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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-THIRD MEETING \*/

held at the Palais des Nations, Geneva,  
on Wednesday, 1 August 1973, at 3.15 p.m.

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

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N.B. Participants wishing to submit corrections to this provisional summary record are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4121, Palais des Nations, Geneva, within three working days of receiving the provisional record in their working language.

\*/ This provisional summary record, together with the corrections to be issued in consolidated form after the session, will constitute the final record of the meeting.

## ORGANIZATION OF WORK

The CHAIRMAN said that it would expedite the preparation of the summary records if members of the Committee delivering written statements arranged to provide the secretariat with an extra copy or a photocopy beforehand.

He informed the Sub-Committee that its Vice-Chairman, Mr. Fekete, the representative of Hungary, would be unable to continue to exercise his functions during the remainder of the session. He therefore suggested that, in accordance with the normal practice, another member of the Hungarian delegation, Mr. Zador, should replace him.

It was so decided.

Mr. ZADOR (Hungary) thanked the members of the Sub-Committee for the confidence they had placed in his country and in himself.

## PROGRESS REPORT BY THE CHAIRMAN OF THE WORKING GROUP

The CHAIRMAN invited the Chairman of the Working Group to present a report on the Group's progress.

Mr. PINTO (Sri Lanka), Chairman of the Working Group, said that since he had last given a progress report, the Working Group had continued its first reading of draft texts relating to the powers and functions of the international machinery. The Working Group had considered document No. 4 of 23 April 1973, and had decided to take up first draft articles XXVIII (Powers and functions of the Authority), XXX (Powers and functions of the Assembly) and XXXII (Powers and functions of the Council) commencing respectively on pages 46, 53 and 60 of that document. To facilitate the work of the Group on those three articles, a new document, Document No. 5, had been prepared in collaboration with the Secretariat, which was a comparative table reflecting in three adjacent columns and under some 20 headings, the powers and functions of the Authority, and powers and functions that might be vested in the Assembly and the Council, respectively, with a view to giving effect to the Authority's powers and functions.

As the Authority was conceived of by all delegations, it would have two organs with over-all responsibilities: first, an organ with primarily deliberative functions, variously called "Assembly", "General Assembly", "General Conference", composed of representatives of all the Contracting Parties, and for the sake of convenience referred to as the "Assembly"; and secondly, a smaller organ with primarily executive functions, called "Council" or "Executive Board" and referred to for the time being as the "Council".

At the outset, it had been suggested that an article like article XXVIII, on the powers and functions of the Authority, as such, was not necessary: since the Authority must act through its organs, it would be sufficient to distribute the various powers and functions listed in article XXVIII among provisions dealing with the Authority's organs and omit from the treaty a text along the lines of article XXVIII. On another view, the text in article XXVIII should be replaced by a provision that would describe the powers and functions of the Authority, but only in general terms and without specific detail. It was decided to let the discussion proceed on the basis of the three articles referred to, and to return to the question of a general article on the powers and functions of the Authority after the powers and functions of all of its organs had been considered.

There were within the Working Group two concepts of the two major organs, the Assembly and the Council and of the relationship between them. The first, or hierarchical concept, would characterize the Assembly as "the supreme organ" of the Authority, empowered to deal with any question within the scope of the articles and to give directions and make recommendations on any such question to the Council, to the other organs of the Authority and to member States. On that same view, the Council would perform those functions that the Assembly delegated to it, and would be responsible to the Assembly. While it was clearly the Council that would manage the day-to-day business of the Authority, it would do so under the supervision of the Assembly, and the actions of the Council would be subject to review and redressment by the Assembly. The basis of that view was the assumption that the Assembly, as the most comprehensively representative organ, should always have the ultimate authority on any matter, and the possibility of reviewing the decisions of organs of more restricted membership, where the economic, technological and political influence of individual members as groups might have a greater impact.

Those who favoured the second approach did not wish to be explicit regarding the establishment of a hierarchy of organs, and so did not wish to characterize one organ as "supreme", or to conceive of it as the fountain of all authority. On their view, it would be sufficient to list the powers and functions appropriate for each organ and let the relationship between them evolve in practice. Nor was it necessary to consider whether a particular power derived from a superior organ and its exercise was subject to review by that organ, or whether it derived directly

from the articles themselves. In the interest of operational efficiency powers and functions had to be conferred on a variety of organs. While in theory the Assembly, as the most comprehensively representative organ, would, in the broadest sense, reflect the collective will of the membership, it should have only general recommendatory powers, and it would be impractical and unnecessary for it to be given explicit powers in relation to the actual day-to-day business of the Authority.

Each of the foregoing approaches was reflected in alternative texts dealing with the powers and functions of the Assembly and of the Council.

