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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

PROVISIONAL SUMMARY RECORD OF THE SEVENTY-SECOND MEETING \*/

held at the Palais des Nations, Geneva,  
on Monday, 23 July 1973, at 3.20 p.m.

<u>Chairman:</u>	Mr. ENGO	Cameroon
<u>Rapporteur:</u>	Mr. MOTT	Australia

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ORGANIZATION OF WORK

The CHAIRMAN said that, following representations made to him, he had decided to call the meeting in order to provide an opportunity for delegations to make observations on the reports requested by the Sub-Committee during the Spring session, if they so wished. The timing had been due entirely to the problem created by the unavoidable absence of the Chairman of the Working Group, Dr. Pinto, from Geneva. Several delegates had requested a breathing-space to enable consultations to take place.

However, it had also been the intention of the Chair to hold a meeting not only to listen to the periodic reports of the Chairman of the Working Group, but also to take stock of the Sub-Committee's work and to evaluate the problems ahead. That matter was of such importance that it deserved the fullest attention if success was to be achieved.

He stressed the Sub-Committee's weakness in bargaining with time. The illusion of movement was one of the greatest threats to the Sub-Committee. The Sub-Committee had set up its working procedures before any other Sub-Committee had done; it had established its institutions before any other; it had produced working papers responding to the need for identifying in clear terms the various proposals before any other Sub-Committee had done; it had gotten down to the task of examining those proposals before any of the others had done. Those facts were known; but one fact to remember was that the Sub-Committee was now in running competition with the other Sub-Committees. It was, jointly with them, running a race against time and texts that would be productive of progress at the proposed Conference of Plenipotentiaries on the Law of the Sea in Santiago, Chile, in 1974.

One task had been assigned to Sub-Committee I; a contribution that it had to make in a specified field. Other Sub-Committees had theirs. The Sub-Committee should not be complacent until its work was successfully completed.

The Sub-Committee recognized the need speedily to produce a document on each of the two items before it, reflecting the present thinking in the Sub-Committee. Undoubtedly, the membership of the Committee was fully reflective of the character of contemporary international society. The Sub-Committee must assemble, with regard to both the international régime and the international machinery, areas in which there was no disagreement in substance or form; it also had to assemble areas of agreement in substance even if the form was still a matter of controversy; finally it had to assemble areas of disagreement.

The Sub-Committee had to graduate from the mere assembly of various texts in a comparative table. That type of effort had already produced working papers. The type of document that would be helpful for the Conference would not need identification of the holders of particular views. It was the problem on each issue that was important, not the name of the proponent.

It was therefore essential to speed up the outstanding work, which had been divided into "first and second readings". Time did not permit the Sub-Committee to stick to the procedures they provoked. The Sub-Committee must now proceed to attempt a comprehensive statement on the current trends in the Sea-Bed Committee on the two items before it. That had not been done. In the process it should endeavour to remove all brackets and all dissenting opinions that masqueraded as footnotes. Brackets should only identify alternative statements where substance was not at issue.

Perhaps the most pressing aspect of the Sub-Committee's task related to areas of disagreement on substance. Intensive informal consultations and negotiations should aim at narrowing the divergencies. Two alternatives reflecting existing trends would be ideal. Where more than two trends were irreconcilable or fundamentally at variance there would be value in their individual statement, if the alternatives clearly demonstrated the type of political decision that must be made by the Conference.

No delegation expected a consensus text reflecting full agreement by all communities of interest within the Committee. The nature of the debate so far, after five years of effort, did not give ground for such optimism. Yet, it must be said that the Committee's mandate did not necessarily imply that one was required. Its endeavours would undoubtedly aid the international society in identifying the spectrum of opinion within it. A general debate at the present stage was of little value in comparison with the need for final negotiations leading to the political decisions that could produce an international convention.

The areas demanding the Sub-Committee's fullest concentration related in the first place to the basic question of the powers and functions of the Authority, including those of the organs to be established under it. That issue had tended to produce two communities of interest on political lines. The developed world on the one hand had called for realism based on what they considered to be the political and economic realities of the present and past. The developing nations had also called for realism on what they considered to be the failures of the past, as well as the political and economic realities of the present and future.

