The Council of an International Sea-Bed Authority

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It is generally accepted that the international regime for the exploration and exploitation of the sea-bed, to be agreed upon at the 1973 Law of the Sea Conference, will consist of a basic set of rules and of an international machinery for the implementation of these rules.

Except for some early proposals limited to a simple secretariat for registering claims, and apart from some recent proposals for an
all-embracing international organization dealing with all aspects of
the law of the sea, most models of an international sea-bed au-
thority are designed on lines similar to those of the specialized
agencies of the United Nations. They contemplate, therefore, a
structure centered on a plenary assembly, an executive council
and a secretariat. Some of the models envisage, in addition, a tri-
bunal, a variety of commissions, and even some operating enter-
prises.

With respect to the prevailing model, there seems to be a general
agreement that the Sea-Bed Authority’s Assembly shall consist of
all Member States; each Member State shall have one vote; and
that most decisions shall be taken by a majority of the members
present and voting. While some Governments might have pre-
ferred a system of weighted voting, similar to the one prevailing
in the International Monetary Fund, other international financial
institutions and some commodity arrangements, no official proposals
of that kind have been made.

There is less agreement on the composition and voting procedure
of the Executive Council of the future International Sea-Bed Au-
thority, and it is the purpose of the present paper to explore the pro-
posals made so far and the possible ways of reconciling the appar-
ent differences.

II. CURRENT PROPOSALS FOR A SEA-BED COUNCIL

Current proposals for a Council of an International Sea-Bed Au-
thority range from relatively simple to more complicated ones.

1. Tanzanian Draft Statute. Tanzania has suggested that the
Council shall consist of 18 members, elected by the Sea-Bed Assem-
bly for three-year terms, “with due regard to geographic distribu-
tion.” It shall include “not less than 3 land-locked States.” While
procedural decisions of the Council shall be made by a simple ma-
jority vote, substantive decisions shall be made by a two-thirds ma-
jority of its members. This proposal would seem to require a vote

reprinted in 1970 Report of the Committee on the Peaceful Uses of the
Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,
Sea-Bed Committee Report).

2. Infra, Part IV.

of at least 12 members in each substantive case, and by allowing any 7 members to block a decision by voting against it or even abstaining, it would provide proper safeguards for the protection of any sizable minority of Council members. Such safeguards would be greatly diminished, if a two-thirds majority of members "present and voting" were contemplated instead, especially if no quorum were required.


4. The original Charter of the United Nations provided for an Economic and Social Council of eighteen Members of the United Nations. U.N. Charter art. 61. This number was increased to twenty-seven by an amendment of 1963 which came into force in 1965. In 1971, the General Assembly adopted another amendment increasing the number to 54. While the Charter contains no provisions relating to geographic distribution, in the resolution relating to the 1963 amendment the General Assembly decided to allocate the new seats in accordance with a specified pattern. G.A. Res. 1991 B (XVIII), para. 3, 18 U.N. GAOR Supp. 15, U. N. Doc. A/5515, at 22 (1971). Similarly, Resolution 2847 (XXVI), of 20 December 1971 decided that the 54 seats should be distributed according to the following pattern: 14 members from African States; 11 members from Asian States; 10 members from Latin American States; 13 members from Western European and other States; and 6 members from socialist States of Eastern Europe.

5. The original Constitution of the FAO, of 16 October 1945, contemplated the appointment by the Conference "of an Executive Committee consisting of not less than nine or more than fifteen members or alternate or associate members of the Conference or their advisors who are qualified by administrative experience or other special qualifications to contribute to the attainment of the purpose of the Organization" (Article 5). 60 Stat. 1896, T.I.A.S. No. 1554, 3 Bevans, Treaties and Other International Agreements of the United States of America 1288 (hereinafter cited as Bevans). This committee of specially-qualified individuals was replaced in consequence of a constitutional amendment adopted in 1947 by a Council of the FAO consisting of "eighteen Member nations." The number of
Executive Board of the United Nations Educational, Scientific and Cultural Organization (UNESCO),⁶ and the Executive Board of the World Health Organization (WHO).⁷

2. Latin American Working Paper. A group of Latin American States, together with Guyana, Jamaica, and Trinidad and Tobago, has proposed that the Council of an International Authority for the Sea-Bed shall comprise 35 members elected by the Sea-Bed Assembly from lists to be prepared later, “having due regard to the principle of equitable geographical representation.” Members shall serve for a term of three years, with about one-third of membership being elected each year. Substantive decisions of the Council shall be made by a two-thirds majority of the members of the Council present and voting.⁸
While some important details are missing from this preliminary draft, the Latin American Working Paper clearly contemplates a Council twice as large as that suggested by Tanzania, and by allowing a decision by a vote of two-thirds of the members present and voting diminishes the protection granted to any minority of Council members by the Tanzanian draft.

The distribution of seats on the Council among various geographical and other groups, coupled with a listing of members of those groups, has become a common feature of recent organizational arrangements. Such lists are included, for instance, in the resolutions of the General Assembly which established the United Nations Conference on Trade and Development (UNCTAD)^9 and the United Nations Industrial Development Organization (UNIDO).^10

3. **Working Paper of Land-Locked and Shelf-Locked States.** A group of land-locked and shelf-locked States has suggested that all States be divided into two categories: Category A consisting of primarily coastal States; and Category B consisting of primarily non-coastal States. Each State shall be entitled to indicate at the moment of ratification of the Sea-Bed Treaty to which category it belongs. The representation on the Council of the International Sea-Bed Authority shall be divided equally between the two categories, and the developing countries shall be represented adequately within each category.^11
While the land-locked and shelf-locked States comprise a large group, which might control more than one-third of the votes at the 1973 Law of the Sea Conference, it is not likely that the coastal States would be willing to concede to them one half of the seats on the Council. It is probable, however, that a specified number of seats on the Council would be reserved for them.

4. Soviet Draft Treaty and Polish Working Paper. The Soviet Union has for a long time contended that no new machinery is needed for the sea-bed. Nevertheless, in August 1971 it presented a draft treaty which provided for the establishment of an International Sea-Bed Resources Agency. It proposed that the Executive Board of the Agency should consist of 30 States, with an equal allocation of five seats to each of the following groups of countries: the socialist countries; the countries of Asia; the countries of Africa; the countries of Latin America; and the Western European countries and other countries not coming within the four previous categories. It proposed further that, in addition, the Board should include one land-locked country from each of the five groups. Decisions "on questions of substance shall be made by agreement."