He observed, however, that irrespective of the difference of approach regarding the relationship between the Assembly and the Council, it seemed clear, that the Assembly would have the broadest possible recommendatory and deliberative powers and that that would be stated explicitly. The Assembly was likely to be given the power to make recommendations on any matter within the scope of the new Convention to the Council, possibly to certain other organs of the Authority, and to member States. While the view had been expressed that to confer such a broad recommendatory power would seem to render superfluous additional references to general recommendatory powers or to recommendatory powers in connexion with specific subjects, several representatives had felt that such additional recommendatory powers should continue to be reflected, at least for the time being. Consequently, special provisions were contemplated by some delegations, at least through the current phase of the first reading, on recommendatory powers regarding (1) promoting international co-operation in the international "Area" for certain purposes; (2) safeguarding the marine environment; (3) the peaceful adjustment of situations which the Assembly deemed likely to impair ecology; (4) the criteria and rules relating to the equitable sharing of benefits derived from the Area or, if those were incorporated in the Convention, then supplementary guidelines for their implementation; (5) ensuring participation by the developing countries, and certain other countries, in the exploration of the Area and the exploitation of its resources, on terms of equality with the technologically advanced developed countries; (6) basic guidelines for appropriate agreements or arrangements between land-locked or other geographically disadvantaged States and transit States; (7) scientific research in the Area; and (8) the amendment of any technical annexes that might be included in the Convention.

It should be noted that not all representatives could agree in respect of each and every one of the foregoing specific recommendatory powers of the Assembly.

In addition to the general and special recommendatory powers of the Assembly, some delegations wished to see a general deliberative power conferred on the Assembly to consider questions relating to the exploration of the Area and the exploitation of its resources, without any express direction or limitation as to the action that the Assembly might take on the basis of such deliberations. Some representatives would omit that provision while others would like to see it replaced by a more specific power of the Assembly to determine policy and lay down the general conditions governing the exploration of the Area and the exploitation of its resources.

He then spoke about the powers and functions of a broadly constitutional or administrative character which, in the view of some representatives, should be performed by the Assembly as the organ of the Authority with the most representation. The first of those was to "elect the members" of the Council in accordance with the relevant provisions on the composition of the Council. Representatives who favoured a Council in which some members would be elected and others designated on the basis of specified criteria, preferred a more general formulation, and accordingly an alternative text would empower the Assembly to "establish the membership" of the Council. Some representatives would give the Council the power to elect members of the Tribunal, while in the opinion of others, both organs should have a role in the election. The Assembly should in the view of some also elect the members of the Tribunal contemplated as a permanent organ responsible for dispute settlement. That would, however, be subject to the emergence of an agreement on the establishment of such a permanent judicial organ. It had been provisionally agreed that the Assembly could establish, as and when appropriate, such subsidiary organs as might be necessary for the fulfilment of its functions, and that it should review periodically the need for such subsidiary organs as might have been established. While it had been agreed that member States might have to provide financial support to the Authority, opinions were divided on when such support might be necessary and on how it might be done. It was generally agreed that the Authority should be self-financing, and that contributions should be assessed on member States only in relation

to the Authority's administrative budget. However, some would limit such support to the initial stages of the Authority's existence until the revenues received had accumulated sufficiently to sustain it, while others saw no reason for such a restriction.

On one view, the Assembly should have the power to adopt the financial regulations of the Authority, while some representatives, who felt that details relating to the financing of the Authority should be covered in the Convention itself, could agree only to the Assembly's having the power to adopt regulations supplementary to the financial provisions of the treaty itself. Some delegations would omit that provision as the precise content of the term "financial regulations" was not clear to them.

Those who favoured adoption by the Assembly of "financial regulations" would provide for the Council initially to recommend a draft of those regulations. A corresponding power to make recommendations to the Assembly regarding the financial regulations of the Authority was included among the Council's powers and functions. However, some would invest the Council not merely with the power to make recommendations to the Assembly on that matter, but in fact to adopt the Authority's financial regulations, and that idea was reflected as an alternative text under the Council's powers.

There had been agreement that the Assembly should be the organ to approve the Authority's budget and, further, that the budgetary proposals would be drawn up initially by the chief executive officer of the secretariat for the Council, and the Council would in turn submit the budgetary proposals to the Assembly. The Assembly would have the right to approve the budget or return it to the Council for reconsideration and re-submission.

A corresponding power was to be vested in the Council, together with a general power to "adopt necessary measures for the execution of budgets approved by the Assembly".

Some delegations wished to provide expressly for a general power of the Assembly to authorize borrowing by the Authority, while others did not wish to include such a power.

On other constitutional and administrative matters, provision was to be made for the appointment of the principal officer of the Secretariat. While different terms like Secretary-General, Director-General and Executive Secretary had been

considered, the term "chief executive" was being used temporarily for convenience. On one view, the chief executive was to be appointed by the Assembly on the recommendation of the Council from a list of candidates proposed by member States, while on another, the Council should be given the power of appointment, and corresponding provisions covering these alternatives appeared among the powers and functions of the Council. The Assembly should, on one view, establish the administrative rules of the Authority, including its staff rules, and in the opinion of others that should be done on the recommendation of the Council. A corresponding power to make such a recommendation would be included among the powers of the Council to cover the second possibility. The Assembly would be required to adopt its own rules of procedure and select a President for each session along the lines of a similar article in the Charter of the United Nations. It would also be given a central role in the procedure for amending the Convention. For the time being, the Assembly would be required to consider proposals for amendment of the Convention in accordance with an article to be specified - an article which was to contain the substantive rules of the amendment procedure. A corresponding provision among the powers and functions of the Council would require consideration of any proposed amendments by the Council in the first instance, their initial approval and subsequent transmission to the Assembly.