It would be difficult to solve all the broad underlying problems posed by those two groups at the present stage. However, an attempt to solve some of them should be made before stating the alternatives. Both sides had to give something, but perhaps because the developed countries had more they must make the greater sacrifice. It lay to a large extent with them to dictate the course of contemporary history. They had the material and human resources to ensure the strengthening of international peace and security, through realistic co-operation among States in the economic and technological fields. The experience of the United Nations was not a happy one - it could not breathe confidence and patience into even the most "moderate" of the developing countries. There was no need to leave to future historians for instance the judgment on the use of the "veto" in the Security Council. The disenchantment of the young weak nations with that institution was directly reflected in their attitude towards the issue of the powers and functions of the proposed "Council" for the International Authority.

If the Sub-Committee could not find common ground now, at least it should clearly state the two main trends on the range of subjects. He had used the term "main" because he recognized the existence of some middle-of-the-road ideas. The Sub-Committee should investigate the agreed aspects and not allow them to be drowned in an uproar of disagreement.

The second question related to the broad one of "who should exploit the area". There, too, there were some variations in perspective in spite of the Declaration of Principles. What appeared to be necessary was a free and frank exchange of views, outside the glare of publicity. The area of fundamental disagreement was comparatively smaller. The Sub-Committee must turn its concentrated attention on that area because it was possible to narrow substantially the scope of the existing divergency.

It was essential for the Sub-Committee to conclude all its work, including the adoption of draft articles or a report, after considering the results of the informal consultations in the Working Group and elsewhere, no later than 17 August, so that the remainder of the session could be left free for the Main Committee. It must be mindful of the warning given by some delegations that they would not adopt any texts on which they had not been consulted. There were also, within the Working Group procedures, sheets in blue ink containing informal suggestions, which, if they were to be useful, must undergo certain procedures in the proper forum before being considered adopted. All of those procedures must be completed as part of the Sub-Committee's task before that final date.

Consequently, he wished to make the following proposals for consideration by the Sub-Committee:

1. That the Sub-Committee should divide its remaining time into three periods -
    - (a) the period between now and 31 July;
    - (b) the period between 1 and 10 August;
- and
- (c) the period between 10 and 17 August.

He proposed that the first period be allocated to the Working Group to conclude the current method of work. It should spend the time attempting to concretize existing divergencies in the form of draft texts, including the adoption of all written informal proposals and suggestions which would aid the identification of such divergencies. The Chairman of the Working Group would make a comprehensive statement including the introduction of agreed texts, etc.

The second period would be used for intensive consultations. The aim during that period would be to ensure that existing divergencies had been narrowed down to an absolute minimum. The negotiations and consultations would also be informal and no doubt Dr. Pinto would continue to play a very important if not a central rôle. The Officers of the Sub-Committee would participate actively at that stage.

What happened in the first two periods, especially in the second, would dictate the course of action in the third. The third and final week would have to be kept free for one or both of two actions: (a) to prepare a report to the Main Committee; or, (b) to finalize the procedures for adopting any emerging consensus texts reflecting the various trends on all vital issues.

The Officers of the Sub-Committee were still consulting on the question of a report - its nature, its form and the like. The Sub-Committee's Rapporteur was also in touch with the other Rapporteurs. Those consultations would be held at a different level, so as not to obstruct the efforts directed at questions of substance.

Although he was proposing certain time-limits it must be understood that approval did not bind the Chair to applying them with crippling rigidity. The attainment of success was the primary motivation for his proposals. The Chair would undoubtedly adjust the periods if doing so would promote greater chances of success.

He wished however to draw attention to the time factor and to the magnitude of the tasks before the Sub-Committee. He strongly appealed to all delegations to bring out their maximum of co-operation in the weeks ahead. No general debates or lengthy reiteration of already declared or well-known positions would be helpful.

The Sub-Committee must not lose its perspective of the task before it. It could not afford to fail in the statement of the results of its deliberations over the past six years. The positions were well-known and concrete proposals had been put forward. It should assemble the ideas now in their current form. The Conference was scheduled in Santiago for next year - only months away. It was completely outside the Sub-Committee's competence directly or indirectly to question the timing of that Conference.