The Polish Working Paper suggested in a similar fashion that the Council of the sea-bed organization be composed of 25 States, five from each geographical group. It noted that in all the organs of the new organization "a balance should be preserved between the interests of States with different levels of development and with different social and political systems." As far as voting is concerned, Poland recommended: that the "voting system should safeguard the interests of all States and groups of States"; that no group "should be placed in a position in which it might be dominated by another group"; and that in the Council "the principle of consensus should be applied as generally as possible."


13. Working Paper concerning an International Organization to Be Es-
These two drafts are characterized by a more rigid distribution of seats among the various geopolitical groups, and the introduction of the requirement of consensus, or agreement, with respect to all substantive decisions. While one can agree with the need for adequate protection of the rights of each important group of States, the system adopted should be sufficiently flexible to permit decisions by a preponderant majority, whenever an inaction should threaten world community interests more than an action objected to by a small group of states.  

5. United Kingdom Proposals. The United Kingdom has not presented a detailed draft, but only "proposals for elements of a convention." The relevant section of it contained the following guidelines:

The membership of the Council should reflect the diverse interests of States parties to the Convention, including those of the developing and landlocked countries. However, just as it would be appropriate to give developing States a special position on any institutions of the Authority which might be set up for the purpose of distributing sea bed benefits, so it would be necessary to make special provision on the Council for those States with an established sea bed technology, who have a special contribution to make in organising sea bed activity and without whose support no international regime in this field would be viable. This could be done by designating as members of the Council a limited number of industrialised countries which, either directly or through commercial enterprises based on their territory, have or develop a substantial sea bed technology. An important criterion in establishing a country's claim to be a designated member of the Council might be the extent to which it has an established tradition and expertise in the transfer of technological skills and abilities to developing countries.


14. As Mr. Pinto (Ceylon) stated in the Sea-Bed Committee, the decisions of the plenary or the executive organ of the sea-bed machinery should not be "subjected to the application of any system of preferential voting rights. In other words, the principle of one-State-one-vote should apply in the deliberations of both organs, and no veto system, manifest or disguised should operate. It must be recognized, however, that certain developed countries whose technological capacity or financial assistance will be essential to the success or viability of the organization might seek a greater role in the direction of its affairs and the formation of policy. It may be necessary to devise some method that would attract the support of these countries without at the same time sacrificing the one-State-one-vote principle." Committee on the Peaceful Uses of the Sea-Bed, Subcommittee I, Statement by C.W. Pinto (Ceylon) on 25 March 1971: The International Regime for the Sea-Bed, at 9-10 (mimeo.); U.N. Doc. A/AC. 138/SC.1/SR.1-4, at 10.

The ideas contained in the United Kingdom proposal are interesting ones, though there might be some difficulty in translating them into practice. While the concepts of "developing" and "industrialised" countries are generally understood, there is likely to be more controversy about the designation of countries which "have or develop a substantial sea-bed technology," or which have "an established tradition and expertise in the transfer of technological skills and abilities to developing countries."

To some extent these criteria might lead to difficulties similar to those which were encountered in the International Atomic Energy Agency (IAEA), in connection with trying to determine which States qualify for membership on the Board of Governors of that Agency as "members most advanced in the technology of atomic energy including the production of source materials" or as "a supplier of technical assistance";16 in the International Civil Aviation

Sea-Bed Committee Report, at 88. In a prior U. K. Working Paper on the "International Régime", the view was expressed that there should be a Board of Governors, which "might be small in size in the interests of administrative efficiency and its membership should reflect a balance which would inspire confidence and would reflect the interests of, and the technical contribution which could be made by, the developed and developing countries, both landlocked and maritime. In principle such a Board might work on a majority voting basis." U. N. Doc. A/AC.138/26 (1970), reprinted in 1970 Seabed Committee Report, at 179.

16. The original Statute of the International Atomic Energy Agency, of 26 October 1956, contained the following provision in Article VI(A):

The Board of Governors shall be composed as follows:

1. The outgoing Board of Governors (or in the case of the first Board, the Preparatory Commission referred to in Annex I) shall designate for membership on the Board the five members most advanced in the technology of atomic energy including the production of source materials and the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas not represented by the aforesaid five:
   (1) North America
   (2) Latin America
   (3) Western Europe
   (4) Eastern Europe
   (5) Africa and the Middle East
   (6) South Asia
   (7) South East Asia and the Pacific
   (8) Far East.

2. The outgoing Board of Governors (or in the case of the first Board, the Preparatory Commission referred to in Annex I) shall designate for membership on the Board two members from among the following other producers of source materials: Belgium, Czechoslovakia, Poland, and Portugal; and
shall also designate for membership on the Board one other member as a supplier of technical assistance. No member in this category in any one year will be eligible for re-designation in the same category for the following year.

3. The General Conference shall elect ten members to membership on the Board of Governors, with due regard to equitable representation on the Board as a whole of the members in the areas listed in sub-paragraph A-1 of this article, so that the Board shall at all times include in this category a representative of each of those areas except North America. Except for the five members chosen for a term of one year in accordance with paragraph D of this article, no member in this category in any one term of office will be eligible for re-election in the same category for the following term of office.