Some representatives favoured a specific provision relating to delegation of the exercise of the Assembly's powers and functions (or such of them as might be specified by reference to particular articles) to the Council, and to modification or revocation of such delegation. Others saw no need for such explicit coverage and would prefer to omit that provision from the Convention.

It had been agreed that the Assembly should consider the reports of the Council, and, if it deemed it appropriate, reports from the other organs of the Authority. On one view, provision should be made for special reports from the Council, and, as appropriate, from the other organs of the Authority on any matter within the scope of the Convention. Special provision was proposed for consideration, by the Assembly, of annual and special reports of the Enterprise to be submitted through the Council. Corresponding provisions on reporting were included among the powers and functions of the Council and the other organs of the Authority, including the Enterprise.

Three other provisions of a constitutional nature had been proposed: first, that the Assembly should have the right to decide whether a State should cease to enjoy permanently or temporarily, in whole or in part, the rights and privileges of membership of the Authority. Some representatives favoured a provision which would give the Assembly the right to deprive a member of the rights and privileges of membership upon the recommendation of the Council or upon the recommendation of the Security Council of the United Nations, and foresaw in that connexion a separate article dealing with the substantive aspects, including the criteria and circumstances upon which such action would be based. Others preferred a more detailed provision which would interpose a decision of the Tribunal, and would indicate the extreme nature of the conduct that would constitute the delinquency. In that connexion, some representatives took the view that all States might be considered to have certain inalienable rights to the benefits accruing from the Area and its resources as the common heritage of mankind and that not even a formal act of the Assembly interrupting the rights and privileges of membership, could deprive States of those inalienable rights. Corresponding powers and functions contemplated for other organs in connexion with the suspension procedure would be included among the powers and functions assigned to those organs.

Under a second proposal, the Assembly would be required by some to approve agreements between the Authority and the United Nations or between the Authority and other "appropriate intergovernmental organizations", that term being generally interpreted to mean organizations whose work was related to that of the Authority or, in the view of those who would be more specific, organizations concerned with the oceans. Others did not feel it necessary for the Assembly to review and approve each such agreement individually, and would prefer merely to have the Assembly approve the general terms on which such arrangements or agreements between the Authority and such organizations, or States might be concluded. Yet others felt that the Assembly should have no role to play in this matter and that a comparable power should be given to the Council. Thus, the powers and functions of the Council would include the power to approve and authorize the conclusion of such agreements and, in addition, to establish procedures for co-ordination between the Authority and the intergovernmental



organizations described as well as agreements between the Authority and States. It would be necessary for a choice to be made at a later stage as to which organ - the Assembly or the Council - was best suited to discharge those functions. The Council was to be given, in addition, the power to supervise the administration of agreements entered into by the Authority.

Under a third proposal, the Assembly's powers of a constitutional character would include that of approving the statutes or constituent instruments governing the functioning of the Enterprise, of laying down principles concerning the appointment of the Governing Board of the Enterprise which would provide for a recommendatory role for the Council, and lastly of acting on the recommendation of the Council in appointing the Governing Board in accordance with those principles. Those who were unable for the time being to accept the Enterprise concept, proposed omission of that provision. A corresponding power would be included among the powers and functions of the Council.

Turning from the more constitutional powers and functions of the Assembly to its more operational powers and functions, he noted that on one view the Assembly would be the organ of the Authority to adopt criteria and rules for the equitable sharing of benefits, as well as to approve annually a plan for the apportionment of benefits submitted by the Council on the basis of such criteria. Another provision along similar lines would, however, expand that text by specifying the principal criteria to be used, and requiring the Assembly not merely to apportion the benefits, but also to adopt rules with a view to securing their utilization in accordance with the purposes and principles of the United Nations. Other representatives would require the Assembly to adopt not "precise criteria and rules", but merely supplementary guidelines for implementing the criteria, which criteria would in their view, form part of the Convention itself. Another alternative would deal with the matter under a general provision empowering the Assembly to approve proposals by the Council for changes in the allocation of the net income of the Authority within the limits to be prescribed in an appendix. That appendix would deal, inter alia, with apportionment of cash benefits, through listed international development organizations, for the "economic advancement of developing States Parties to this Convention". Some representatives felt that the whole matter of benefit sharing should be dealt with by the Council or by

a subsidiary organ to be established. All those alternatives were reflected in texts before the Working Group, and corresponding powers and functions were included under the Council provisions and in the provisions concerning appropriate subsidiary organs.

In the view of some representatives the Assembly should be given the power to adopt, perhaps on the recommendation of the Council, international rules, standards and practices relating to a variety of technical and operational subjects dealing with the exploration of the Area and the exploitation of its resources, including licensing of such activities in the Area, and non-interference with use of the high seas. Those who felt that the Council should have the primary role in the adoption of operational rules would prefer to empower the Council to adopt rules of this type and urged omission of such subjects from the Assembly's rule-making power. Those who were opposed to a system of licensing supported a shorter list of subjects, which omitted those covering licensing, while some delegations could consider only rules relating to the security and protection of human life. It was the view of some that "non-interference with use of the high seas" was a subject outside the competence of the Authority as such.

