17 December 1970 offers a useful point of departure.

Structure of the International Authority

In establishing an International Authority, Governments may wish to consider the broad lines of existing intergovernmental organisations, e.g. (i) a plenary organ of the entire membership, meeting annually or at some other prescribed interval and responsible for laying down the broad lines of policy ; (ii) an executive organ of limited membership, but representative composition organised to meet at short intervals or remain in permanent session and responsible for working decisions within the broad lines laid down by the plenary organ ; (iii) a tribunal for the settlement of disputes ; and (iv) a Secretariat.

An executive organ

The executive organ might consist of about 25 members and its composition might be based on the principle of geographic representation, while providing also for certain important special interests ; for example, provision may be made for a specified number of places for land-locked and shelf-locked countries. Governments may wish to ensure that decisions of the executive organ will be taken on a one-State-one-vote basis and that no system of preferential or weighted voting, "concurrent majorities", or other form of veto should be allowed to operate. However, in recognition of the fact that certain developed countries whose technological capacity and financial assistance would be essential to the success or viability of the Authority might seek a greater role in the conduct of its affairs and the formation of policy, it may be necessary to devise some method that would attract the support of those countries without, at the same time, sacrificing the one-State-one-vote principle.

A tribunal

The inclusion of a tribunal in the institutional framework of the Authority might be desirable in view of the

highly specialised nature of the disputes that are likely to arise. The composition of such a tribunal would have to be carefully worked out so as to ensure the confidence of the parties to any dispute. In addition, consideration may be given to involving disciplines, other than, the purely legal, e.g. economic, scientific and technical, in the decision.

The tribunal might, in general, have jurisdiction over inter-State disputes. Should it have jurisdiction over disputes between a Contracting Party and International Authority ? Should its jurisdiction be categorised and/or limited by reference to other criteria, e.g. value of the sum in dispute, "legal disputes", "technical disputes" ? Should the tribunal have jurisdiction over disputes where one of the parties is an operator having the nationality of a Contracting Party? The tribunal's powers might include the power to decree interim or emergency relief and to impose sanctions in the event of non-compliance with its decisions. What limit, if any, should be placed on the tribunal's power to impose a fine or other penalty ?

A question of crucial importance will be whether the tribunal's jurisdiction should be consensual or compulsory. In dealing with this question Governments may wish to bear in mind that for many years to come those involved in exploration and exploitation activities, and therefore likely to cause damage, will be corporate entities from the technologically advanced countries. Some means of compelling their appearance before an impartial tribunal may warrant serious consideration.

As an alternative to having a permanent specialised judicial organ as part of the institutional framework of the Authority, consideration might be given to maintaining panels of arbitrators or conciliators from which tribunals or other judicial or quasi-judicial bodies may be constituted by the parties to a dispute on an *ad hoc* basis by agreement, either in anticipation of future disputes or after a particular

dispute has arisen. Another possible alternative might be some arrangement between the membership of the Authority and the International Court of Justice whereby the latter might make available a special chamber for sea-bed disputes under Section 26 of the Statute of the Court.

A Secretariat

As to the Secretariat, there may be general agreement that its character should be truly international. The statute of the Authority should prescribe that recruitment policy should be based (1) on the highest standard of competence, and (2) on the principle of geographic representation. Consideration might be given to restricting the incidence of permanent employment with the Authority at any rate in the case of the large number of scientific and technical personnel that will be necessary, since such personnel should be allowed to circulate freely and maintain a familiarity with current trends and developments in their respective fields of expertise.

The head of the Secretariat ("Secretary-General", "Director General") might be designated the chief executive and legal representative of the Authority. Governments may wish to consider his term of office, and the other terms and conditions of his appointment.

