

PROVISIONAL: FOR PARTICIPANTS ONLY

UNITED NATIONS

Distr.
RESTRICTED
2 May 1975
Original: FRENCH

THIRD CONFERENCE
ON THE LAW OF THE SEA

Third Session
FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-FIRST MEETING

held at the Palais des Nations, Geneva,
on Monday 28 April 1975, at 10.35 a.m.

<u>Chairman:</u>	Mr. ENGO	United Republic of Cameroon
<u>Rapporteur:</u>	Mr. BAILEY	Australia

CONTENTS

International Machinery: structure, functions, powers (continued)

N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final summary record of the meeting are requested to submit them in writing in quadruplicate, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, within five working days of receiving the provisional record in their working language.

A/CONF.62/C.1/SR.21
GE.75-64942

INTERNATIONAL MACHINERY: STRUCTURE, FUNCTIONS, POWERS (continued)

Mr. BASABE (Argentina) said that, by considering the question of the régime and the question of the machinery and economic implications separately, the Committee might be overlooking the conceptual unity of the future convention; it should be guided in its work by the ideas underlying the Declaration of Principles contained in General Assembly resolution 2749 (XXV). In order to achieve the aims set forth in the Declaration, a strong authority which could not relinquish the powers vested in it or dispose of the resources of the area would have to be established. The same legal régime should be applied to the whole of the area to be explored and exploited by the authority either directly or by means of contracts with third parties.

He wished to emphasise some points in connexion with the machinery which his delegation considered essential. The assembly, on which all member States would be represented, should be the supreme organ of the authority. It would meet annually but could also hold special sessions. The convention should confer on the assembly regulatory powers, which it would exercise in accordance with rules laid down in the treaty. The council, a body of limited membership, would perform the functions assigned to it in the convention and those delegated to it by the assembly, and would be held responsible by the assembly for implementing that body's instructions and recommendations. Its membership would be based essentially on the principle of equitable geographical distribution and also on appropriate representation of all the interests involved, particularly those associated with activities in the Area. His delegation was opposed to any form of weighted vote and any system involving a veto; each delegation should have one vote. The enterprise would be one of the principal organs of the authority, as the organ responsible for carrying out all operations in the area, either itself or by the means described in the second paragraph of article 9 (variant (B)). The enterprise would be responsible to the Council and the assembly.

There were those who held that the authority should be considered as an entity for promoting exploration and exploitation of the sea-bed. His delegation thought it should be made very clear that the authority would perform that function only when its own mining policy required it. The authority's principal function would be to organize those activities so that the minerals extracted could be absorbed by the world economy without causing irreparable damage to the economies of developing

A/CONF.62/C.1/SR.21

- 3 -

countries which exported the same raw materials. Nearly all the developing countries were involved, since they were all potential producers. The adverse effects of unplanned exploitation of sea-bed resources would be felt in the social as well as in the economic sphere. Many of the developing countries had started or intended to start mining projects in some regions of their territory with a view to speeding up their development, and these projects would be frustrated by improper exploitation of the sea-bed's mineral resources. His country was not opposed to such exploitation, since its mineral imports cost about \$400 million a year and its economy would benefit if prices were reduced or stabilized. That was not the issue, however. His delegation considered that the authority should be given such powers as would enable it to control and supervise production in order to prevent uncontrolled exploitation by a few people whose sole motive was profit. That was where the idea of the new international economic order came in: it, as stated in the Dakar Declaration of the conference of developing countries on raw materials, should be based on equality and equity; it would require a radical change in current trends in world commodity trade. Only a change of that kind would enable the developing countries to achieve true political sovereignty, economic independence and social justice.

Mr. SEPULVEDA (Mexico) emphasized the close relationship between the international régime and the structure, powers and functions of the authority. The constitutional principles governing exploration of the Area and exploitation of its resources should give the authority such competence as would enable it to achieve the main objective of the régime, as set forth in the Declaration of Principles. The first question to consider was the structure of the international authority. There seemed to be fairly general agreement on the idea of creating a plenary assembly as the supreme organ of the authority, a council as the executive organ, an enterprise as the organ responsible for technical, industrial and commercial activities, and a secretariat responsible for the administrative services. Of course, the powers conferred on all those bodies were manifestly interdependent.

