session, and with regard to the assistance to be given to non-member Asian and African States it decided to make the following recommendations :—

1. Documentation prepared for the Committee on the subject of the Law of the Sea should be circulated to Asian and African States that were not yet members of the Committee in order to assist them in preparing for the Conference on the Law of the Sea to be held in 1973, and that basic materials should be made available in French as well as in English ;
2. Non-member countries in Asia and Africa be invited to attend the Lagos session as Observers following precedents established in regard to the Karachi session (which had considered questions coming before the Conference on the Law of Treaties) and the Colombo session.

The Sub-Committee also requested the Secretary-General of the Committee to address the U.N. Sea-Bed Committee and the Afro-Asian Group of the Sea-Bed Committee on suitable dates to be arranged in consultation with their respective Chairmen with a view to acquainting non-member States of the aims and purposes of the Committee and the work that was being done by it on the Law of the Sea. In accordance with the said request the Secretary-General addressed the UN Sea-Bed Committee at its plenary meeting on the 19th July, 1971. A special meeting of the Afro-Asian Group was convened under the chairmanship of Mr. Justice Seaton of Tanzania on the 21st July, 1971 which was addressed by the Secretary-General of the Committee.

The UN Sea-Bed Committee and its three sub-committees met in Geneva from the 19th July to 26th August, 1971. The first sub-committee dealt with the question of international sea-bed area and the establish-

ment of appropriate machinery. Several drafts were placed before the sub-committee for its consideration by various delegations. The second sub-committee gave consideration to a number of suggestions about the topics that should be taken up at the forthcoming Conference on the Law of the Sea. The third sub-committee dealt with questions relating to pollution and scientific research. It is significant to note that the joint proposal made by a vast majority of Asian-African States regarding the list of subjects was substantially the same as was suggested by some of the member States of this Committee and noted by our Sub-Committee on the Law of the Sea at its Geneva meeting held in July 1971.

Immediately after the conclusion of the summer session of the UN Sea-Bed Committee, the Working Group established by this Committee held a meeting on the 26th August, 1971. It was decided at that meeting that the members of the Working Group would prepare working papers on international regime for the sea-bed area beyond national jurisdictions, fisheries, archipelagos, economic zones and international straits for consideration at the Lagos Session.

At the Lagos Session held in January 1972, which was attended by the delegations of 17 of the Member States, Observers from 38 non-member countries and representatives of several inter-governmental and international organisations, the topics discussed included almost all the important questions and issues that are likely to be dealt with by the forthcoming Conference on the Law of the Sea, namely (i) international regime for the sea-bed area ; (ii) exclusive economic zone ; (iii) territorial sea and international straits ; (iv) archipelagos ; (v) regional arrangements ; and (vi) position of landlocked States. The Committee commenced deliberations on the subject in its plenary meeting held in the afternoon of 20th January, 1971, by hearing brief statements of the

members of the Working Group on the Law of the Sea on the topics on which they had prepared special studies. The working papers presented at the session were the following :— (i) "Preliminary Draft and Outline of a Convention on the Sea-bed and the Ocean Floor and the Subsoil thereof beyond National Jurisdiction" prepared by the Rapporteur of the Sub-Committee on the Law of the Sea, Mr. C. W. Pinto of Ceylon ; (ii) "Proposed Regime concerning Fisheries on the High Seas" prepared by Japan ; and (iii) "The Exclusive Economic Zone Concept" prepared by Kenya. The Committee had also before it the working papers on "the Concept of Archipelago" and on "International Straits" which had been submitted earlier respectively by Indonesia and Malaysia, both as members of the Working Group and a Working Paper prepared by Ambassador Tabibi of Afghanistan on the position of land-locked States. In the following plenary meetings held on the 21st and 22nd January, the Committee heard general statements of the Member States of the Committee, Observers, and representatives of the international organisations including the Food and Agricultural Organisation and the Organisation of African Unity. Observers from major maritime nations such as the United States, the U.S.S.R., and the United Kingdom also took part in the general debate to express the viewpoint of their governments. After the general debate, the Committee referred the subject to the Sub-Committee on the Law of the Sea for giving detailed consideration to the various topics on the basis of the working papers referred to above. The Sub-Committee drew up a report which was adopted by the Committee in its plenary meeting held on the 25th January, 1972.

REPORT OF THE RAPPORTEUR ON THE WORK OF THE SUB-COMMITTEE ON THE LAW OF THE SEA ADOPTED AT THE THIRTEENTH SESSION

INTRODUCED BY

Mr. C. V. Ranganathan (India)

CHAIRMAN :	Hon'ble Dr. T. O. Elias (Nigeria)
VICE-CHAIRMAN :	His Excellency Dr. Mustafa Kamil Yasseen (Iraq)
ACTING RAPPORTEUR :	Dr. S. P. Jagota (India) (In the absence of Mr. C. W. Pinto of Ceylon)

1. Organisation of work :

The Chairman put before the plenary the suggestions made by the Working Group* on the Law of the Sea regarding the method of work on this subject at this session. The suggestion was that, in view of the wide ranging nature of the subject-matter and the inter-relationship of various issues, it would be most effective to concentrate discussion in the short time available on the following topics :

(1) International regime for the seabed ;

(2) Fisheries ;

(3) Economic Zone ;

(4) Territorial Sea and Straits ;

(5) Regional arrangements ;

*Members of the Working Group on the Law of the Sea and related questions are : Ceylon, India, Indonesia, Malaysia, Japan, Kenya and Egypt.