Subsidiary organs

Consideration will also have to be given to the establishment of subsidiary organs of the Authority ("Commissions", "Committees", "Boards") to deal with certain technical or operational matters. These might be subsidiary organs created by the plenary organ or the executive organ of the Authority depending on their function and scope. It might be possible to envisage, as does the United States' draft, an "Operations Commission" dealing with the issue of licences, and supervision and inspection of all operations ; a "Rules and Recommended Practices Commission" for the establishment and periodic review of sound operational practices ;

and an "International Boundary Review Commission". The latter, as envisaged by the U. S., is associated with the United States' concept of a "trusteeship" system, but a Commission on boundaries of national jurisdiction could perform a useful function quite apart from such a system. Other subsidiary bodies might be considered e.g. in connection with the Authority's benefit-sharing and commodity price fluctuation control functions.

Other aspects of the international regime

The broad principles of the regime for the area of the sea-bed beyond national jurisdiction are spelled out in the General Assembly's Declaration of 17 December 1970. Governments may wish to consider incorporation and, where necessary, elaboration of those principles in the Convention, so as to place their legal effect beyond question. Thus the "common heritage" concept (paragraph 1 of the Declaration), non-appropriability (paragraphs 2 and 3 of the Declaration), subjection of all activities of exploration and exploitation to the regime (paragraph 4 of the Declaration), and restriction of the use of the area to exclusively peaceful purposes, might be enunciated in a first chapter of the Convention on the regime.

Several other general principles from the Declaration might need to be incorporated, and Governments might wish to decide on precise formulations for inclusion in the Convention. What other general principles would warrant inclusion in the Convention ? The Declaration of 17 December 1970 was essentially a compromise text, a lowest common denominator as between the several competing interests of groups of States in the General Assembly. In the drafting of the new Convention, Governments would be free to make new proposals with regard to other principles, although they might wish to restrict themselves to proposals that are not incompatible with the principles of the Declaration (see paragraph 3 of the Declaration).

Among the other important principles of the Declaration that might be incorporated in a Convention are :

(*a*) *The rights and duties of coastal States adjacent to activities taking place in the international sea-bed area.*

Paragraph 12 of the Declaration of 17 December 1970 requires States to pay due regard to the rights and legitimate interests of coastal States in the region of such activities as well as those of all other States which may be affected by such activities. It specifically requires that consultations be maintained with the coastal States concerned with respect to activities relating to exploration of the international area of the sea-bed and the exploitation of its resources with a view to avoiding infringement of such rights and interests. Governments may wish to consider how these provisions might be elaborated in the Convention and to what extent the required consultations might be institutionalised within the framework of the Authority or outside it.

(*b*) *Preservation of the legal status of the waters superjacent to the international sea-bed area, and the airspace above them. Declaration, paragraph 13 (a).*

How should this principle be reflected in the Convention ? Should the Convention include a further provision requiring that activities in the superjacent waters should in no way impede sea-bed activities covered by the Convention ?

(*c*) *The right of coastal States to take emergency measures.*

Paragraph 13 (b) of the Declaration of 17 December 1970 expressly preserves, but does not elaborate upon.

> "The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof resulting from, or from other hazardous occurrences caused by, any activities in the (international sea-bed) area, subject to the international regime to be established".

This provision clearly contemplates that the regime would contain provisions regarding the exercise of this right. Governments would wish to consider how this right is to be formulated in the Convention, and to what extent procedures for its exercise are to be institutionalised either within or outside the framework of the Authority.

(*d*) *State responsibility*

Paragraph 14 of the Declaration of 17 December 1970 reads as follows :

> "Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international regime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability".

Governments may wish to give careful consideration to the principles applicable in determining responsibility of States for damage caused by any activity, regardless of its nature, with respect to the international sea-bed area and its resources. Should the offender's State be responsible directly and immediately for damage caused by such activities as being in a special category of international injury ? Should liability be "absolute" or "strict", or dependent on some notion of fault ? Where the offender is the national of a Contracting State should he be liable jointly and severally with that State ? What rules should be adopted for ascert-

aining the nationality of the offender in the event that nationality, as such, is deemed to be relevant in the system for determining liability ultimately adopted ? Would the States members of an organization held responsible for damage themselves be liable in any degree ? Should the whole question of liability be dealt with in an agreement separate from the general Convention on the Sea-bed ? Consideration may be given to systems of international insurance against damage caused as a result of sea-bed activities.