A/CONF.62/C.1/SR.21

- 4 -

In view of the stage the discussions had reached, his delegation wanted to outline its views on the basic characteristics of the enterprise and its relationship with the other two main organs. First, there was a link between article 9, concerning the régime, and the powers conferred on the enterprise. Draft article 9 contained the fundamental rule that all activities of exploration of the Area and of the exploitation of its resources "shall be conducted directly by the authority", on the understanding that in certain cases the authority might delegate those activities to natural or juridical persons. In order, therefore, to carry its functions in the former case, the authority would need an operational instrument -- the enterprise -- whereas when it exercised them indirectly, it would conclude contracts or set up joint ventures. The essential purpose of the enterprise would be to acquire revenue and distribute it fairly, with due regard to the interests of the developing countries. The enterprise would co-exist with two other main organs the assembly and the council. The assembly would lay down policy and conditions of exploration and exploitation, open areas for exploration and exploitation, and decide on the quantity of minerals to be mined, marketing conditions and the status of joint ventures. The council would have competence to consider and approve the enterprise's proposals for exploring and exploiting the resources of the Area. In order to operate efficiently, the enterprise should have some autonomy and have legal personality. It should submit periodic reports to the council, which would transmit them to the assembly with its own comments and recommendations.

Mr. THOMAS (Trinidad and Tobago) said that he fully endorsed the views expressed at the previous meeting by the representatives of Peru and other members of the Group of 77 concerning the international machinery; he was speaking only in order to amplify what had been said on the subject and to stress, on behalf of his own delegation and as a member of the Group of 77, the functional connexions between the organs of the authority. The key idea was that the international machinery to be set up, should be strong and effective, making for the type of exploitation that would be universally beneficial. The activities of the proposed machinery should be governed by five basic principles: optimum use of resources, optimum sharing of resources, equitable distribution of revenue, sharing of benefits so that no State would be placed at an

A/CONF.62/C.1/SR.21

undue disadvantage, and supervision in the international area in order to protect the environment. It was clear that those functions had political, commercial and technical aspects, and would give the international authority the balanced structure it needed. It might indeed, have a type of balance that was unique among international organizations. First, there would be a type of hierarchical relationship between a plenary body and an executive body. The plenary assembly would lay down policy guidelines, and all organs would be ultimately accountable to it. The council would carry out the instructions given by the Assembly, but as a permanent organ authorized to take decisions, it, too, would be very important. Its membership would be determined on the basis of political considerations. To counterbalance those political organs, two other principal organs would have commercial and technical functions: the enterprise and what might for the moment be called the production regulation unit or planning unit, both of which would be composed of technocrats. The enterprise would examine the feasibility of proposed projects and negotiate contracts. The production regulation unit would be an advisory body whose primary function would be to evaluate potential commercial production and its likely impact on the objectives of the authority. Co-ordination between the production regulation unit and the enterprise, and between them and the council, would be essential. The two organs would counterbalance each other, inasmuch as the enterprise, by reason of its functions, might be tempted to maximize benefits whereas the production regulation unit would be concerned with the best use of resources.

In evaluating proposed activities in the international Area the Council should carry out studies on land resources and act jointly with other bodies; it should also plan and evaluate the use of the resources of the international Area. The relationships among the organs of the international machinery would therefore be at once hierarchical, vertical and lateral. Those organs would form a pyramid, with the enterprise and the production regulation unit together at the bottom, topped by the council, which, in turn, would be subordinate to the assembly. Other functional units might be created according to requirements, but they should cease to exist when they no longer served a useful purpose.

- 6 -

With regard to the dispute settlement mechanism, on which the Group of 77 had not yet taken a decision, his delegation considered that some such mechanism was necessary; it should be able to act quickly and should not be a permanent body. A panel of experts - economists, lawyers, labour experts and financial experts -, to be drawn upon as the need arose, might be the answer.

As a member of the Group of 77, his delegation believed that the international machinery proposed by the Group might lead to the creation of a viable organization capable of responding to contemporary needs: in other words, an organization notable for strength and justice.

Mr. RATINER (United States of America) said that he would outline briefly the views of his delegation on the question of international machinery, having regard to the fact that they could be regarded as harmonious in most respects with those of a great many industrialized countries. The structure and powers of the organs of the international authority and the balance between those organs, besides being of great importance to the endeavour to build a viable international institution, had a bearing on what nations could accept in the way of articles relating to the régime and the "basic conditions". There were 12 critical elements which, in the view of his delegation, had to be settled to the satisfaction of all if the unified text which the Chairman was to prepare by the end of the week was to be regarded by all delegations as a basis for negotiation.

First, the competence of the authority should be restricted to activities directly related to the exploration and exploitation of the resources of the international Area. The term "activities", as it was being used in the work of the Committee, needed to be defined in such a way that other activities to be conducted in the Area, such as fundamental scientific research, did not fall within the regulatory powers of the authority. Second, the powers and functions to be conferred on the authority and its organs by the Convention should be specifically set out, - not included by implication, in the general provisions of the treaty.