On another approach, international rules, standards and practices of such a type should not be adopted by an organ of the Authority. They should form part of the text of the Convention itself, which would also establish a procedure for their implementation through technical annexes containing specific rules and regulations which would be prepared by the Council, or a subsidiary organ, and come into force after being submitted directly to Contracting Parties and approved by them. Those technical annexes would be amended by the same procedure. Another view which accepted that basic approach, would nevertheless give the Assembly the role of examining the technical annexes submitted to it by the Council and submitting recommendations to States on the matter.

All alternative proposals would be reflected in the texts before the Working Group, and complementary powers would be assigned to the Council.

Some representatives would empower the Assembly to adopt general principles and recommendations concerning the prevention of pollution and contamination of the marine environment resulting from or caused by exploration of the Area and the exploitation of its resources, while others would cover pollution from all activities in the Area. In addition, in the opinion of some, the Assembly should also have the power to take measures to prevent, mitigate or eliminate pollution or the threat of pollution as well as other hazardous occurrences resulting from or caused by any activities in the Area. Others thought the recommendatory provision unnecessary in view of the general recommendatory power of the Assembly, while in their view the adoption of principles was a matter for the Council, or perhaps a specialized subsidiary organ. On that view, the entire provision ought to be omitted. It should also be noted that a proposal had been made to empower the Council to issue emergency orders to prevent serious harm to the marine environment arising from any activity connected with exploration of the Area and the exploitation of its resources. It was also proposed that, on the recommendation of the Council, the Assembly should approve "non-discriminatory normative principles" dealing with a variety of matters concerning the uses of the marine environment. Other representatives preferred to omit such provisions on the ground that it went beyond the competence of the Authority as they conceived it.

Some representatives felt that the Assembly should have the power to establish an emergency fund for relief in the event of a disaster resulting from activities of exploration and exploitation of the Area, while others felt that the establishment of such a fund, or at least its operation, should be among the powers and functions of the Council. Accordingly, the Council's powers and functions contained provisions covering such alternatives. Some representatives preferred to omit such provisions altogether, or to deal with it in connexion with budgetary arrangements. It was also proposed that the Assembly should have the power to make recommendations for the peaceful adjustment of situations which, in the opinion of the Assembly, were likely to impair the ecology of the Area or the general welfare of the international community or co-operation among States in the Area. Some representatives felt that such a power should be omitted, because it was superfluous in view of the general recommendatory power of the Assembly, because it appeared to deal with matters beyond the purview of the Authority as they conceived it, or because it might be better if it were assigned to an organ dealing with the settlement of disputes.

Several alternative proposals had been made for a power of the Assembly in connexion with participation of developing countries and certain other countries lacking advanced technology or financial capacity in exploration and exploitation of the Area, and, in the view of some representatives, in all activities in the Area. They dealt with arrangements for the training of nationals of such countries, provision of technical assistance, employment of qualified personnel from such countries and recognition of a certain priority for such countries in specified activities connected with the exploration of the Area and the exploitation of its resources. Some representatives believed that many of the powers sought to be assigned to the Assembly under those proposals should be assigned to the Council or to an operational arm of the Authority, such as the Enterprise, or to a subsidiary organ.

There were several proposals for a power of the Assembly with respect to scientific research. They mainly concerned the encouragement of research in the Area; the promotion of international co-operation in scientific research on the resources of the Area; promotion of the exchange of scientific and technical information relating to the peaceful uses of the Area and its resources; promotion of the exchange and training of scientists and experts in the field of exploration of the Area and the exploitation of its resources; encouraging the development and practical application of scientific techniques for the exploration of the Area and the exploitation of its resources; and the acquisition of facilities, plant and equipment useful in the carrying out of the authorized functions of the Authority. Representatives had supported one or more of those measures, but no one group of measures had been able to command general support. In particular, opinions differed on the steps to be taken to accomplish those purposes. On one view, the Assembly should "take measures" to achieve them; some representatives could go no further than specifying the adoption of principles or the making of recommendations, while others would not direct the Assembly to adopt any particular mode of action. Some delegations would assign the provision of services, equipment and facilities to a subsidiary organ, while others suggested that the training of personnel should be the function of a subsidiary organ.

The view had been expressed that the Assembly should have the power to lay down regulations for the conduct of scientific research in the Area, whether carried out by the Authority itself, or by other entities under the authorization of the Council. That view was opposed by some representatives, who were unable to accept such a limitation on the freedom of scientific research. Provisions under the Council's powers and functions reflected the same difference of view. Alternative texts provided for the Council's power to authorize scientific research; or to encourage international co-operation in the exercise of the freedom of scientific research in the Area and, in the opinion of some, research on its resources; or again simply to encourage scientific research in the Area. A proposal to empower the Council to carry out scientific research in the Area and on the development and practical application of scientific techniques for the exploration of the Area and the exploitation of its resources, could not be accepted by some representatives. Some could agree with the provision in so far as it concerned scientific research, but found unrealistic the reference to research in the practical application of scientific techniques of sea-bed exploration and exploitation. Others would omit that provision altogether, or assign it to a subsidiary organ to be established.