8 U.S.T. 1093; T.I.A.S. No. 3873; 276 U.N.T.S. 3. By an amendment adopted in 1961, which came into force in 1963, the number of members of the Board to be elected by the General Conference was changed from 10 to 12, and it was specified that "the Board shall at all times include in this category three representatives of the area of Latin America, three representatives of Africa and the Middle East and a representative of each of the remaining areas except North America." 14 U.S.T. 135; T.I.A.S. 5284; 471 U.N.T.S. 334. On 28 September 1970, the General Conference adopted a comprehensive amendment to Article VI (A), increasing from 5 to 9 the number of members most advanced in the technology of atomic energy, abolishing para. 2, relating to producers of source materials and suppliers of technical assistance, and increasing the number of members to be elected by the General Conference to 20, with the proviso that "the Board shall at all times include in this category five representatives of the area of Latin America, four representatives of the area of Western Europe, three representatives of the area of Eastern Europe, four representatives of the area of Africa, two representatives of the area of the Middle East and South Asia, one representative of the area of South East Asia and the Pacific, and one representative of the area of the Far East." In addition, one member is to be elected from one of the 3 Asian regions, and one from Africa or the 2 Asian regions other than the Far East. IAEA Doc. GC (XIV)/RES/272; IAEA Doc. INFCIRC/142, at 718. See also P.C. Szasz, THE LAW AND PRACTICES OF THE INTERNATIONAL ATOMIC ENERGY AGENCY 137-162 (1970). Professor Henkin has suggested that in an international machinery for the sea-bed the International Atomic Energy Agency example should be followed, and that both technically advanced nations and those with special mining interests (e.g. oil producing nations) should be given special representation. L. Henkin, Law for the Sea's Mineral Resources (Columbia U., ISHA Monograph 1), at 58-59 (1968).

17. The original text of Article 50 of the Convention on International Civil Aviation, of 7 December 1944, provided for a Council composed of 21 States, in the election of which the Assembly "shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council." 61 Stat. 1180; T.I.A.S. No. 1591; 3 Bevans 944; 16 U.N.T.S. 295. A 1961
mental Maritime Consultative Organization (IMCO), in connection with trying to determine which States belong to the following categories: States with "the largest interest in providing international shipping services"; States with "the largest interest in international seaborne trade"; States with "substantial interest in providing international shipping services"; and States with "substantial interest in international seaborne trade." 18


18. The original text of Article 17 of the IMCO Convention provided for a Council of 16 members to be composed as follows:

(a) six shall be governments of the nations with the largest interest in providing international shipping services;
(b) six shall be governments of other nations with the largest interest in international seaborne trade;
(c) two shall be elected by the Assembly from among the governments of nations having a substantial interest in providing international shipping services, and
(d) two shall be elected by the Assembly from among the governments of nations having a substantial interest in international seaborne trade.

In addition, Article 18 provided that, with the exception of the first Council, which was constituted in accordance with Appendix I to the Convention, the Council itself "shall determine for the purpose of Article 17(a), the Members, governments of nations with the largest interest in providing international shipping services, and shall also determine, for the purpose of Article 17(c), the Members, governments of nations having a substantial interest in providing such services. Such determinations shall be made by a majority vote of the Council including the concurring votes of a majority of the Members represented on the Council under Article 17(a) and (c). The Council shall further determine for the purpose of Article 17(b), the Members, governments of nations with the largest interest in international seaborne trade." 9 U.S.T. 621; T.I.A.S. No. 4044; 289 U.N.T.S. 48. An amendment to these two articles adopted in 1964, which came into force in 1967, increased the membership of the Council to 18, removed the control of the Council over the election process and provided for the election of all members by the IMCO Assembly. The new text of Article 18 obliged the Assembly to elect the six governments of the States with the largest interest in providing international shipping services and the six with the largest interest in international seaborne trade, but the last two categories in old Article 17 were replaced by a new combined one, requiring that the Assembly elect as the remaining six members Governments of States "which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographic areas of the world." 18 U.S.T. 1299; T.I.A.S. No. 6285. Article 28 of the
6. *Canadian Working Paper*. The Canadian proposal, like the United Kingdom one, is not in the form of a concrete draft. It discusses the crucial issues in the following manner:\(^{10}\)

With regard to the membership of the council, it is considered that traditional formulae used within the UN for representation on the basis of geographic groupings would be completely inapplicable in determining the composition of the executive body of the international seabed machinery. In this context the ranges of national interests cut clear across traditional groupings, and it is the proper balance of these national interests which must be taken into account in fixing the membership of the council. In achieving this the essential criteria could be the level of state expertise in offshore technology and resource management, the length of coastline, area of continental shelf, landlocked or shelf-locked status, and level of economic development. It is such criteria which must be adequately taken into account—pro or con—and to do so probably will require the creation of two classes of membership, the first

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\(^{10}\) IMCO Convention provided also for a Maritime Safety Committee of fourteen members elected by the Assembly from “the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas.” This provision caused various difficulties and led to an advisory opinion of the International Court of Justice of 8 June 1960, in which the Court decided that the refusal of the Assembly to consider Liberia and Panama as two of the eight largest shipowning nations constituted a violation of Article 28. Advisory Opinion concerning the Constitution of the Maritime Safety Committee of the Inter-governmental Maritime Consultative Organization, [1960] I.C.J. Reports 150-172. By an amendment adopted in 1965, which came into force in 1968, the Maritime Safety Committee was enlarged to sixteen members, to be chosen from among Governments of those States having an important interest in maritime safety, which was defined in a manner similar to that in the old Article 28. Eight members were to be elected from among the ten largest shipowning States, four from four geographical areas (Africa, the Americas, Asia and Oceania, and Europe), and four from among States not otherwise represented on the Committee. 19 U.S.T. 4855; T.I.A.S. 6490.

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\(^{19}\) *International Sea-Bed Regime and Machinery: Working Paper*, submitted by Canada, U. N. Doc. A/AC.138/59 (1971), reprinted in 1971 Sea-Bed Committee Report, at 220. Similarly, Australia has suggested that States which would be involved in the administration of large areas of the continental slope—for example, Argentina, Australia, Canada, India, the United States and the Soviet Union—should be represented on the Council, in addition to States with the financial ability and the advanced technology necessary to work in the international sea-bed area. Statement by Mr. J.B.R. Livermore, Delegation of Australia to Sub-Committee I of the United Nations Sea-Bed Committee, Geneva at 8-9 (mimeo.), 29th July 1971; U.N. Doc. A/AC.138/SC.I/SR.5-31, at 65. Denmark has also stated that there should be representation on the Council, in addition to those States which have established a sea-bed technology, of “countries which possess long coastlines or large shelf areas.” Statement by the Danish Delegation in Sub-Committee I, at 4-5 (mimeo.) August 18, 1971.
being composed of states parties designated by the assembly, and
the second of states parties elected by the assembly. Various per-
mutations and combinations would offer themselves in determining
which of the criteria just described should be used as a basis for
the designation or election of members of the council and the rela-
tive proportion to be maintained between the two classes of mem-
bership. It need only be added that the council should be a small
body and should probably not exceed a maximum of 30 states. De-
cisions of the council should be made on the basis of a two-thirds
majority vote. Very difficult questions arise concerning proposals
for weighted voting or double majorities. It would be incongru-
ous, and incompatible with the fundamental principle of the UN of
the sovereign equality of states, in an international regime intended
to benefit humanity as a whole, to give a virtual right of veto to
any particular state or group of states.