He was sure he could count on all delegations to give co-operation at its maximum and best. Life at a session of the Sea-Bed Committee took its rhythm from the ups and downs of the day to day attitudes and positions of delegates. He wished to appeal most urgently to members of the Sub-Committee to keep their common perspectives, to avoid unnecessary procedural debates and to get on with the job.

The Sub-Committee would assess the progress of its work virtually on a daily basis, bearing in mind the need for pragmatism and flexibility.

Mr. NJENGA (Kenya), speaking also on behalf of the Group of 77, endorsed what had been said by the Chairman, and said that the Group of 77, which already had a considerable investment of time and money in sea-bed matters was strongly committed to the convening of the Conference on the Law of the Sea at Santiago on the scheduled date. He stressed the fact that although the Sub-Committee's Working Group had produced some useful work, more complete documentation would be needed for the Santiago Conference, so that the plenipotentiaries could make political decisions. He agreed with the Chairman that there was unfortunately no possibility of achieving a consensus text. It should, however, be possible to narrow present differences.

In his view, it was essential that the Sub-Committee should hold a number of formal meetings before concluding its work, so that it could produce its report to the Main Committee. The period 10-17 August was the most appropriate time for that. In conclusion, he noted that the Chairman had introduced an element of flexibility in his proposals, which was most appropriate, since the time-limits should, in his own view, be regarded as targets.

Mr. ZOTIADOS (Greece) expressed his delegation's support for the Chairman's proposals and also endorsed what had been said by the representative of Kenya. It was essential that the Sub-Committee should now pass on from the preliminary stages of negotiation to the more substantive stages and to the narrowing of differences of opinion. Having done that, it should prepare a text that could be used as a basis for draft articles.

He proposed that the Chairman's statement should be reproduced in extenso in the summary record of the meeting.

Sir Roger JACKLING (United Kingdom) said that his delegation would support the Chairman in all his measures for speeding up the work of the Sub-Committee and particularly welcomed his proposals with regard to the time schedule.

His delegation assumed that the Working Group would continue to meet and that, in view of the Chairman's reference to flexibility, the dates he had proposed were target dates.

He agreed with the representative of Kenya that the Working Group should continue to meet until the time came for the Sub-Committee itself to rationalize its work. In fact, the Working Group could continue to meet until 10 August, and there was no reason why negotiations should not carry on independently at the same time. The representative of Kenya had rightly stressed the Chairman's wish to introduce an element of flexibility, because it was essential that the Sub-Committee should now concentrate on refining its ideas and narrowing its differences.

Mr. BOJILOV (Bulgaria) said that the Chairman's proposal, as he had understood it, was essentially an attempt to formulate a programme of work for each of the next three weeks. He approved that approach in principle, but his delegation nevertheless had misgivings about certain aspects of the statements just made both by the Chairman and by other delegations.

First, they had seemed to imply that the work of the Working Group precluded consultations. He did not think that was the case. The work of the Working Group provided material for consultations, and when they were to be held depended on the political will of members.

Secondly, they had seemed to ascribe too much importance to the reports of Sub-Committee I and the other Sub-Committees; those reports were important of course,

but they would be merely the outcome of the work now in progress. He drew attention to operative paragraph 2 of General Assembly resolution 3029 (XXVII), in which the Committee was requested to hold two further sessions in 1973 with a view to completing its preparatory work, and to submit a report with recommendations to the General Assembly at its twenty-eighth session. The preparation of the report was thus clearly linked to the completion of the preparatory work. In operative paragraph 5 of the same resolution, the General Assembly had decided to review at its twenty-eighth session the progress of the preparatory work of the Committee and, if necessary, to take measures to facilitate completion of the substantive work for the Conference and any other action it might deem appropriate. The General Assembly had therefore evidently intended that the Committee should devote most of its attention to completing the preparatory work.

The report of Sub-Committee I would reflect the success or failure of the work carried out in the few remaining weeks. If good results were achieved, he believed that it would not be difficult to present them in the form of a report. In any case the preparation of the report would not impede the work itself. He acknowledged the need for flexibility, and expressed support for the United Kingdom representative's suggestion that the Working Group should continue to meet, if necessary, until the last possible day. In parallel with those meetings intensive consultations should take place involving all delegations.

The CHAIRMAN said that the form and content of the report would be considered later, but the views expressed by the Bulgarian representative on the subject could be borne in mind. At present the Sub-Committee was considering how to tackle its immediate problems.

