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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

INSTITUTIONAL PROBLEMS CONCERNING THE SEA-BED AUTHORITY:  
THE COUNCIL

Working paper submitted by the Italian delegation

According to the views expressed by many delegations and the various drafts submitted hitherto, the Sea-Bed Authority should have certain organs parallel to those which are to be found in all major international organizations at the present time.

The Italian delegation shares this view. In addition to a plenary organ (the Assembly), the Authority should have a governing - or executive - organ, i.e., the Council. The structure of the Authority should also include a Secretariat and other subsidiary organs to ensure that it is capable of achieving its objectives.

Of all these organs, it is the Council which is undoubtedly the most important, and which at the same time raises some rather complicated problems. It may be useful to examine here the solutions proposed in the drafts submitted hitherto, which differ from one or other in several respects.

There seems to be unanimity on one point only - that the Council should be a small body, like most governing or executive organs.

(a) Functions and powers of the Council

The first important question relates to the functions and powers of the Council. It seems, however, premature to attempt a solution at the present stage, since the functions and powers of the Council will necessarily depend on the functions and powers of the Authority itself, of which the Council is to be the principal organ; and it is clear that there are profound differences of opinion concerning the functions and powers to be given to the Authority. Some delegations think it would be preferable to give the Authority merely a supervisory and co-ordinating role, whereas other delegations maintain that the Authority should be endowed with more extensive functions and powers.

In this situation it is obvious that, in order to determine the functions and powers of the Council, it is essential first to solve the prior question of the functions and powers to be assigned to the Authority. For the time being, therefore, this problem must be left in abeyance, though it remains a matter of fundamental importance.

(b) Composition of the Council

On this subject, two different views have emerged.

Some delegations maintain that the entire membership of the Council should be elected by the Assembly, and that equitable geographical distribution should be the only criterion used. Various proposals have been put forward to this effect.

Other delegations believe, on the contrary, that the criterion of geographical distribution is not, in itself, sufficient to ensure a suitable composition for the Council. These delegations take the view that it is essential in any case to ensure the presence, in the Council, of certain States whose contribution would seem to be necessary in order to make the Council and the Authority itself "viable". These are the States which possess the technological capacity and the resources necessary for the establishment and operation of the Authority, and which are also willing and able to transfer the technologies in question to the developing countries.

The Italian delegation believes that the continuous presence of these States in the Council is indeed essential, and that the election of the members of the Council by the Assembly, in accordance with the criterion of equitable geographical distribution, could not in itself guarantee their presence beyond all doubt.

To ensure that the Authority can operate efficiently, therefore, the Italian delegation supports the view of those delegations which have suggested that there should be two categories of members of the Council. Thus, in addition to the elected members -- to be chosen by the Assembly -- there would be a category of designated members who would be chosen in accordance with certain objective criteria and whose presence in the Council would be necessary to enable the Authority to operate efficiently.

Though the Italian delegation supports the principle on which this view is based, it cannot agree with the methods so far proposed for the practical application of the principle to the composition of the Council.

In particular, the Italian delegation cannot support any proposals which would lead to a confrontation of two groups in the Council -- a small group of great Powers (designated or permanent members), on the one hand, and a large group consisting of all the other members elected by the Assembly, on the other hand. Such a system would inevitably lead to serious difficulties in relations between a small group of privileged States and the other members.

In addition, in accordance with some of the proposals which have been submitted, this discriminatory composition of the Council would be aggravated by a voting system which would in practice enable only three members of the "directorate", voting together, to block any decision of the Council. This arrangement would be tantamount to giving a collective veto to certain Powers; and it is obviously inadmissible.

Accordingly, while the Italian delegation believes that there should be a class of designated members, who would be selected on the basis of objective criteria and whose continuous presence in the Council is necessary to enable the Authority to operate efficiently, it cannot agree that this solution should be applied in a manner which would involve a kind of "confrontation" between two groups of countries separated by their levels of development.

(c) Outlines of the solution proposed

The Italian delegation believes that the following method could be used to reconcile the different interests in a satisfactory manner:

The Council would be composed of thirty-five members, twenty of them elected by the Assembly and fifteen of them designated in accordance with the following criteria:

First, ten of the fifteen designated members would be chosen on the basis of the GNP scale. This would ensure the collaboration of all countries possessing the technologies and resources necessary to enable the Authority to operate efficiently.

Next, five other members would be designated on the basis of their particular role as coastal States; the countries already designated on the basis of the first criterion would, of course, be excluded.

In accordance with these two criteria, which are both relevant and objective, the fifteen designated members would include a considerable proportion of developing countries. This would ensure a balanced and equitable composition, and would exclude any idea of discrimination.

It may also be noted that the first group of designated Council members would include eight of the ten countries having the largest populations in the world. It would also include seven of the ten countries possessing the largest merchant fleets in the world. It will be recalled that these criteria (tonnage of merchant fleet, and population) have already been proposed in the various drafts submitted by other delegations.

For the twenty Council members to be elected by the Assembly, it would be possible to adopt the traditional criterion of equitable geographical distribution, as it has been applied in certain recent cases. One solution might be to follow the model provided by article VI, paragraph 3 of the Statute (revised in 1970) of the International Atomic Energy Agency (IAEA) concerning the election by the General Conference of ten members of the Board of Governors. This text states that the members are to be elected in such a manner that the Board of Governors shall at all times include a pre-determined number of members representing the various areas listed in paragraph 1 of the article.

If a similar system were applied to the composition of the Council of the Sea-Bed Authority, the twenty elected members should be chosen by the Assembly from the "groups of States" listed below. It will of course be necessary, at a later stage of our negotiations and after a careful balancing of proportions, to indicate the total number of seats in the Council (designated and/or elected) which each group of States is to have at all times.

Subject to this consideration, the list might be (in French alphabetical order):

- (1) Africa
- (2) North America
- (3) Latin America
- (4) Asia
- (5) Land-locked States
- (6) Western Europe
- (7) Eastern Europe
- (8) Oceania

It should be pointed out that, in accordance with our proposal, the presence in the Council of an adequate number of land-locked countries would be guaranteed at all times.

(d) System of voting in the Council

A two-thirds majority should be required for decisions of substance, while decisions on questions of procedure could be taken on the basis of a simple majority, the quorum being determined in both cases by the States present and voting.

It will also be necessary to determine how large a majority is required for deciding whether a question is substantial or procedural.

This system would eliminate any right of veto, either an individual veto or the collective veto implicit in the multiple-majority system proposed in some of the drafts, which has rightly been criticized in the working papers of other countries.