This statement raises issues similar to those discussed in con-
nection with the United Kingdom proposal. It might be difficult to
determine, for instance, “the level of state expertise in offshore
technology and resource management.” On the other hand, while
it might be easier to list the States with the longest coasts or the
largest continental shelf areas, these factors might provide seats
on the Council for such countries as Greenland or New Guinea
which might find it difficult to play a leadership role with respect
to sea-bed questions. On the other hand, these criteria might en-
sure the representation on the Council, in addition to the major
powers, of such States as Argentina, Australia, Canada, Chile, In-
donesia, Mexico, New Zealand and Philippines.20

The Canadian comment on the voting question shows clear op-
position to any provision similar to that suggested by the Soviet
Union, which would require unanimity or consensus and would
thus give a veto right to any particular state or group of states. On
the other hand, the requirement of a two-thirds majority vote
would, in a Council of 30 members, give a blocking power to any
group of eleven members. As long as that power is granted without
discrimination to all members, and not only to some of them, there

20. A table of Coastline Measurements of World Major Political Entities
may be found in SOVEREIGNTY OF THE SEA, published in 1969 by the Geo-
grapher of the U.S. Department of State as Geographic Bulletin No. 3
(Dept’ of State Pub. 7849), at 18-22. A list of “Countries with Extensive
Adjacent Shallow Ocean Areas” is published in MARINE SCIENCE AFFAIRS—
A YEAR OF BROADENED PARTICIPATION: THE THIRD REPORT OF THE PRESIDENT TO
THE CONGRESS ON MARINE RESOURCES AND ENGINEERING DEVELOPMENT (1969),
at 19.
will be no violation of the fundamental principle of the "sovereign equality" of States.

7. Japanese Working Paper. The Japanese proposal provides for a Council composed of 24 Member States, some of which would be "designated" and others would be "elected" by the Sea-Bed Assembly. The draft does not specify how the six designated members will be selected. Among the 18 other members there shall be at least 12 developing countries and three land-locked or shelf-locked countries. In electing this group of members the Assembly shall take into account the need for equitable geographical distribution. Voting on non-procedural questions shall be by a two-thirds majority of the members present and voting.21

The Japanese draft seems to translate some of the features of the Canadian proposal into more concrete terms and does not require additional comments. The distinction between designated and elected members will be also considered in connection with the United States proposal which is discussed below.

8. United States Working Paper. The draft convention prepared by the United States, though chronologically first is discussed here last, as it is the most detailed of the drafts thus far presented. It provides for a Council composed of 24 States, six of which would be the six most industrially advanced Contracting Parties (i.e., those Parties which are both developed States and have the highest gross national product), while of the remaining 18 members at least 12 would be developing countries. In selecting the 18 members, the Sea-Bed Assembly should take into account "the need for equitable geographical distribution," and should ensure that at least two of the 24 members shall be land-locked or shelf-locked countries. Decisions of the Council would require not only a majority of all its members (i.e., 13 votes), but also a concurrent majorities in the two categories (i.e., 4 of the 6 most industrially advanced Parties and 10 of the 18 other Parties).22


ARTICLE 36.—1. The Council shall be composed of twenty-four Contracting Parties and shall meet as often as necessary.
2. Members of the Council shall be designated or elected in the following categories:
   a. The six most industrially advanced Contracting Parties shall be designated in accordance with Appendix E;
   b. Eighteen additional Contracting Parties, of which at
The category of "most industrially advanced" States is similar to the category of States "of chief industrial importance" which is used least twelve shall be developing countries, shall be elected by the Assembly, taking into account the need for equitable geographical distribution.

3. At least two of the twenty-four members of the Council shall be landlocked or shelf-locked countries.

4. Elected members of the Council shall hold office for three years following the last day of the Assembly at which they are elected and thereafter until their successors are designated or elected. Designated members of the Council shall hold office until replaced in accordance with Appendix E.

5. Representatives on the Council shall not be employees of the Authority.

ARTICLE 38. Decisions by the Council shall require approval by the majority of all its members, including a majority of members in each of the two categories referred to in paragraph 2 of Article 36.

APPENDIX E. Designated Members of the Council.—1. Those six Contracting Parties which are both developed States and have the highest gross national product shall be considered as the six most industrially advanced Contracting Parties.

2. The six most industrially advanced Contracting Parties at the time of the entry into force of this Convention shall be deemed to be: 

3. The Council, prior to every regular session of the Assembly, shall decide which are the six most industrially advanced Contracting Parties. It shall make rules to ensure that all questions relating to the determination of such Contracting Parties are considered by an impartial committee before being decided by the Council.

4. The Council shall report its decision to the Assembly, together with the recommendations of the impartial committee.

5. Any replacements of the designated members of the Council shall take effect on the day following the last day of the Assembly to which such a report is made.

For a comment on the U.S. draft by one of its principal authors, see Leigh S. Ratiner, *United States Oceans Policy: An Analysis*, 2 J. of Maritime L. and Commerce at 225-266 (1971). He comments as follows on Articles 36 and 38:

The net effect of these provisions is that any three industrially advanced parties can block a Council decision as can any nine developing countries. This formula seems appropriate since it can be assumed that obtaining the necessary three votes in the group of industrially advanced parties would involve approximately the same degree of difficulty as obtaining the necessary nine in the group of 12 developing countries.