Third, the powers and decision-making procedures of the assembly, the plenary body of the authority, should be so structured as to ensure that the interests of all States were accommodated, while protecting the essential rights of smaller groups of States which were members of the authority. To that end, decision by the assembly should be taken, as far as possible, by consensus. In the past, his Government had urged that the

assembly should be empowered only to make recommendations. While agreeing to give the assembly general policy-making powers, his delegation held that it was essential that those powers should be carefully defined and should not overlap with those of the council. Furthermore, it appeared important to devise a procedure whereby decisions in the assembly could be postponed if a minority of States wished to seek the advice of the dispute settlement organ on the legality of any measure contemplated by the assembly. In addition, the assembly should not have competence to over-rule decisions of the council on matters that fell within the latter's jurisdiction. Such restrictions on the plenary power of the assembly were the essence of a sound constitutional structure for the international machinery.

Fourth, his delegation attached special importance to a council structure which recognized the special interests of certain States, both developed and developing; criteria for assigning a State to a particular category should be negotiated and specified in the treaty. Moreover, voting arrangements should protect the critical interests of States. It should be possible to work out provisions to that effect while avoiding procedures which might paralyse decision-making.

Fifth, the fundamental resource policies, as part of the basic conditions of exploration and exploitation, should be stated in the treaty itself. Sixth, to the extent that those policies required further elaboration before they could be implemented, his delegation supported a procedure whereby the rules should be drafted by a specialized subsidiary organ, and, after approval by the council, forwarded to States. If after a period of, say, 90 days, fewer than one third of the members of the authority had objected, the rules would enter into force. Such an approach would give both the authority and Governments an opportunity for expert review and avoid the risk that one or other of the authority's organs might acquire undue influence.

Seventh, the council should have the exclusive mandate to exercise the authority's powers and functions relating to exploration and exploitation. In conformity with the policies laid down in article 9 of the régime, the council should have over-all responsibility for policy and management. Eighth, the council should rely on technical organs, under its sole supervision, which would be composed of experts and would each exercise clearly defined functions. One commission might prepare rules and regulations, another might supervise all exploration and exploitation activities, a third might conclude contracts relating to those activities, and so forth.

A/CONF.62/C.1/SR.21

Ninth, an effective dispute settlement procedure was indispensable; for that purpose, only a sea-bed tribunal with exclusive jurisdiction over disputes relating to the sea-bed would be effective. There would have to be a single procedure for adjudicating such disputes, and it should be impossible for the authority to conclude contracts outside of the jurisdiction of the tribunal, whose decisions should be prompt and binding. Members of the tribunal should be appointed by the council. Tenth, the secretariat of the authority should inspire confidence in the States and entities with which it dealt. To that end, the treaty should contain provisions prohibiting conflicts of interests within the secretariat and imposing stringent penalties for the disclosure of any data or information that had been declared the property of the authority. Eleventh, his delegation believed that the authority should be financially self-sufficient, although it might be necessary to empower it to borrow funds during the early years of its existence. Twelfth and last, arrangements would have to be made for the provisions of the Convention dealing with the international Area to be applied provisionally, since only that approach would enable the new international régime to be applied immediately to activities connected with the exploitation of marine resources and permit the whole international community to share in the benefits.

The Committee should continue its negotiations in order to find a mechanism which would balance both the interests and needs of minerals importers and consumers and the concerns of certain land-based producers of minerals.

Mr. ADEDE (Kenya) said that his delegation had stated at Caracas that the authority responsible for sea-bed exploration and exploitation should comprise a plenary organ (the assembly), an executive organ (the council), an operational organ (the enterprise), a secretariat to service all the organs of the authority and a tribunal for the settlement of disputes arising from the interpretation and application of the relevant provisions of the Convention.

With regard to the constitution of the tribunal, his delegation considered that account should be taken, on the one hand, of the question of parties (disputes might arise between two or more States, between States and the authority, between natural and juridical persons and the authority, or between two or more natural or juridical persons) and, on the other hand, of the nature of the dispute (disputes might relate to questions of fact, questions of law or political, economic or technical questions).

Bearing in mind those two aspects, there were at least two ways of looking at the tribunal. There was the question of its competence: it might be a tribunal which handed down binding decisions not subject to appeal or an administrative tribunal whose decisions might be subject to appeal in another court. The most important issue to be decided was whether the tribunal should be considered in isolation or within the general context of a system for the settlement of disputes established by the Convention.

