by circulating informally amongst you, concrete suggestions on the paths that, in my view, may lead to progress. It is my sincere hope that when I do, I shall be able to rely on your characteristic sense of duty and dedication to suggest to me any concrete ideas which could hold far greater prospects for the satisfactory solution of problems than my own. It is only through such a co-operative endeavour that I could hope

to be fully armed with productive ideas necessary for the composite text envisaged for this session. I do not wish to produce texts for the sake of adding yet another document to the Conference. It is my sole ambition the next time I make any documentary contribution, to succeed in reflecting ideas with which all of you can live, even if grudgingly.

You may recall that at our first meeting on 25 May 1977, we adopted a programme of work in which it was decided to tackle a mini-package consisting of three groups of elements in the following order:

- (i) The issues of exploitation, notably the modalities of the system of exploitation (including, *inter alia*, its duration), basic conditions for exploration and exploitation, the viability of the Enterprise and the resource policies of the Authority;
- (ii) The institutional questions; and
- (iii) The dispute settlement system.

With your approval, I proceeded to establish a working group of the whole, imposing on the head of the Norwegian delegation, Mr. Jens Evensen, the arduous responsibility of acting as my special co-ordinator. In future,