The composition of the Council is of critical importance to the viability of the organization. It must be fairly representative of nations whose nationals will provide capital for seabed exploration and exploitation on the one hand, and of nations who will be the principal beneficiaries of the revenue-sharing system on the other. The draft Convention by its terms offers substantial protection to the latter group. It will be recalled that the draft
by the International Labor Organization (ILO).23 While there were

Convention requires revenue collection and distribution, gives
developing countries an overwhelming voice in the Assembly, and
assures that licenses will not issue until revenues are established,
hence placing developed countries under substantial pressures to
agree on revenues. On the other hand, it must be conceded that
the major interest in the mechanics of the management system
rests with the developed countries. Accordingly, they must have a
voice in the Council commensurate with that interest. The voting
system in the Council clearly establishes an almost consensus-
like system without needlessly strangling the organization.

Two further points are worthy of note. First, no state has a per-
manent seat but rather must qualify for its seat—in the case of
designated members, in accordance with Appendix E. Second,
despite the heavy interests of the 'super powers' they do not have
a veto and can be outvoted.

23. The original text of Article 7 of the ILO Constitution, which was
embodied in Article 393 of the Treaty of Versailles, of 28 June 1919,
established a Governing Body of 24 persons, of which 12 were to represent Gov-
ernments, six were to be elected by the employers' delegates at the Inter-
national Labor Conference, and six were to be elected by the workers'
delegates at that Conference. Of the 12 persons representing the Govern-
ments eight were to be nominated "by the Members which are of chief in-
dustrial importance," and four by the Members selected for that purpose by
the Government delegates to the Conference, excluding the delegates of the eight States of chief industrial importance. Any question as to which
are the Members of the chief industrial importance were to be decided by
the Council of the League of Nations. [1919] British T.S. No. 4, at 195;
3 Malloy-Redmont Treaties, Conventions, . . . between the U.S. and Other
When India and Poland contended in 1922 that they were States of chief
industrial importance, the issue was submitted to the Council of the League,
and on the basis of a report of a Committee of Experts the Council de-
cided that the eight States of chief industrial importance were then (in al-
phabetical order): Belgium, Canada, France, Germany, Great Britain, India,
Italy and Japan. 3 League of Nations Off. J. 1206, 1339-1374, 1385-1387.
An amendment adopted in 1922, which came into force in 1934, increased
the membership of the Governing Body to 32 persons: 16 representing Governments, 8 representing the employers, and 8 representing the workers.
Eight of the governmental members were to be appointed by the Members
of chief industrial importance, and six of the sixteen governmental mem-
ers were to be from non-European States. [1925] British T.S. No. 6;
1 Hudson, International Legislation 248-50 (1931). Various changes
were made in the list of the States of chief industrial importance from time
to time, especially when new States joined the ILO or when some States left
it. For a comment on some of these changes, see Jenks, The Eight States
of Chief Industrial Importance, 17 British Y.B. Int'l L. 178 (1936). When
Article 7 of the ILO Constitution was revised in 1946, the power to deter-
mine which are the Members of the Organization of chief industrial im-
portance was transferred to the Governing Body, with a right of appeal to
the International Labor Conference. 52 Stat. 3435; T.I.A.S. No. 1868; 4
Bevans 182; 15 U.N.T.S. 35. The membership of the Governing Body was
increased to 40 by a 1953 amendment, which entered into force in 1954.
At that time, the number of persons appointed by the Members of chief in-
dustrial importance was increased from 8 to 10. 7 U.S.T. 245; T.I.A.S. No.
3500; 191 U.N.T.S. 143. Another amendment adopted in 1962, which en-
tered into force in 1963, again increased the membership of the Governing
Body, from 40 to 48, but the number of Members of chief industrial im-
some difficulties about this concept in the early years of that Organization, an agreement now seems to exist about its meaning and components. A 1954 report took into account contributions to the ILO, national income, foreign trade and economically active population. A 1963 report discarded foreign trade and increased greatly the weight given to national income. Consequently, at present the determination of States of chief industrial importance for ILO purposes is based on the following factors (with the weight given to each factor being indicated in parentheses): national income (6), contributions to ILO (3), and economically active population (1). On this basis the following States were listed by the ILO Committee of Experts in 1963 as falling within the category of States of chief industrial importance: United States, Soviet Union, China, United Kingdom, France, Federal Republic of Germany, India, Japan, Canada and Italy.24

The United States sea-bed proposal uses a slightly different criterion—"six most industrially advanced countries." As explained in Appendix E to the United States draft, there are two major components of that concept: it can be applied only to the developed States; and it is related to "the highest gross national product." It is generally accepted in the United Nations that the dividing line between developed and developing countries is $1,000 per capita gross national product.25 While "national income" and "gross national product" are used interchangeably, the experts seem to consider the latter term more precise. An annual study by the U.S. Arms Control and Disarmament Agency ranks various States according to gross national product, population and gross national product per capita. Thus its estimates of national "economic strength" in 1968 were as follows:26

According to this list the six most industrially developed States are: United States, Soviet Union, Japan, Federal Republic of Germany, France and the United Kingdom. The next two are Italy

24. For reports to, and decisions of, the Governing Body relating to this question, see I.L.O., Minutes of the 125th Session of the Governing Body (1954), at 18–23, 52–56; 154th session (1963), at 27, 88–91.

25. This criterion has been applied, for instance, by the U.N. Committee on Contributions since its early years. 7 U.N. GAOR Supp. 10 at 2, para. 11, U. N. Doc. A/2161 (1952).

## Economic Strength

<table>
<thead>
<tr>
<th>Rank</th>
<th>Gross National Product (billion dollars)</th>
<th>Population (millions)</th>
<th>GNP per capita (dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>United States</td>
<td>China</td>
<td>United States</td>
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<tr>
<td>2</td>
<td>Soviet Union</td>
<td>India</td>
<td>Kuwait</td>
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<tr>
<td>3</td>
<td>Japan</td>
<td>Soviet Union</td>
<td>Sweden</td>
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<td>4</td>
<td>West Germany</td>
<td>United States</td>
<td>Canada</td>
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<td>5</td>
<td>France</td>
<td>Pakistan</td>
<td>Switzerland</td>
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<td>6</td>
<td>United Kingdom</td>
<td>Indonesia</td>
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<td>7</td>
<td>China</td>
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<td>Australia</td>
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<td>Finland</td>
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<td>25</td>
<td>Rep. of South Africa</td>
<td>Argentina</td>
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<tr>
<td>30</td>
<td>Indonesia</td>
<td>North Vietnam</td>
<td>Ireland</td>
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</tbody>
</table>

and Canada. China and India do not qualify as yet as developed nations in view of their quite low per capita gross national product.  