His delegation considered that both approaches should be taken into consideration in the creation of the tribunal. In its view, the Conference should retain its freedom to choose between two options, namely, to establish a tribunal competent to decide conclusively and without appeal all disputes arising in the international Area or to establish an administrative tribunal of first instance whose decisions might be reversed by a higher court and which for that reason could be allowed a margin of appreciation. The Conference should also retain its freedom to decide what type of court should have appellate jurisdiction over the tribunal's decisions.

Mr. ANDRES (Switzerland) said that in its statement at the fifth meeting of the Committee, his delegation had declared its support for a strong but flexible authority, capable of dealing with the extraordinarily difficult problems awaiting it and of adapting to new circumstances. It considered that the arrangements for electing members of the council should provide for membership to be based not only on equitable geographical distribution, but also on equitable geographical location, thus enabling land-locked and geographically disadvantaged countries to be duly represented in the council. With regard to the powers to be conferred on the authority, his delegation had advocated provisions enabling natural or legal persons, and the authority itself, to undertake on a non-discriminatory basis, exploration and exploitation of sea-bed resources, provided such exploration and exploitation was carried out according to rules which took account of the interests of all parties, especially those of the least privileged members of the international community.

His delegation reaffirmed those views, which, in so far as they related to adequate representation for States in the organs of the future authority, were shared by the group of land-locked and geographically disadvantaged countries and were based on the desire to ensure the kind of equitable participation by those countries in a soundly-structured, effective authority that was contemplated for other special-interest groups.

A/CONF.62/C.1/SR.21

With regard to the composition of the council, his delegation favoured a formula which had been approved by the majority of land-locked and geographically disadvantaged countries, the effect of which would be to add the following paragraph to all provisions relating to that issue: "At least two fifths of the members of the Council shall be representatives of land-locked States and of geographically disadvantaged States". There should be similar representation of land-locked and geographically disadvantaged States in all other organs of the authority in which not all member States were represented. The proposed formula did not exclude similarly adequate and equitable representation of other special-interest groups in the organs of the authority.

Mr. LUBAKU-K'HABOUJI (Zaire) said that he strongly believed that the establishment of international machinery should be based on the fundamental principle that the international sea-bed Area was the common heritage of mankind. The Area should therefore be administered in such a manner that no part of it became the property of any State and that the benefits derived from exploring and exploiting it should go, in the first instance, to developing countries, in other words, to under-equipped countries whose lack of technology would exclude them from exploration and exploitation activities in the Area. In that connexion, he contended that the Declaration of Principles in General Assembly resolution 2749 (XXV) should be observed to the letter and that the moratorium declared by the General Assembly in resolution 2574 D (XXIV) should be respected in order to prevent the emergence of any fait accompli.

The authority envisaged in the text of draft article 9 submitted by the group of 77 should have some freedom to conclude contracts and be empowered to conclude various types of contracts, not one type only. Nevertheless, the basic principle governing the machinery was direct exploration and exploitation of the Area by the authority. The organs of the authority should be an assembly, a council, an enterprise, and a planning and price stabilization body.

The assembly, the supreme organ, would lay down general policy for the authority. It would accordingly consist of all member States and could consider any problem relating to the exploration and exploitation of the Area. Each member State would have the right to one vote, in accordance with the principle of the equality of States. His delegation reserved the right to speak again about the way in which decisions would be made by the assembly.

/CONF.62/C.1/SR.21

The council would be the executive organ of the authority and would perform its functions under the assembly's supervision. Its composition should be governed by the principle of equitable geographical distribution, with due regard to the specific interests of countries which might be affected by exploration and exploitation activities in the Area, particularly the interests of developing countries which were potential producers of raw materials. Such arrangements were not intended solely to protect the interests of existing producers of raw materials; no developing country could claim to possess a complete geological inventory of its resources and any of them might become a major producer of a particular ore.

Zaire, like the other member countries of the Group of 77, could in no circumstances accept a system which allowed for a veto. It also refused to accept the establishment, within the council, of a system of permanent membership or weighted votes. It was convinced that any formula based on the Yalta agreements and allowing certain powerful or rich countries greater weight would be incompatible with the Declaration of Principles. His delegation's position with regard to the powers to be conferred on the council, would depend on the composition of that organ.

The enterprise would be the operational organ through which the authority would carry out the task assigned to it in article 9, namely, the exploration and exploitation of the Area, either on its own account or through service or partnership contracts. The enterprise would operate in the Area, and would be subject to the council and the assembly. It would be an operational organ and would not have power to conclude service or partnership contracts.