It had also been proposed that the Council should be empowered to promote the exchange of scientific and technical information, or alternatively, to collect, publish and disseminate all such information as would contribute to man's knowledge of the Area and its resources; or alternatively the setting up of international and regional training centres for research and the training of personnel in sea-bed technology. Some felt that this function should be performed by a subsidiary organ.

Some representatives proposed that the Assembly should have the power to decide from time to time which parts of the Area should be open to exploration and exploitation, and to establish, where necessary for the orderly development of the Area and the preservation of the marine environment and its resources, reserve areas free from exploration and exploitation. Others felt that such a provision should be omitted, or that it should be assigned to the Council, which in the view of some should have a major role in the regulation of production. Under the Council's powers in that field, alternative formulations provided for the taking of measures to regulate the production, marketing and distribution of raw materials

from the Area in consultation or collaboration with the competent organ of the United Nations or with the specialized agencies concerned. One proposal contemplated an elaboration of such measures in an article in the Convention, while others specified some of the measures envisaged. In the view of some, the inclusion of specific controls for the purpose of commodity price stabilization would be meaningless, and accordingly their proposal would merely require "measures ... on a global basis ... taking into account the production of raw materials from the Area". Some representatives wished to have that power assigned to the Enterprise or to a subsidiary organ, while others took the position that it should be omitted altogether.

The Working Group had discussed at length, on various occasions, a system of licensing exploration of the Area and the exploitation of its resources, which, for some representatives, appeared to be the only feasible method at the present time whereby operations could be encouraged and carried out efficiently in the Area. On one view, the Assembly should adopt, upon the recommendation of the Council, rules regarding the entire licensing system, and approve an appropriate scale of fees and other charges with respect to all activities of exploration of the Area and the exploitation of its resources. A corresponding power would be conferred on the Council. In the view of others, operations in the Area should be regulated or carried out by the Council or by a subsidiary organ and there was no need to give the Assembly a direct role in the matter. From their point of view, the extent of the Assembly's role should be limited to a power to consider general questions relating to the exploration of the Area and the exploitation of its resources, and in particular to determine general conditions under which such exploration and exploitation might be carried out.

As envisaged above, many proponents of the licensing system gave a central role to the Council and provisions concerning the Council contained alternative formulations on the point, empowering it to issue or authorize the issue of licences in accordance with a substantive provision to be prepared, or providing specifically for the issue of licences to Contracting Parties individually or in groups (and, on one view, to natural or juridical persons sponsored by a Contracting Party) for the exploration and exploitation of the Area in accordance with the Convention, its appendices and annexes and supplementary rules and recommended practices.

An alternative formulation would empower the Council to decide from time to time, and issue instructions to a Management and Development Commission accordingly, regarding the method by which the Area or a part thereof might be explored or exploited. Four such methods were contemplated: (1) direct exploitation by the Authority through an appropriate organ; (2) joint ventures; (3) service contracts; and (4) a system of non-discriminatory licensing. In connexion with the licensing procedure note should be taken of a proposed power of the Assembly to allocate blocks for exploration and exploitation, as well as a corresponding power of the Council to decide upon competing claims to such blocks. On another view, such a power should be assigned to a subsidiary organ.

In that connexion, one of the views expressed was that any licensing system was incompatible with the concept of the Area as the common heritage of mankind and no powers relating to such a system should be assigned to any organ of the Authority.

Other powers and functions proposed for inclusion with regard to the Assembly related to the following subjects: (1) Consideration by the Assembly of the general problems arising for land-locked countries (and in the view of some, geographically disadvantaged countries and transit States as well) and recommendations concerning appropriate agreements and arrangements with respect thereto between the States concerned. A corresponding power of the Council to deal with the specific problems of these countries and to recommend such agreements and arrangements would be included under the Council provisions; (2) Approval of draft conventions dealing with specified subjects on the recommendation of the Council, and their submission to Contracting Parties for appropriate action; and (3) Establishment of control over the use of materials obtained by the Authority from the Area in order to ensure that these materials were used only for peaceful purposes. It had also been proposed to omit such a provision.

There had been no precise proposal thus far that the Assembly might play a direct role in the settlement of disputes arising out of the Convention. However, the view had been expressed that the Assembly might be asked to bring about the settlement of disputes or situations relating to major economic issues. Other representatives had proposed the omission of such a provision and had recalled the central role of the Tribunal in the system of dispute settlement envisaged by them. On the other hand,

some representatives had proposed that the Assembly should be empowered to discuss any question relating to the maintenance of law and order in the Area and to draw the attention of the Council to situations "likely to endanger international law and order in the Area or the territorial, jurisdictional or ecological integrity of the Area". Others would merely empower the Assembly to discuss any question relating to the observance or implementation of the Convention; while on a third view, the Assembly ought to be empowered to request an advisory opinion of the Tribunal on any matter within the scope of the Convention. It had also been proposed to omit such a provision.

He then referred to two other proposed powers of the Council. The first was the power of the Council to approve the establishment of scientific stations, nature parks and archeological or other marine preserves in the Area, as well as such "services for international community purposes" (a place to be defined in due course). It had also been proposed to omit such a power.