In criticizing the United States and Soviet drafts, Mr. Njenga (Kenya) expressed strong opposition to "any device such as preferential or weighted voting, 'concurrent majorities' or any other veto arrangements which will enable any interested group to block decisions." He was prepared, however, to "provide for continuous representation of special interests in the Council, so long as a fair geographical representation is maintained," and for decisions to be made by a two-thirds majority "irrespective of any special groups." He suggested that a Council of 30 [40] members be established, composed as follows:  

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27. According to the study cited in note 26 supra, the gross national product per capita in 1968 of China was $112 and of India $82. Id. at 12. World Bank's estimates for 1967 were $90 for both China and India. International Bank for Reconstruction and Development, World Bank Atlas: Population, Per Capita Product and Growth Rates, at 3 (1969).  

(a) Five members designated as the most advanced in seabed technology.
(b) Ten members designated by the Assembly from the various geographical areas.
(c) At least three members elected by the Assembly from the land-locked and shelf-locked countries.
(d) Finally, twenty-two other members elected by the Assembly taking into account the need to ensure equitable representation of interests not already covered.

While the major powers and other developed countries might consider the Kenyan proposal as a step in the right direction, they are likely to require stronger representation on the Council than is granted to them in that proposal. If sufficiently high majorities should be prescribed, the interests of the developed countries might be sufficiently safeguarded without the additional requirement of concurrent majorities.

9. Private Drafts. Finally, for the sake of completeness, it might be useful to mention some of the many private drafts for an International Sea-Bed Authority.

The Commission to Study the Organization of Peace, which already in 1957 and 1966 suggested that an international authority be established by the United Nations to administer the sea-bed, proposed in 1969 that the Council of such authority should have a membership not exceeding 25, which should be divided into the following categories: “(1) a group of States technologically developed in matters of the exploitation of the mineral resources of the sea-bed; (2) an equal number of other States with access to the sea; and (3) a smaller number of States having no access to the sea.” In 1970 the Commission prepared a Draft Statute for a United Nations Sea-Bed Authority, which envisaged a Council comprising all Contributing Members of the Authority (i.e. States contributing more than a specified percentage of the expenses of the United Nations) and six other Members (four from coastal States


and two from non-coastal States). Decisions were to be made by a majority vote, including at least three of the non-contributing Members.\textsuperscript{31}

A draft treaty prepared by Mr. Aaron Danzig in 1971 for the World Peace through Law Center proposes the establishment of an international corporation rather than international authority, to be chartered by the United Nations. Each State would be entitled to one share and one vote in that corporation. The proposed Board of Directors would have the same structure and voting rules as are proposed in the United States draft discussed above.\textsuperscript{32} An earlier draft contemplated an equal division of seats between technologically advanced nations and developing countries, with a two-thirds majority required for any action.\textsuperscript{33}

While the main reports of the Deep-Sea Mining Committee of the International Law Association contain no details about the structure of the proposed international agencies\textsuperscript{34} some of the national re-

\textsuperscript{31} Commission to Study the Organization of Peace, The United Nations and the Bed of the Sea (II) (1970), p. 25. If 1\% of United Nations contributions were chosen as the lower limit, the list of Contributing Members would include 15 States: Australia, Belgium, Canada, China, France, India, Italy, Japan, Netherlands, Poland, Soviet Union, Sweden, Ukrainian S.S.R., United Kingdom and United States. If the figure were dropped to 0.75\% the following 5 States would join the list: Argentina, Brazil, Czechoslovakia, Mexico and Spain.

\textsuperscript{32} World Peace through Law Center, Revised Draft Treaty Governing the Exploration and Exploitation of the Ocean Bed (World Peace through Law Center, Pamphlet Series No. 14, 1971) at 19.

\textsuperscript{33} Treaty Governing the Exploration and Exploitation of the Ocean Bed (World Peace through Law Center, Pamphlet Series No. 10, 1968) 6, 26. Mr. Danzig followed in this draft the model of the Special Fund of the United Nations, as originally constituted by Resolution 1240 (XIII) of the General Assembly, of 14 October 1958, which provided that on the Governing Council of the Fund there shall be equal representation of economically more developed countries and of less developed countries, taking into account the need for equitable geographical distribution among the latter members. 13 U. N. GAOR Supp. 13 at 12, U. N. Doc. A/4090 (1958). It must be noted, however, that when the General Assembly decided in 1965 to combine the Special Fund and the Expanded Programme of Technical Assistance of the United Nations into a consolidated United Nations Development Programme, it changed the composition of the Governing Council, allocating nineteen seats to developing countries and seventeen to the economically more developed countries, and arranged for the rotation of the thirty-seventh seat among the five major regional groups. G.A. Res. 2029 (XX), 20 U. N. GAOR Supp. 14 at 20-21, U. N. Doc. A/6014 (1965). The composition of the Governing Council was changed again in 1971, when the General Assembly enlarged it to 48 members, allocating 27 seats to the developing countries and only 21 seats to the developed countries. G.A. Res. 2813 (XXVI), U. N. Doc. A/RES/2813 (1971).

ports on deep-sea mining deal with this question to some extent. Thus the report of the American Branch Committee specifies that voting in a governing council should "be weighted, with additional voting power being assigned to those nations having the greatest technological capability for deep-sea operations." Similarly, the report of the British Branch Committee proposes the establishment of a Governing Council consisting of 24 States, to be elected "on the basis of criteria giving due regard to a reasonable balance between technically developed and underdeveloped States and between coastal and landlocked States." The former rapporteur of the British Branch Committee, Mr. E. D. Brown, has suggested that the Governing Body of an International Sea-Bed Registry should provide adequate representation for coastal developing States, for land-locked and shelf-locked developed and developing States, and for the main geographical area, provided that technologically advanced States command a controlling majority. In particular, he proposed a Governing Body of 43 members, divided as follows: technologically advanced States of North America, Western Europe and other areas—22 seats; Eastern Europe—4 seats; developing States of Africa, Asia and Latin America—5 seats for each of these regions; Yugoslavia—1 seat; land-locked States—1 seat. He would balance that Governing Body with another Governing Body which would be in charge of distributing any funds which might become available. The structure of that second body would be almost identical with that of the Governing Council of the United Nations Development Programme, i.e. would give to the developing nations 19 seats, to the developed nations 17, and would rotate the thirty-seventh seat among the land-locked and shelf-locked nations.