The question had been raised whether the work of the Working Group precluded the possibility of consultations. In his view the two processes should be complementary and share the common goal of producing agreed texts reflecting trends of opinion within the international community. The Committee's aim must be to finalize proposals for eventual submission to the Conference, and he personally did not mind by what means that end was achieved.

Mr. TUNCEL (Turkey) expressed his delegation's approval of the plan of work suggested by the Chairman. He wished to put forward a few ideas which might contribute to the successful completion of the Sub-Committee's work.



First, the Chairman and other speakers had made it clear that the proposed work programme was flexible and subject to whatever alteration might prove necessary. His delegation was prepared to adopt the plan provided that the dates prescribed in it were not rigidly adhered to. Secondly, the Chilean representative had mentioned at a previous meeting that his Government was preparing for the Conference on the understanding that it would be held in May 1974, which was the date set by the General Assembly. The Secretariat would also be doing its part. It was therefore up to the Committee and the Sub-Committees to ensure that their share of the preparatory work was completed in time. He stressed that Sub-Committee I should not try to give priority to its own work, but should co-ordinate its efforts with those of the other Sub-Committees and Working Groups so that they could all finish at the same time.

Thirdly, there was the question of consultations, which had in fact been going on ever since Sub-Committee I was set up. His delegation had made it clear from the beginning that it regarded the Committee's work as political rather than legal, for the delegations taking part in it were first and foremost representatives of their Governments. Consultations among them were therefore political consultations, and could not be expected to happen merely because a certain period of ten days was set aside for them. Such consultations could be undertaken only on the initiative of individual Governments. He emphasized that consultations must be allowed to take place anywhere at any time. He thought that too much importance was being attributed to them at the present stage; the main political consultations would take place towards the end of the Conference, for Governments tended to reserve their positions until the last minute. For the present the Working Groups should be left free to get on with their work, and at the end of the session a report describing the progress made to date should be forwarded to the Conference.

The CHAIRMAN said it was outside his competence to decide what should be done in the other Sub-Committees, and co-ordination was a matter for the main Committee to discuss. He agreed with the Turkish representative that the Conference in Santiago would be the appropriate forum for political consultations and decisions. In the context of the present session, he had only wished to say that members must consult together in order to ensure that the proposals which were eventually put forward did not show apparent disagreement where there was no disagreement in fact.

Mr. ROMANOV (Union of Soviet Socialist Republics) said his delegation had advocated from the start that the work of Sub-Committee I and particularly of its Working Group should be carried out at a steady pace and without delays. He therefore welcomed the references made by previous speakers to the need to accelerate the work of the Working Group. The whole question now was by what means the Sub-Committee could best achieve its aims.

To answer that question it was necessary to review the present position. The Working Group had completed, on first reading, its consideration of the functions of the assembly of the proposed international sea-bed Authority and had begun to elaborate articles relating to the council of the Authority. What did the term "first reading" imply? It meant, first, that amendments to texts prepared by the Chairman of the Working Group were submitted at meetings of the Working Group and subsequently considered by an informal drafting group. Secondly, it meant that a second reading had to be given, the purpose of which was, where possible, to elaborate agreed articles, and where agreement was not possible, to prepare alternative texts. The whole process was both laborious and time-consuming. Over fifty meetings had been needed to complete the first and second readings of the articles relating to the régime. At the present session there had so far been about fifteen meetings of the Working Group and a few meetings of the informal drafting group. The former was now working so intensively that there was no time for meetings of the latter and very little time for consultations. He suggested that in future the Working Group should meet only once a day and the drafting group three times a week, and that consultations should be held at any time in parallel with those meetings.

To establish a time-limit by which the Working Group must conclude its consideration of the draft treaty articles was unrealistic. Many very important provisions remained to be considered, including the composition and rules of procedure of the proposed council, the boundaries of the international area, definitions of terms, and the rules relating to the exploitation of resources. The Working Group could therefore hardly be expected to complete its consideration of all those questions and its second reading of the articles on the functions of the assembly and the council by 31 July, even if that date were regarded as flexible. To set such a time-limit would not contribute to the success of the Working Group, but would merely have the absurd effect of preventing it from meeting officially after that date.