The other power related to the Enterprise, the entity proposed by some representatives as the sole entity to carry out exploration of the area and exploitation of its resources. The Council would propose to the Assembly the draft statutes or constituent instruments of the Enterprise; propose to the Assembly candidates for the Governing Board of the Enterprise in conformity with principles laid down by the Assembly; and, in conformity with the policy and general conditions approved by the Assembly. It had also been proposed that the Council should: (1) examine and authorize drafts for the purpose of granting to natural or juridical persons, exploration permits in a specified part of the Area; (2) examine and authorize drafts for the purpose of initiating negotiations with natural or juridical persons for the exploitation of the resources situated in a specified part of the Area with a view to concluding contracts of operation and/or association and/or joint ventures; (3) approve contracts of operation and/or association and/or joint ventures presented by the Enterprise for the exploration of the Area and the exploitation of its resources. It had also been proposed to omit such a provision.



The powers and functions of the Assembly and the Council which he had outlined had been proposed for inclusion in the course of a first reading of Document No. 4 of the Working Group. They had been examined by an informal group under his own chairmanship and would now go back to the Working Group.

The Working Group had also carried out a preliminary review, on the basis of provisions contained in Document No. 4, of the powers and functions of the Enterprise (article XXXIV) and had supplemented and elaborated that provision. The Enterprise was conceived by its sponsors as the organ of the Authority responsible for carrying out all technical, industrial and commercial activities relating to the exploration of the Area and the exploitation of its resources whether on its own account or under contracts of operation and/or association and/or joint ventures with juridical persons. The Enterprise concept had been first elaborated in document A/AC.138/49, sponsored by 13 States, and had been further elaborated at the current session in a document placed before the Working Group as document DP.1 sponsored by the same States. The provisions concerning the Enterprise had been sent to the informal group and would come before the Working Group after having been modified to reflect the views hitherto expressed. It would then serve as the basis for the Working Group's second reading.

Another text dealing with the role of the Authority in relation to exploration and exploitation of the Area had been presented by its sponsor as an alternative to the Enterprise concept. That alternative envisaged a system under which licences for exploration and exploitation would be issued, by an organ of the Authority called the Operations Commission, to any Contracting Party, group of Contracting Parties or natural or juridical persons under its or their sponsorship. Such licences would be subject to specified terms and conditions. In contrast to the Enterprise, however, the Operations Commission would be prohibited from itself engaging in exploration of the Area and the exploitation of its reserves.

There were two other proposals which dealt with the establishment of an organ of the Authority that would regulate exploration of the Area and the exploitation of its resources. The first envisaged a Permanent Board, which would issue licences subject to terms and conditions to be set out in the Convention; the second provided for a Management and Development Commission which would, subject to the over-all authority

of the Council, explore and exploit the Area directly, enter into service contracts and joint ventures with States, groups of States or physical or juridical persons, and administer a system of non-discriminatory licensing. The terms and conditions under which each of those methods would be implemented would be set out in annexes to the Convention.

A fifth system envisaged that the Assembly or the Council would set up an "International Sea-bed Operations Organization" empowered to enter into licensing and contract arrangements with States, subject to the approval of the Council, for the exploration of the Area and the exploitation of its resources, and empowered in addition to undertake exploration and exploitation on its own.

All five proposals would be reviewed by the informal group and placed once again before the Working Group as a whole.

In the course of the discussion of the various proposals, it had been stressed by some that while there were differences between the systems - and two of the five did not contemplate in express terms that an arm of the Authority would be empowered to exploit the Area directly - there were several important similarities. Essentially, in all five alternatives, exploration of the Area and the exploitation of its resources would be subject to regulation by the Authority alone; in two cases, regulation would be through a system of licensing only and several branches of the Authority would participate in administering that system; in one of the remaining cases, authorization to operate would be embodied not in a system of licensing, but through other types of contractual arrangements, control being centralized in a single organ of the Authority, the Enterprise. In the two other cases, the possible forms of authorization to operate included both licensing and other contractual arrangements. Some representatives maintained, however, that the central issue was the degree of control which the Authority could maintain over sea-bed operations under each of the systems. In their view, under a licensing system, as that system was commonly interpreted in the light of its history, the Authority would relinquish control over the operation to an extent that was unacceptable to them. Consequently, they were inclined to reject that system.

The Working Group had also heard proposals for the creation of the following subsidiary organs of the Authority: a Rules and Recommended Practices Commission; a Scientific and Technical Commission; an International Sea-bed Boundary Review Commission; and a Legal Commission. The first of those proposals would replace the first three paragraphs of article XXXVI, on page 71 of document No. 4, for the purpose of the Group's second reading. The second Commission, dealt with on page 71, would be deleted, since the original concept had been modified and was now presented elsewhere in the document. The other three texts received would supplement the last two items on page 73 and, of course, add a new one. The proposal for a Planning Commission and a Price Stabilization Commission were set out on page 72 and awaited elaboration.