Finally, his delegation considered that there should be a planning and price stabilization unit to protect the interests of developing producers of minerals which might be exploited in the Area. Like the representative of Morocco, he considered that that issue was one of substance, not just a point of detail. The unit would come under the Council; its principal function would be to submit recommendations for safeguarding the interests of developing countries whose economies were heavily dependent on minerals exploited on land and on how their needs might be taken into account in order to prevent the exploration of the Area and the exploitation of its resources from adversely affecting their economies. His delegation was thinking in particular about

A/CONF.62/C.1/SR.21

the disastrous repercussions which the uncontrolled marketing of products from the Area might have on the fragile economies of developing countries. He drew attention to the statements made on the subject by his delegation at the ninth, eleventh and thirteenth meetings of the Committee at Caracas.

In conclusion, he stated that his country was seeking not any kind of market monopoly, but merely to ensure that States which, through uncontrolled exploitation and waste, had almost exhausted their raw material resources should not attack the finite resources of the Area in the same fashion and thereby deprive future generations - in other words, all mankind - of the raw material resources necessary for survival. The resources of the sea-bed were the common heritage of mankind and should be administered in its interests, with due regard for the special interests of the developing countries.

Mr. ALY (Mauritania) said that his delegation, which had collaborated in the drafting of document A/CONF.62/C.1/L.7 and stood by that document, attached great importance to the system of organization and the distribution of powers among the organs of the future international authority.

The assembly, as the supreme organ of the authority, would lay down the authority's general policy and the conditions of exploration and exploitation of the Area. Once that policy was defined, its application would be the responsibility of the council, which could take decisions. His delegation attached great importance to the composition of the council, in so far as the important decisions to be taken by that executive body would affect any activities conducted in the international Area. Its composition should reflect equitable geographical distribution and also take due account of the interests of countries concerned and affected by the exploration and exploitation of the resources of the Area.

The enterprise would be a technical body whose essential function would be to enable the authority itself to undertake the timely exploration and exploitation of the resources of the Area.

A/CONF.62/C.1/SR.21

Mauritania was essentially a producer country, and also attached the greatest importance to the establishment of a planning body, which should prevent uncontrolled and selfish exploration and exploitation of the Area for the benefit of a few countries. He considered that the producer countries should be represented on that body, which should not be a small committee of experts likely to impose its views on the council or the enterprise.

Mr. ENKHSALKHAN (Mongolia) said that the proposed organization - or authority - for the exploration and exploitation of the sea-bed should certainly be a universal international organization, but it should not be a supranational organization; it should be subordinate to the member States, helping them to exercise fully their sovereign rights, and encouraging the establishment of a new international order and the development of the mineral resources of the sea-bed so as to enable all peoples to meet their vital requirements. It should ensure that all nations had access to sea-bed resources, without any discrimination and on a basis of equality, and that special consideration was given to the needs of the economically less developed States, land-locked States and geographically disadvantaged States. Through the co-operation of member States the organization should promote peace and friendly relations among all peoples, in accordance with the principles of international law and the Charter of the United Nations.

To achieve these aims, the authority should supervise sea-bed mining operations in the international Area and ensure the continuous and orderly exploitation of the resources of the sea-bed for the benefit of all peoples; it should enable all States to explore and exploit the sea-bed in accordance with the principles of international law; it should foster the exchange of scientific, technical and technological knowledge between industrially developed and developing countries; it should encourage co-operation among member States in the exploration of the Area and make the results obtained available to all interested States, particularly the economically less developed and the land-locked States, and it should see to it that the marine environment was not adversely affected by exploration or pollution.

The proposed organization should have a general assembly, as the supreme organ, in which all member States should be represented, an executive council of limited membership but representing all geographical regions and all the different interests, and such other organs as were needed to fulfil the aims of the Convention.

The assembly, representing all the member States, would lay down general policy for the organization and make all important decisions on its behalf.

In deciding on the frequency of the plenary sessions of the assembly, it should be borne in mind that if the intervals between sessions were too long, the assembly's influence might decline, bringing about a considerable expansion of the council's competence.

There was no doubt that in the assembly each member State should have one vote. Decisions on procedural questions might be taken by a simple majority of members present and voting, but recommendations and decisions on questions of substance should be taken by consensus or near-consensus, or by at least by a two-thirds majority of members present and voting, provided that that majority included at least a majority of the member States.