Professor Knight criticizes the United States proposals on the ground that they assign too much weight to "general economic or technological power," thus permitting the inclusion among the "big six" of a State with "no continental shelf resources, no offshore technology, and a minimal interest in the activities conducted there." He would rather give these seats to States having "the greatest economic, technological, and geographical interest in off-shore mining." He suggests, therefore, that the following factors be considered: gross national product, area of continental shelf and slope, resource potential of continental shelf and slope, dollar value of marine resource production, and dollar investment in offshore technology. He would rank all States in each of these categories, assigning to the top ten States points from ten to one as they decrease in rank, the sum of points obtained by any State in the five categories serving as an index of that State's interest in sea-bed exploitation. The six States with the highest total will qualify for membership on the Council.38

III. COMPREHENSIVE PROPOSALS FOR AN OCEAN REGIME

Apart from the drafts limited to a sea-bed regime, there are several proposals of a much broader scope, combining a sea-bed authority with a more general one, dealing also with various aspects of the ocean. Some of these proposals are official, some of them are private.

1. Ambassador Pardo's Draft. Ambassador Pardo (Malta), the person chiefly responsible for putting the sea-bed question on the United Nations agenda,39 presented in 1971 a "Draft Ocean Space Treaty," dealing not only with the regime of the sea-bed, but also with the regimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing, the preservation of the marine environment and scientific research. The International Ocean Space Institutions, proposed by him, would have, therefore, a very broad jurisdiction, and their structure is accordingly much more complicated than that suggested in the drafts discussed in section II of this paper.

Ambassador Pardo proposed that the members of the Ocean Assembly be divided into the following three categories: coastal

States having certain specified characteristics (category A), other coastal States (category B), and non-coastal States (category C). He would include in category A two groups of States: those coastal States which have a population exceeding 90 million inhabitants; and those coastal States which possess at least six of the following nine qualifications:

(a) Have a population greater than 45 million inhabitants;
(b) Have a length of coastline exceeding 5,000 kilometers;
(c) Possess more than 1 million gross tons of merchant shipping;
(d) Own and operate more than 20 ships and submersibles aggregating not less than 30,000 gross tons for scientific and rescue purposes;
(e) Have produced more than 1 million metric tons of fish annually over the previous three years;
(f) Have produced annually over the previous three years more than 1 million tons of hydrocarbons or other minerals from the seabed of ocean space;
(g) Own submarine pipelines or cables in International Ocean Space;
(h) Have expended more than $20 million annually from State funds over the previous three years for scientific research in ocean space;
(i) Have contributed annually over the previous three years more than $25 million to the Institutions in respect of revenue obtained from the exploitation of natural resources in national ocean space.

Ambassador Pardo would require decisions of the Assembly to be made ordinarily "by an affirmative majority of the members present and voting and by a majority of members present and voting belonging to category A and to one of the other two categories"; and with respect to specified important matters he would require the decisions of the Assembly to be made by an affirmative majority of members present and voting and by a majority of members in each of the three categories.

Ambassador Pardo's proposals for the Council are built on similar lines. It would be composed of all members belonging to category A, an equal number of members belonging to category B, and five members belonging to category C. Decisions of the Council would require "the affirmative vote of a majority of its members and of a majority of members in category A and in one of the two other categories."

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While some of the factors to be considered in connection with membership in category A can be determined now on the basis of existing data, others depend on future developments. The scheme here proposed, though complicated, would result in a fair representation of all the major interest groups. The requirement of concurrent majorities of at least two categories of members would protect the minorities in the Assembly and the Council from precipitate action and would promote a spirit of accommodation and consensus. At the same time, it will not grant to any country or group of countries a complete veto right. A coalition across various geopolitical, regional and economic lines would be required to block a particular decision.

2. Draft Statute by Mrs. Elisabeth Mann Borgese. A draft statute for an ocean regime was first prepared by Mrs. Borgese for the Center for the Study of Democratic Institutions in 1968. It was revised considerably several times, and a new version was presented to the Pacem in Maribus II Conference in Malta in 1971. This revised draft is based on the premise that "ocean space is an indivisible whole," and that, consequently, the proposed international regime should "regulate, supervise and control all activities on the high seas and on or under the sea-bed." To provide the necessary expertise in the many fields covered by this proposal, Mrs. Borgese has suggested a Maritime Assembly consisting of five chambers, of 81 delegates each.

The first chamber would be elected by the General Assembly of the United Nations, nine delegates being elected from each of nine regions (North America, Latin America, Eastern Europe, Western Europe, Indian sub-continent, South-East Asia, Africa south of the Sahara, the Middle East and North Africa, and the Far East). In case of regions consisting of less than nine nations, the remaining seats would be filled from among persons nominated by national or regional parliaments or intergovernmental organizations. The second chamber would represent international mining corporations, unions and consumers directly interested in the extraction of oil, metals and minerals from the sea-bed. The third chamber would represent fishing organizations, fish processors and merchants, fisherman unions, consumers of fish, and regional fishing commissions. The fourth chamber would represent shipping companies, cable

companies and other organizations providing services or communications in the ocean space. The fifth chamber would represent various groups of ocean scientists and intergovernmental and nongovernmental international scientific organizations.

A majority vote of two chambers—i.e., of the first chamber and the chamber competent in the matter voted upon—would be required for the adoption of any decision. In case of conflict, decisions would be made by a simple majority vote of a joint session of the two chambers.

The Maritime Commission—equivalent to the Council envisaged in other drafts—would consist of 17 members, 5 of whom would be designated by the outgoing Commission. The remaining twelve members would be elected by the Maritime Assembly, “with due regard to equitable representation on the Commission as a whole of developed and developing nations, maritime and landlocked nations, and nations operating under free enterprise and socialist economic systems.” Decisions of the Commission would require a majority of those present and voting, except for decisions on the international regime's development plans which would be made by a two-thirds majority of those present and voting.