It had been suggested that from 1 to 10 August intensive consultations should be held. He did not see why, at the same time, meetings of the Working Group should be discontinued. The Working Group itself was a forum for consultations and had fully justified its existence as such during the past three sessions. His delegation rejected the very idea that there could be any doubt of the skill shown by its Chairman in guiding those consultations. The Chairman of the Sub-Committee had appeared to damn him with faint praise by implying that he might continue to play a useful role.

The draft treaty prepared by the Committee was expected to be both broadly-based and agreed upon by all delegations as far as possible. He did not see how ten days of consultations among small groups of countries could lead to the formulation of an agreed draft; it was more likely that a mass of different and incompatible drafts would result, which would be a step back rather than a step forward in the preparation of the sea-bed treaty. In the Working Group, by contrast, the different formulations of the same articles which had been submitted to it in the form of proposals were gradually being reduced in number. His delegation could not regard consultations as a substitute for the businesslike activities of the Working Group. In any case it was not clear who was to participate in the consultations, or to what purpose, or how their results would be made known and reflected in the report. All members represented sovereign States and had to report to their Governments, and it was within the framework of the Working Group that normal exchanges between delegations and between them and their Governments could most effectively take place.

There did not seem to be a consensus in the Sub-Committee with regard to the dates suggested by the Chairman. His delegation could accept 17 August as the time-limit for the completion of Sub-Committee I's work, but thought that there was no point in setting so-called "flexible" intermediate dates. There was also no need to propose changes in the procedures of the Working Group. It was a representative body fully empowered to amend its own rules of procedure if it thought fit.

In conclusion, he hoped that no dramatic decisions would be taken at the present meeting, and that members would simply recognize the need to accelerate the work of the Sub-Committee and determine to carry it out as effectively as possible. There was no substitute for sheer hard work, and he would not wish to see any new obstacles placed in the Sub-Committee's way.

The CHAIRMAN welcomed the favourable comments which had been made on the Chairman of the Working Group, of whose integrity and ability he was fully aware. So far from attempting to bring the work of the Working Group to a stop, he wished to enable it to advance more rapidly. The suggestion by the Soviet Union of holding one Working Group meeting per day, leaving the rest of the time free for informal consultations, was fully within the discretion of the Chairman of the Working Group.

He said that the fear that a few members of the Sub-Committee might meet privately and reach decisions not known to the Sub-Committee as a whole was groundless. The Working Group was in fact already the forum, before which suggestions received from small groups, whether geographical or not, were considered and discussed. His own ardent wish was to move the process forward. Since the first reading in the Working Group had not yet been completed, he was suggesting a procedure whereby the Working Group could bypass the discussion of issues which were likely in any case to be rejected.

He believed that the representative of the Soviet Union was in agreement with the spirit of his proposal, which he sincerely hoped the Sub-Committee would accept in principle, thus permitting discussions to proceed on an individual level.

Mr. VINDENES (Norway) said that the overriding concern of the Sub-Committee in the second half of its work was to prepare a concise and coherent report to the General Assembly and to the Conference on the state of the work. The Conference could only act effectively if it received information on the progress made and the alternative positions held. Sufficient time must therefore be left for preparation of the report, even if that meant curtailing the work of the Working Group on specific texts. Consideration of those texts could always be continued during the Conference itself. He therefore supported the proposal by the Chairman to allow sufficient time for preparation of the report and for informal discussions between representatives.

Mr. SUGIHARA (Japan) said that, although aware of the urgency of the situation, he could not fully support the proposal for suspending the work of the Working Group to permit informal consultations to take place. The Sub-Committee should consider first of all the achievements of the Working Group so far. The first and second readings were almost completed and the Group was now concerned with the crucial aspects of drafting articles and devising the machinery of the Conference. Although it was true that the text still contained footnotes and square brackets, discussions in the Working Group had materially helped delegates towards mutual

understanding and the modification and adjustment of their attitudes. He was not fully convinced of the value of informal consultations at that stage. The success of the Law of the Sea Conference involved the simultaneous solution of problems in all Sub-Committees and it was possible that the other Sub-Committees had not yet reached a sufficiently advanced stage.