The assembly could discuss any questions within the competence of the organization and make recommendations thereon. His delegation considered that the assembly should have the power to make recommendations on the general conditions of exploitation and exploration of the sea-bed and on questions of promoting international co-operation in that sphere; it should also be empowered to adopt, on the recommendation of the council, general principles, recommendations and rules on the prevention of marine pollution and on international co-operation in the scientific exploration of the resources of the Area. It should also establish the staff regulations and adopt the budget of the organization on the recommendation of the council, and should consider the reports of the council and, if appropriate, of the other organs of the authority.

All member States would be represented in the assembly, and consequently all points of view would be heard there. In organs with a limited membership such as the council, however, some States would not always be able to express their views and explain their position on the questions under consideration. To be effective, therefore, the council and other organs with a limited membership should have an

A/CONF.62/C.1/SR.21

equitable representation of all geographical regions and all interests. Land-locked States and other special-interest groups should be fairly represented in all the organs of the authority, and have equal rights with other States in decision-making. For example, two fifths of the members of the council should be representatives of land-locked and geographically disadvantaged States. However, the organs with limited membership should not have too many members, which might impair their effectiveness: his delegation considered that they should have 30 to 50 members. In the council important decisions should be taken by consensus.

Mr. VAROUXAKIS (Greece) said that the practice of international organizations provided a general model for the structure of the international authority, which should be both strong and flexible.

The plenary assembly, in which all States would be represented on the basis of the single vote, would be the supreme organ of the organization. It would meet periodically and would give the competent organs the necessary instructions to enable them to carry out their functions. It would be the final court of appeal, and would decide on any issue in dispute. It was the assembly which would establish the necessary subsidiary organs.

The council, with a smaller membership, would be the organization's permanent executive organ, and would act under the authority of the assembly. Its membership should ensure equitable representation of all geographical regions and all interests. The terms of office of its members should be such as to permit equitable rotation. There would be neither permanent members nor weighted votes. The assembly could endow the council with whatever powers it deemed necessary.

An operational organ would be needed to enable the authority to carry out its functions. That body should be capable of acting at a technical level without any bureaucratic obstruction. It would be strictly operational and technical, would have no power of decision and would act on the specific instructions of the organs having decision-making power.

The secretariat would be the administrative organ of the authority, in accordance with the established practice of international organizations.

Lastly, a jurisdiction would have to be provided for the settlement of disputes.

A/CONF.62/C.1/SR.21

Mr. GORALSZYK (Poland) observed that the question of the functions and powers of the proposed organization or authority was closely linked with the problems of the basic provisions governing the conditions of exploration and exploitation of sea-bed resources, which were still under discussion within the Working Group. The functions of the organization would depend to a large degree on the system of exploration and exploitation that was adopted. In 1971 Poland had submitted a working paper (A/AC.138/44) to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction in which it had expressed its views for the first time on the main questions concerning the organization, and particularly on its functions and powers; but the situation had changed since 1971, and his delegation was prepared to modify its position to some extent. For instance, it was ready to accept wider functions for the organization, namely, to agree that the organization should be directly involved in exploration and exploitation activities. In that respect the best system of exploitation would be a mixed one, under which exploitation was conducted either directly by the organization, by States or groups of States or by natural or juridical persons acting under their authority or sponsorship. It should be pointed out in that connexion that acceptance of the possibility of direct exploration and exploitation of sea-bed resources did not exclude the possibility of the organization entrusting certain tasks to other entities through service contracts, association or other legal arrangements. Moreover, as to the exploration and exploitation by States, it should be understood that States would be acting under the control of the organization and in accordance with the rules and regulations concerning such activities. The organization would therefore have wide operational functions in the exploration and exploitation of sea-bed resources.

Moreover, the organization should have powers to deal with the problem of equitable sharing of benefits derived from the exploration and exploitation of the Area, in particular the power to impose on States and other entities acting under their authority fees and payments in connexion with their exploration and exploitation activities.

He had mentioned only some of the functions of the organization, but all the functions and all the powers entrusted to it should be clearly defined. On the other hand, the organization should not have power to control other activities - for example, scientific research - which were permitted under the existing rules of general international law and did not need to be modified.

As to the nature of the organization, his delegation endorsed the view that it would be a sui generis organization, different from the specialized agencies of the United Nations system. It followed from that that the decision-making process should be different from that applied in the specialized agencies. He would not deal in detail with the composition of the main organs of the organization or the voting system to be adopted, but would merely state that a decision-making system should be devised in which the legitimate interests and needs of all States were taken into consideration and that that system should be based on an appropriate composition of the organs and an appropriate voting system. The Assembly would obviously be composed of all member States. The composition of the Council, on the other hand, gave rise to problems; the interests of all regional groups should be represented and at least two fifths of the members of the Council should be representatives of land-locked and other geographically disadvantaged States. Lastly, his delegation was not in favour of granting any special privileges to some States or groups of States; it considered that no State or group of States should be dominated by others. The system of taking decisions by simple majority or even by a two-thirds majority did not give sufficient guarantees in that respect, and a different system of voting should be devised.