Extracts from 1971 Report of the AALCC Sub-Committee on the Law of the Sea.

"(*b*) *The type of regime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction and types of international machinery.*

The Sub-Committee considered that all the basic principles contained in the Declaration of 17th December 1970 e.g. the common heritage concept, non-appropriability, peaceful uses, benefit-sharing, etc. should be duly defined and incorporated in the Convention on the international regime, thus placing their legally binding force beyond controversy.

The majority of Delegations were in broad agreement that the International Authority to be set up should have a range of powers along the following lines :

(i) To explore the International Sea-bed Area and exploit its resources for peaceful purposes by means of its own facilities, equipment and services, or such as are procured by it for the purpose ;

(ii) To issue licences to Contracting Parties, individually or in groups, or to persons, natural or juridical, under its or their sponsorship with respect to all activities of exploration of the International Sea-bed Area and the exploitation of its resources for peaceful purposes, and related activities, subject to

such terms and conditions, including the payment of appropriate fees and other charges, as the Authority may determine ;

(iii) To provide for the equitable sharing by Contracting Parties of raw materials obtained from the International Sea-bed Area, funds received from the sale thereof, and all other receipts, as well as scientific information and such other benefits as may be derived from the exploration of the International Sea-bed Area and the exploitation of its resources ;

(iv) To establish or adopt in consultation, and where appropriate, in collaboration with the competent organ of the United Nations, and with the specialised agencies concerned, measures designed to minimise and eliminate fluctuation of prices of land minerals that may result from the exploitation of the resources of the International Sea-bed Area, and any adverse economic effects caused thereby ;

(v) To encourage and assist research on the development and practical application of scientific techniques for the exploration of the International Sea-bed Area and the exploitation of its resources, and to perform any operation or service useful in such research ;

(vi) To make provision in accordance with the Convention for services, equipment and facilities to meet the needs of research on the development and practical application of scientific techniques for the exploration of the International Sea-bed Area and the exploitation of its resources for peaceful purposes ;

(vii) To foster the exchange of scientific and technical information on the peaceful uses of the International Sea-bed Area and its resources ;

(viii) To promote and encourage the exchange and training of scientists and experts in the field of exploration of the sea-bed and the exploitation of its resources ;

(ix) To establish and administer safeguards designed to ensure that materials, services, equipment, facilities and information made available by the Authority or at its request or under its supervision or control are not used in such a way as to further any military purpose ;

(x) To establish and adopt, in consultation and, where appropriate, in collaboration with the competent organ of the United Nations and with the specialised agencies concerned, standards of safety for protection of health and minimisation of danger to life and property, and the protection of the marine environment as a whole, and to provide for the application of these standards to its own operations as well as to all other operations authorised by it or under its control or supervision ;

(xi) To acquire or establish any facilities, plant and equipment useful in the carrying out of its authorised functions, whenever the facilities, plant and equipment otherwise available to it are inadequate or available only on terms it deems unsatisfactory ; and

(xii) To take any other action necessary to give effect to the provisions of the Convention.

Several Delegations emphasised that in their view the international machinery to be set up to administer the proposed international regime governing the sea-bed beyond national jurisdiction should have comprehensive powers and functions.

The machinery should have the capacity to carry out exploration and exploitation activities on its own, even though in the initial stages of its existence it might not be in

a position to exercise that function. A few Delegations expressed doubts regarding the advisability of conferring the power of direct exploitation on the international machinery, and expressed reservations regarding some of the functions outlined above.

II. THE OUTER LIMIT OF THE TERRITORIAL SEA

Issue unresolved since Geneva Conferences of 1958 and 1960

By Article 1 of the Geneva Convention of 1958 on the Territorial Sea and the Contiguous Zone—

> "The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea".