The Working Group had also carried out a preliminary discussion of the provisions relating to the secretariat of the Authority on the basis of texts contained on pages 67 to 70 of document No. 4. In the course of the discussion, the Working Group had decided to delete paragraph 2 within square brackets on page 67, which would have, inter alia, made the chief executive officer also chairman or president of the Council, on the ground that such an arrangement might prove embarrassing to both parties and might not be in the best interests of the organization. The Working Group had also decided to reflect in paragraph 1 on page 67 the system for appointment of the chief executive officer, which had already obtained considerable support, namely appointment by the Assembly on the recommendation of the Council based on a list of candidates nominated by member States. There had been opposition to paragraph 6 on pages 69-70 which would be reflected, along with other proposals for supplementing that provision, in the text to be placed before the Working Group for its second reading.

The Working Group had also had a preliminary discussion of the powers and functions of the Tribunal on the basis of pages 64-65 of document No. 4 and written proposals submitted by members of the Group. There was a comprehensive proposal containing general provisions concerning its constitutional status and capacity as a judicial organ with compulsory jurisdiction and the power to make binding decisions; provisions on its organization and composition; on disputes involving the Authority; on the roles of the Operations Commission and an International Sea-bed Boundary Review Commission in relation to the Tribunal; on judgments against Contracting Parties and licences; and on failure to comply with judgments. Those

who supported the comprehensive proposal stressed the crucial importance to their Governments of the establishment under the Convention of a judicial organ with compulsory jurisdiction. Several proposals had been made to modify the text, particularly where it dealt with the availability of the Tribunal as a forum to nationals of a State and the role of the Tribunal in relation to national courts. They would be considered in the informal group.

Some representatives felt unable to accept a Tribunal with what appeared to them to be too broad and sweeping powers. However, there were elements of the proposal to which they would wish to give careful consideration. Other representatives preferred the formulation in article XXXIII on pages 64-5, although some criticism had been expressed with regard to paragraph 3 on page 64 and paragraph 7 on page 65. Still others felt that the judicial functions of the Tribunal as contemplated under that Article, should be assigned to the International Court of Justice. The view had been expressed that whatever formulation might be adopted in respect of the Tribunal, the Convention should contain only short general provisions along the lines of article XXXIII while the details of its functioning should be placed in an annex. However, in that event it should be made clear that that annex formed an integral part of the Convention itself.

The Working Group had just held its 76th meeting and had commenced its consideration of the composition of the various organs of the Authority. He was happy to report that the spirit of goodwill and compromise that had characterized the Group from its inception continued to prevail. Unfortunately, however, despite great efforts, the Group had not been able to complete the work assigned to it by 31 July, the tentative terminal date suggested by the Chairman, and consequently he was unable to make a final report, as had been intended. On behalf of the Working Group which had, as always, worked hard and constructively during the session, he requested the Sub-Committee to allow the Group more time for it to attempt to bring to a conclusion its work of reflecting areas of agreement and disagreement. In conclusion, he emphasized that the report was essentially a personal view and was not therefore binding upon any delegation.

The CHAIRMAN congratulated the Working Group on the great progress it had achieved. Although more work remained, it had identified many of the elements and achieved many of the targets that he had referred to at the previous meeting of the Sub-Committee (A/AC.138/SC.I/SR.72).

In the areas in which agreement in substance existed, members should now seek the appropriate language, which was perhaps very close to being established. Where there was disagreement in substance, it was still necessary to assemble the alternatives. He urged members to continue their private informal consultations, because although the final decisions on major issues, many of which were of a political nature, could not be made until the Santiago Conference, it was essential that general tendencies, which would facilitate decision-making, should be made explicit before then.

He advocated a continuation of the negotiations taking place in the Working Group and said that debates in the Sub-Committee itself should be avoided until the time came for issues that had met with the approval of the Working Group to be formally endorsed.

Mr. PARDO (Malta) congratulated the Chairman of the Working Group on his full, impartial and interesting report. A number of proposals had been introduced, briefly and informally, during the meetings of the Working Group. He wondered whether a meeting of the Sub-Committee could be held some time in the near future in order to give the sponsors of those proposals an opportunity to explain them at greater length.

Mr. DEMIRSOY (Turkey) said that the Secretary-General's report on the economic significance, in terms of sea-bed mineral resources, of the various limits proposed for national jurisdiction (A/AC.138/87), which had been prepared with the assistance of experts and consultants from both developing and developed countries, met the requirements laid down in General Assembly resolutions 3029 B and C (XXVII).

He was particularly pleased to note that the first part of the report contained a technical analysis of the hydrocarbon potential of the various areas of the sea-bed and the ocean floor. He drew attention to the last three paragraphs of the chapter on hydrocarbons (chapter 2), which contained a realistic assessment of probable future developments in off-shore oil-drilling.

In the not too distant future manganese nodules would be the main exploitable mineral resource of the international sea-bed area. From chapter 3, section (b) of the report he quoted the main considerations which would determine whether nodule deposits were economically workable. Those criteria indicated that mining on the sea-bed would involve even greater risks than mining on land. Whether sea-bed mining proved attractive would depend on whether complex technical and economic requirements could be met. He therefore wished to emphasize that the powers to be entrusted to the international Authority should be determined by first giving careful consideration to the technical and economic prospects for sea-bed mining, particularly as the growing demand for mineral raw materials and the dwindling supply of various land-based energy and mineral resources would compel mankind to turn to the mineral resources of the sea-bed in the decades to come. The transition from a period in which financial means and technical know-how were either inadequate or confined to certain private companies, to a period in which an international Authority would be directly responsible for exploration and exploitation activities, would inevitably give rise to considerable problems, which would have to be solved with the utmost care and realism.