Mr. HARAN (Israel) said that it would be both wise and rational to draw, in creating the future authority, on experience gained with other international organizations of a universal character and on the Conference's tacit agreement concerning the decision-making process in the assembly. The executive organ should represent the interests of all the contracting States, but as its membership would be limited, the example of the International Monetary Fund, in which delegations did not represent their own countries alone, but were also mandated to represent other countries, might be followed.

It should be remembered that the concept of the common heritage of mankind did not apply only to the sea-bed of the international Area; the tendency to restrict that concept was a recent development. The fact that a number of States had submitted proposals concerning sharing of revenues derived from the exploitation of the resources beyond the international Area clearly proved that not all States were encouraging the tendency to encroach upon the common heritage of mankind. That seemed to be the main result of the Conference. In that context, he stressed that the geographically

A/CONF.62/C.1/SR.21

disadvantaged States would gain nothing from some of the results achieved by the Conference and that the term "geographically disadvantaged State" had been defined extremely loosely.

As far as basic research was concerned, his delegation had made its views known during the debate on the economic implications. The Convention should entrust research policy to an expert committee whose decisions would be binding once they had been accepted by the contracting States; the Chicago Convention on International Civil Aviation could be taken as a model in that respect.

Finally, effective and compulsory machinery for the settlement of disputes should be provided and a permanent independent organ should be created within the framework of the authority.

Mr. PERISIC (Yugoslavia) said that he fully shared the views which the representative of Peru, speaking as co-ordinator of the Group of 77, had expressed at the previous meeting. His delegation considered that in establishing international machinery three basic elements of the Declaration of Principles should be taken into account. They were common ownership, common administration and common distribution of benefits. A strong authority should therefore be established.

The assembly, as the supreme and representative organ of the authority, should have the broadest political and normative powers. It should be empowered to issue policy directives to the council and the other organs of the authority. As the representative of Peru had said, it should also have residuary power. Its decisions should be governed by the principle of the sovereignty and equality of States, with each State having one vote and decisions on questions of substance requiring a two-thirds majority.

The council, as the executive body of the authority, should, in its work, follow the policy directives issued by the assembly. While the principle of geographical distribution should be observed in its composition, special interests of States should be taken into account within the geographical groups. Financial or economic power should not be a criterion for permanent membership or a special position in the council, and no system of weighted votes was acceptable. The principle of rotation of membership should be applied.

/CONF.62/C.1/SR.21

Responsibility for planning the production of minerals from the international Area should be vested in a special unit of the authority, having regard to the decisions on raw materials taken at the sixth special session of the General Assembly and by UNCTAD. The special unit should be responsible for regulating production so as to avoid adverse effects on land producers of the same raw materials.

The enterprise, the authority's agency responsible for operations, should undertake all the activities entrusted to it by the Convention, the assembly or the council. It should engage in such activities either on its own or by entering into contracts, joint ventures or other forms of association with natural or legal persons. The assembly, however, should not be precluded from seeking other forms of participation in exploration and exploitation activities in the Area in accordance with article 9 of the draft articles presented by the Group of 77.

His delegation supported the idea of having two subsidiary organs, namely a planning commission which would advise the council on plans for the exploration and exploitation of resources, and a unit responsible for supervising, among other things, the protection of the marine environment and the safety and protection of human life.

Consideration might be given to setting up two separate bodies for the settlement of disputes, one responsible for settling disputes on the application of the Convention, and the other for disputes arising out of exploration and exploitation activities in the Area. That distinction took into account the fact that the enterprise and the authority itself might be parties to a dispute.

Mr. WUNSCH (German Democratic Republic) said that the only way to solve development problems was through co-operation among States. That could be achieved, as experience had shown, only by strict observance of the principle of the sovereignty and equal rights of States, and non-interference in the internal affairs of States. Hence, the organization or authority to be set up should observe those principles and could not be a supranational body.

His delegation agreed with the representative of Poland on the functions and nature of the organization. It should consist of an assembly, a council, a secretariat, an exploitation commission and an operations commission. The assembly would set up the subsidiary bodies it needed to perform its functions; every member State would be represented in it, and it would have regular annual sessions. It would decide, by means of recommendations, on matters of substance. The council, as the executive organ, would be set up by the assembly. The principle of equitable geographical distribution should be observed in its composition, having due regard for the special interests of some States. His delegation was prepared to consider the proposal on the composition of the council made by the delegation of Kenya at the previous meeting.