He would be prepared to support the proposal by the Chairman for informal consultations, which were not, of course, incompatible with continuation of the work of the Working Group, provided that sufficient flexibility were allowed in the implementation of the proposal.

The CHAIRMAN wished to make it clear that informal consultations were in fact already taking place. The only point at issue was the type of subject to be covered. Such consultations could not, of course, solve political problems, but they performed a valuable function by reflecting areas of agreement and disagreement.

Mr. OLSZOWKA (Poland) said that the Working Group had made substantial progress and could produce results if allowed to continue with its work. Informal political consultations, although helpful, could not replace the Working Group, nor should they be allowed to retard its work. Resolution 2750 (XXV) of the General Assembly had given the Sub-Committee inter alia the task of formulating draft articles on subjects within the Sub-Committee's terms of reference. It was very improbable that such draft articles could emerge from informal consultations.

He reminded members of the Sub-Committee of the length of time required to obtain agreement on issues and subjects in bilateral and multilateral negotiations. It would be optimistic and unrealistic to expect to obtain agreement within ten days by means of informal consultations. He therefore believed that the Working Group should be allowed to continue its work on the existing basis, not up to a time-limit of 31 July but until it had fulfilled its appointed task.

The CHAIRMAN said that since the Working Group was itself an informal group, his proposal only involved moving on to a new phase in the form of informal consultations. He reminded members of the Sub-Committee that only 18 days remained for completion of their work.

Mr. PARDO (Malta) said that informal consultations could perfectly well take place within the Working Group. A prerequisite of the success of such consultations, whether inside or outside the Working Group, was the clarification of certain basic issues, such as the purposes and functions of the Conference and the voting procedures to be adopted. Until such clarification had been attained informal consultations could not lead to useful results. He therefore suggested a meeting of the full Sub-Committee between 10 and 15 August to discuss those issues.

Mr. ZEGERS (Chile) said that his Government hoped to see the Conference open on the date fixed by the General Assembly. That meant that negotiations would have to start immediately, in order to produce the greatest possible number of agreed texts and the fewest options. He therefore supported the proposal by the Chairman.

Mr. de ROSSI (Italy) had some reservations about transferring the main emphasis of the work from its natural forum, the Working Group, to some informal entity, which might in time even become enlarged to form a second Working Group. He suggested that a saving of time could well be obtained by curtailing the length of statements.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the Sub-Committee was concerned with two separate aspects, the basic aim and the method of achieving it. He was disturbed lest they lose sight of the basic aim during discussion of the method. That aim was to obtain a multilateral and universal treaty and they should not therefore digress into consideration of regional or group interests. The foundation for that treaty, as many delegates had said, was a thorough knowledge of the subject-matter and the devising of suitable machinery for discussion during the conference.

He felt that the three-stage proposal by the Chairman was open to objection on several grounds, notably the allocation of a complete week for preparation of the report. The main emphasis in the report of Sub-Committee I would in any case be placed on reflecting the work of the Working Group and it would therefore be quite wrong to discontinue discussions in the Working Group just at the time when it was urgently required to produce results.

He did not agree with the criticism of square brackets and footnotes, which in fact represented the views of several sovereign States. Sincere disagreements could not be eliminated merely by wishing them away and there was no reason to suppose that they could be more easily solved by informal consultations.

In the light of the above divergence of opinion within the Sub-Committee, he considered that it would be premature to take an immediate decision on the proposal.

The CHAIRMAN said that an earlier proposal by the representative of Greece, regarding the recording of the Chairman's statement in extenso, was before the Sub-Committee.

Mr. LEVY (Secretary, Sub-Committee I) said that the recording of the Chairman's statement in extenso involved financial implications, of which the Sub-Committee was required to take note.

Mr. ROMANOV (Soviet Union) asked whether actual figures could be given for the cost.

Mr. LEVY (Secretary of Sub-Committee I) said that the most recent quotation had been US\$90 per page and the statement would amount to about 7-8 pages.

It was decided that the Chairman's statement should be recorded in extenso.

The CHAIRMAN, thanking the members of the Sub-Committee for their enthusiastic work, said that he was glad to see that all delegations were aware of the urgency of the situation and were prepared to allow the Chairman of the Working Group the necessary freedom in order to speed up the work of the Group.

The meeting rose at 6.05 p.m.