Decisions of the Commission would become effective only when approved by two chambers of the Assembly including the first chamber. Decisions of the Assembly, on the other hand, would become effective only when passed by the Commission.42

Many details of the draft, especially those relating to the actual composition and method of elections of the four nongovernmental chambers, are left for future determination. Nevertheless, it is quite obvious that this draft, unlike all the others, goes beyond the framework of an intergovernmental institution and assigns an important role to various transnational elements. It thus provides “a pattern for the transition from representational to participational democracy at the level of international organization,” and follows in this respect the model provided by the constitution of Yugoslavia. It relies on “a rotating bicameral system, the fulcrum of which is the political (first) chamber.”43

43. See id., Part II, Sec. 6 (Comments by Elisabeth Mann Borgese), at 10-11.
3. **Iraqi Proposal.** Ambassador Dr. Al Rawi (Iraq) has also suggested a combined international regime for the sea-bed and the high seas, with “functions of enormous breadth and complexity” over a vast area. Such a regime would require, according to his proposal, a Council of 30 members: 15 representing the developing States, 5 representing the highly industrialized developed States, 3 representing other developed States, 2 representing landlocked States and States with short coastlines, and 5 representing the five international agencies interested in ocean and seabed exploration and exploitation (UNESCO, IMCO, FAO, IAEA and UNIDO). Decisions on vital matters would require a two-thirds vote, and no State should have any preferential rights or veto. 

The interesting feature of this proposal is that it provides for separate representation of the major international organizations concerned with ocean affairs. This approach would have the advantage of facilitating international cooperation between these agencies and the new seabed and ocean authority or authorities. Such a supercouncil might be desirable, whatever the structure of the sea-bed authority might be.

IV. **Other Possible Options**

The Secretariat of the United Nations in its early analysis of the problem has anticipated many of the proposals here discussed. After a study of several specialized agencies, it outlined the perimeters of the problem of composition of an international council as follows:


44. *U.N. Secretariat Study, 1969, supra, note 1, at 133.*

Within this general framework many options are possible, in addition to these discussed above. It is quite clear that the major developed States will not accept an ordinary-majority rule and might...
be even hesitant about two-thirds or three-quarters majority, unless they are guaranteed a sufficient number of seats on the Council. On the other hand, most other States resent the idea of any special privileges for a few developed nations. They might feel differently if a criterion could be found which would give equal status to the developed and the developing nations.

One possible solution would be to treat these two groups of States equally in all respects and to distribute any reserved seats in an equitable fashion between them. The following proposal might provide the elements of such a solution:

a. The Council should have 32 members. (A larger number of seats would provide more seats for the various groups and would be more consistent with the general trend in United Nations bodies.)

b. These 32 seats should be divided equally between the developed and the developing States. (There would be thus 16 developed and 16 developing States on the Council.)

c. These 32 seats should, at the same time, be divided equally between permanent members and rotating members. The 16 permanent seats would be, in turn, divided equally between the developed and the developing States. (There would be, therefore, 8 permanent members from among the developed States, 8 permanent members from among the developing States, 8 rotating members from among the developed States, and 8 rotating members from among the developing States.)

d. The permanent members would be selected on the basis of certain objective criteria, different for each group. The permanency of each seat would not be absolute, as a State would be entitled to it only as long as it fulfills the requirements. (Should another State forge ahead of one of the original permanent members, it would replace the original member at the time of next selection.)

e. The permanent members coming from among the developed States might be the eight developed States with the highest gross national product. (As noted in section II (8) above, the criterion for differentiating between the developed and the developing States would be the figure of $1,000 per capita gross national product. According to the data cited in that section, the eight developed States with the largest gross national product at this time are:
f. The permanent members coming from among the developing States might be the two most populous States in each of the four developing regions. (The four regions for this purpose might be Asia, Africa south of the Sahara, North Africa and the Middle East, and Latin America. At present, the following States would qualify for permanent membership: from Asia—People's Republic of China and India; from Africa south of the Sahara—Nigeria and Ethiopia; from North Africa and the Middle East—Egypt and Iran; and from Latin America—Brazil and Mexico.)

g. The eight non-permanent members coming from among the developed States might be divided as follows: four Western European States, three Eastern European States, and one developed State not belonging to either group. (The last group would include such States as Australia, Israel, New Zealand, Yugoslavia, etc.)

h. The eight non-permanent members coming from among the developing States might be divided equally among the four developing regions. (There would be, therefore, two members from Asia, two from Africa south of the Sahara, two from North Africa and the Middle East, and two from Latin America, including the Caribbean States.)

i. At least four of the thirty-two members of the Council should come from among the land-locked and shelf-locked States. At least one of them should come from each of the four major continents. (There would be thus at least one land- or shelf-locked State from Africa, Asia, Europe and the Americas.)

j. All decisions of the Council would require a three-fourths vote of all the members of the Council. (24 votes would thus be required in each case, ensuring that a decision is acceptable to almost all members of one group and at least a half of the other group.)

There may be, of course, several variations on this basic option. For instance, a Council of 48 members would permit an increase in each group and sub-group, though it might be too unwieldy for effective decision-making.

The permanent members in both the developed and developing group might be chosen on the basis of the same criterion, e.g. population or gross national product.

The number of non-permanent members from each region might vary, depending on the number of permanent members from that region, so that all regions would be represented by the same number of States.
With respect to voting, instead of a three-quarters majority, one might consider a triple majority, composed of a majority of the permanent developed members, a majority of the permanent developing members, and a majority of the non-permanent members. Or a majority in each of the four sub-groups might be required.

The suggestions made here are merely illustrative of possible solutions. The final decision will be made at the bargaining table. If the proposed International Sea-Bed Authority is given important powers and duties, its structure must be satisfactory to the major groups of States. On the other hand, if in the course of negotiations the powers of the authority are whittled down to a bare minimum, the structure will become less important and a compromise on that subject might prove easier. If we really want an orderly and peaceful development of the newly discovered resources of the sea-bed, it is necessary to take the first approach. Let us hope, therefore, that the 1973 Conference will be able to devise a generally satisfactory structure of the authority and would endow it with sufficient powers to protect the common heritage of mankind and to ensure its use for the common benefit of all States, large and small, developed and developing, coastal and land-locked.