The exploitation commission should comply with the council's decisions and be responsible for the exploration and exploitation of the international Area. It would recruit the staff it needed, purchase and install the necessary equipment, and put raw materials on the world market. It might conclude agreements on behalf of the organization and would spend the funds allocated to it. The exploration and exploitation plans it prepared would have to be approved by the council before implementation. Moreover, an operations commission, acting under the council's authority, would have to be set up to co-ordinate the exploration and exploitation activities of States.

Finally, the organization should promote the pacific settlement of disputes among member States or between the organization and its members, in accordance with the Charter, the Convention, and other rules of international law. If necessary, the organization should have legal personality in international law, and the requisite legal capacity for the performance of its functions in the territory of its members.

Miss MARTIN SANE (France) said that she agreed with most of the views expressed by the representative of the United States. Her delegation considered it essential that the scope of the authority's competence should be clearly defined and that it should not be allowed to exceed it. A balance should be established between

A/CONF.62/C.1/SR.21

the developing and the industrialized countries, and it was important that no situation should be allowed to arise in which one group of States could automatically impose its will on another. On the contrary, the interests of all States should be safeguarded.

The Conference was endeavouring to set up an organization of a completely new type. It was a matter for regret, therefore, that the tendency within the United Nations was to invoke precedents, to cling to the past and to ignore the future. In her view, action must be taken to remedy that defect.

Her delegation considered that no agreement on machinery could be reached until the basic conditions governing the exploration and exploitation of the Area's resources were known.

Mr. VELLA (Malta) said that other speakers had concentrated less on the structure, functions and powers of the authority than on the necessity for the authority to take account in the exercise of its functions of special interests. His delegation had no objection to the management of the common heritage in such a way as to benefit all countries. In order to achieve that, however, account had to be taken of interests other than those most frequently mentioned. In fact, the exchange of views on the question might well give the impression that there was a conflict of interests between the industrialized countries and the land-based producers of raw materials. A large number of developing countries fell into neither category; they took the view that the minerals produced from the international area could be a stabilizing force, protecting their economies from fluctuations that affected their economic development plans. In that context it was necessary, in defining which of the developing countries were major importers of land-based minerals that could also be produced from the Area, to take into account the needs of the economy of the country in question rather than some global criterion that would be meaningless in that country's particular circumstances; otherwise, the participation of many small developing countries in the work of the authority, particularly that of its executive organs, would be seriously jeopardized.

With regard to the structure of the authority, he had been particularly impressed by the way in which the representative of Trinidad and Tobago had analysed the relationship of the various organs of the authority. Whatever structure was ultimately agreed upon, however, it should be sufficiently flexible to enable the authority to respond to needs as they arose.

A/CONF.62/C.1/SR.21

- 22 -

The authority would also be interested in scientific research to be conducted in the area and that interest, as well as any others, would be better served if the authority was able to supervise, on behalf of the international community as a whole, the activities undertaken in the area.

Mr. MAZILU (Romania) considered that all States should be represented in the assembly, which should have wide powers. The council -- the executive organ of the authority -- should have only limited powers, which it would exercise under the control of the assembly. Moreover, one organ should be specifically responsible for direct exploration and exploitation in the international Area under the control of the assembly. The States parties to the future Convention should undertake to promote the transfer of technology and the exchange of scientific knowledge through programmes for the benefit of the developing countries. The authority could establish permanent machinery for the acquisition, dissemination and transfer of scientific and technological knowledge and for training nationals of developing countries so as to ensure that those countries participated fully in the activities carried on in the Area.

The members of the executive organs should be elected by the assembly on the basis of equitable geographical distribution and representation of the various interest groups, no country or group of countries having any preponderance of power. The members of the executive organs should be replaced periodically, and the executive posts should change hands from time to time so that all States were represented equitably.

The assembly should have policy-making powers and be able to give directions to the council and to the operational body. It would elect the members of the council, approve the budget of the Authority, consider reports from the council and the operational body, promote scientific research in the Area and adopt criteria for the equitable sharing of the benefits derived from the Area and its resources. The council and the operational body should have only executive powers. In conclusion, his delegation considered that the assembly should have all the powers required for the management, exploration, exploitation and control of the international Area. The principle that the sea-bed and its resources were the common heritage of mankind and should be exploited in the interests of mankind, with due regard to the needs and interests of the developing countries, should be reflected in the structure, functions and powers of the authority.

The meeting rose at 1.10 p.m.