By Article 2 of that Convention—

> "The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil".

The 1958 Conference on the Law of the Sea was unable to reach agreement on the maximum breadth of the territorial sea, and consequently the Convention does not cover the point. The 1960 Conference on the Law of the Sea also failed to settle that issue, which is now to come before the proposed Conference on the Law of the Sea scheduled to take place in 1973. What should be the maximum breadth of the territorial sea ? Should the limit be uniform for all countries? Would it be feasible or desirable to have a country-by-country approach or regional approach to delimiting the territorial sea, depending on political, economic and geographical factors associated with the country or region concerned?

It may be noted that at the 1958 Conference, a joint Indian-Mexican proposal (following a recommendation of the International Law Commission) to the effect that every State be entitled to fix the breadth of its territorial sea up to a

limit of 12 nautical miles measured from the baseline applicable in conformity with the relevant principles set forth elsewhere in the Convention on the Territorial Sea, was not adopted, 35 States voting for, 35 voting against, with 12 abstentions. (Summary Records, Vol. III, pp. 177, 233). At the 1960 Conference a joint Canadian-United States proposal for a 6 nautical mile territorial sea plus an additional 6 nautical mile fishing zone received substantial support (43 in favour, 33 against with 12 abstentions) and was adopted by the Committee of the Whole, although the Conference itself failed to reach a conclusion on the point. (Summary Records, pp. 152, 170, 173). Of possible significance as pointers in the general direction of 12 miles as the maximum breadth of the territorial sea are paragraph 4 of Article 7 of the Convention on the Territorial Sea which prescribes 24 miles as the maximum distance between the natural entrance points of a bay if it is to be validly claimed as internal waters; and paragraph 2 of Article 24 of the same Convention which states that the contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured.

Many developing countries tend to the view that the whole question of what the maximum breadth of the territorial sea should be ought to be discussed after the extent of national jurisdiction over the sea-bed and over fisheries in waters adjoining the territorial sea have been settled. On this approach, a claim of wide territorial limits would be a last resort if those States cannot secure a satisfactory regime for the international sea-bed area, or recognition of appropriate claims of economic jurisdiction over waters adjacent to the territorial sea.

For statistics regarding current claims to territorial seas, reference may be made to AALCC Twelfth Session, Brief of Documents, Vol. IV (Law of the Sea) pp. 93 ff; and "Limits and status of the territorial sea, exclusive fishery zones etc.", published by FAO, Rome 1969.

Extracts from 1971 Report of the AALCC Sub-Committee on the Law of the Sea

III. FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

Freedom of fishing

From Articles 1 and 2 of the Geneva Convention of 1958 on the High Seas it may be implied that under the law as incorporated in that Convention, all States have "freedom of fishing" in the high seas, i. e. in those parts of the sea not included in the territorial sea or internal waters of a State. However, as of 20 October 1970 only 46 countries had become parties to that Convention, and recently several developing coastal States, concerned with the preservation and management of the living marine resources of adjacent seas upon which they are economically dependent, have subjected the concept of "freedom of fishing" to close examination.

The Geneva Convention of 1958 concerning Fishing and Conservation of the Living Resources of the High Seas recognises the "special interest" of a coastal State in the maintenance of the productivity of living resources in any area of the high seas adjacent to its territorial sea, and places the coastal State in a special position regarding fishing activities in those waters (Article 6). It goes further to confer on the coastal States a right to take unilateral action with regard to conservation measures under certain prescribed conditions if such measures are urgent, are based on proper scientific findings and do not discriminate against foreign fishermen (Article 7).

Neither of these Conventions contemplates preferential fishing rights for a coastal State in areas adjoining its territorial sea. A coastal State is thus believed by many to have exclusive fishery rights *only within its territorial sea*. The fishing Convention itself is quite explicit that even conservation measures outside the territorial sea that discriminate against foreign fishermen will not be regarded as valid. (Article 7 (2) (c).