He wished to draw attention to and express his appreciation of the three charts showing the geographical distribution of manganese nodules and their mineral content, which appeared at the end of chapter 3 of the report. They were the result of comprehensive, lengthy and arduous scientific research. His delegation also appreciated the four technical documents submitted by the United States delegation to Working Group I.

It was stated in the final paragraph of part I of the report that concentrations of valuable metals found in places other than the Red Sea rift had not been sufficiently high to be of commercial interest. While manganese nodules would be the principal mineral resource of the sea-bed in the future, therefore, metalliferous muds and hydrocarbons would probably be of secondary and tertiary importance.

The figures given in the second part of the report relating to the dimensions of the various areas under consideration and the mineral deposits they contained should be regarded as no more than a basis for comparison. He drew attention to a discrepancy of 39 million square kilometres between the figure given on page 37 of the English text for the area inside the 200 nautical miles equidistance line and the figure given in Appendix III, paragraph B of Annex I.

The most significant fact that emerged from part II of the report was that the wider the limits of national jurisdiction, the greater would be the percentage of manganese nodules among the mineral resources that were left to the international Authority. It should also be pointed out that the realization of the present high hopes for the exploitation of hydrocarbons would depend largely on the future progress of off-shore technology.

Mr. Ranganathan (India) took the Chair.

Mr. IVANOV (Union of Soviet Socialist Republics) said that the detailed and objective statement made by the Chairman of the Working Group was all the more important because the Working Group did not have summary records. In order to make the full text of that statement available to all members of the Sub-Committee and of the Committee, he suggested that the Secretariat might either circulate it as a document, at least in English, or reproduce it in extenso in the summary record.

It was gratifying to note that experts and consultants from various countries and regions had assisted in the preparation of document A/AC.138/87; their participation had undoubtedly ensured that it did not lack the high quality and scientific reliability which were proper to such reports. The report was particularly important in that it made available, for the first time, an analysis of the potential mineral resources of all areas of the sea-bed. The information it contained on the distribution and extent of manganese nodule deposits in the ocean floor would also be important when the allocation of exploitable sectors to individual countries and to the international sea-bed Authority came to be considered. As had been requested in General Assembly resolution 3029 B (XXVII), the report provided a study of the economic significance of the international sea-bed area, the boundaries of which would be determined in accordance with the decisions to be taken on national boundaries. For Sub-Committee I that was most important, for it had hitherto had no clear idea of the economic significance of the international régime and sea-bed Authority which it was preparing to establish. He thought the report should encourage Working Group I to consider the question of sea-bed and ocean floor boundaries as soon as possible.

He drew attention to the fact that in the Secretary-General's progress report on sea-bed mineral resources (A/AC.138/90) the adjective "German" had been used several times, notably on page 12 of the Russian text. Since Germany as a single State had long ceased to exist, that adjective was ambiguous and should be appropriately amended.

The CHAIRMAN noted the Soviet Union representative's suggestion that the statement made by the Chairman of the Working Group should be reproduced in extenso in the summary record. If there was no objection, he would ask the Secretariat to comply with that wish. A corrigendum would be issued to cover the other point raised by the Soviet Union representative.

Mr. SUGIHARA (Japan) expressed his delegation's appreciation of the excellent statement made by the Chairman of the Working Group and of the Secretary-General's very important and interesting reports. He wished to point out, however, that the progress report on sea-bed mineral resources (A/AC.138/90) contained certain incorrect information regarding the part played by the Japanese Government in deep sea-bed mining activities.

In the first place, the section entitled "Sumitomo Group/MITI" reproduced an article from a certain weekly publication which stated that in January 1973 Japan's Ministry of International Trade and Industry had proposed the creation of a US\$ 220 million semi-public venture to pursue mining and processing of nodules using the continuous line bucket (CLB) system. Unfortunately, the article in question was inaccurate. No organ of the Japanese Government had so far proposed the creation of such a venture, and the figure of US\$ 220 million was merely an estimate by an informal study group of the required initial investment in manganese nodule exploitation for an annual yield of one million tons.

The same section of the report contained an extract from another mining publication to the effect that the Agency of Industrial Science and Technology of Japan, which was a Government organ, had granted a subsidy to Sumitomo Metal Mining for the erection of a test plant. That was likewise untrue; Sumitomo Metal Mining had erected no test plant and had therefore received no Government subsidy.

He wished to offer some clarification regarding the Deep Ocean Minerals Association referred to on page 13 of the English text. That Association was a voluntary organization created by private enterprises and aimed at collecting information on recent developments in manganese nodule exploitation. It did not possess legal personality and was not competent to engage in exploitation activities, nor did it plan to do so.

The CHAIRMAN said that if the Japanese representative so wished the Secretariat could issue a corrigendum amending the errors he had pointed out.

The meeting rose at 5.05 p.m.