(6) Archipelagos ; and

(7) Position of land-locked countries.

There was no objection to accepting the suggestion. Consequently, after hearing statements of a general nature made at plenary sessions by twelve member delegations, nine observers, and two representatives of international organisations, the Sub-Committee of the Whole met on the 22nd and 24th January 1972. The Sub-Committee also had the benefit of hearing brief statements by individual members of the Working Group on some of the above subjects during one of the plenary sessions and on which working papers had been prepared earlier. Full texts of these statements as well as the statements made by members, observers, etc. which have been mentioned above, will be included in the verbatim proceedings of this session and will be made available by the Secretariat.

2. Mr. C. W. Pinto (Ceylon) who was appointed Rapporteur at the Colombo session in 1971 for the Law of the Sea and related subjects, was not present. Dr. S. P. Jagota (India) was appointed acting Rapporteur for the Lagos session.

3. At the invitation of the Chairman, the Acting Rapporteur initiated the discussion in the Sub-Committee by observing that a good starting point for the Sub-Committee would be to attempt to clarify and crystallise thinking on the various terms currently in use, relating to aspects of the present or proposed national jurisdiction over ocean space. For instance, the area of national jurisdiction was referred to variously as national sea-bed area, economic zone, continental shelf, exclusive zone for fisheries, territorial waters, etc. The usage of such multiple terms made it difficult to distinguish the difference, if any, between the concepts of economic zones and exclusive zones. It further tended to blur the clear-cut distinction which should be made between areas of national jurisdiction and areas outside national jurisdiction which

would be brought under the proposed international regime. If, therefore, the various concepts currently being used in discussions relating to ocean space were to be given a precise legal meaning, it would first be necessary to clarify in greater depth the extent and attributes of national jurisdiction.

Two delegations felt that the establishment of coastal State claims under various concepts such as the economic zone and the exclusive or preferential fishery zone, should not amount to extension of national jurisdiction. While admitting that in certain cases a coastal State may be entitled to a preferential catch of fisheries, these delegations felt that the question was more one of international fisheries management than one of extending national jurisdiction. Other delegations, however, felt that the concept of economic zone should be accepted by the international community and agreed with the suggestion that detailed discussions should take place on the different terminology currently in use. It was pointed out by one delegation that accommodation of interests would be easier, if there was a clearer understanding on questions such as the following :

Should there be one limit for all purposes or should there be multiple limits for diverse functions ?

What were the functions for which correspondingly varying limits should be set ?

Fisheries :

One delegate pointed out that the exclusive enjoyment of the resources of the high seas by the coastal State alone, at the expense of the interests of distant-water fishing States, is not the proper way of reconciling the equally legitimate interests of both coastal and distant-water fishing States in rational and effective utilization of these living marine resources. As regards conservation, coastal States will have general responsibility to take necessary conservation measures in co-operation with the distant-water fishing States, and also

certain corresponding rights necessary to carry out such responsibilities. Without admitting the extension of exclusive zones of jurisdiction for fisheries purposes beyond the 12-mile limit, coastal States' preferential fishing rights will be recognised in order to remedy certain disruptive elements of free competition and to give adequate protection to uncompetitive coastal fisheries in relation to the fishing activities of distant-water fishing States. Distinction is to be made in the recognition of such preferential rights of coastal States as follows :

> In the case of a coastal State which is a developing country, the rights will consist in the allocation of a preferential share of catch determined on the basis of the maximum fishing capacity of that State, having due regard for a reasonable allowance for its future growth.

In the case of coastal fisheries of coastal States which are developed countries, the preferential share of catch will be recognised with respect to "small scale coastal fisheries" in terms of the minimum annual catch required for the continued operation on the existing scale of those small-scale coastal fisheries.

On the basis of such criteria, the actual regulatory measures, including the manner of enforcement, will have to be negotiated and agreed upon among the parties concerned and in the absence of agreement within a specified period, the matter may be referred to a special arbitral commission for settlement.

In order to ensure strict enforcement of regulatory measures, the coastal State may exercise competence to inspect vessels of distant-water fishing States and arrest vessels in the case of violation of its regulatory measures, but it must deliver them promptly to the flag State, which alone will have jurisdiction to punish the offenders. Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to the regime suggested.

The following comments were made on the views expressed above :

(a) Conservation on the high seas should not be confused with the question of national jurisdiction.

(b) The proposal that only a coastal State with a definite interest in a particular stock of fish can claim preferential treatment, outside its territorial waters, did not seem very fair as it was not always possible for developing countries to establish their rights.

(c) If it was the view that the living resources of the high seas were common, would distant-water fishing States consent to sharing the catch with coastal States ?

(d) As for regulatory measures, including enforcement and punishment of violations suggested in the proposals, an arrangement whereunder the coastal State could merely arrest and not punish violators was not satisfactory, since it would impose an unnecessary burden on the complainant State to carry its evidence to the courts of the flag State to establish their case against the offenders.

(e) The proposal itself drew a distinction between territorial sea and exclusive zone, where the territorial sea was less than 12 miles. While no adequate legal basis was provided in the proposals for acceptance of this exclusive zone, where it is different from the territorial sea, this showed that the entire problem was really jurisdictional, i.e. the outer limit of exclusive fishing zone within which the coastal State will exercise complete jurisdiction.

(f) One of the criteria mentioned for according a coastal State a preferential catch under the proposal was possible rate of growth of future catch.

This was difficult to determine and imprecise as a basis.

(g) Did the proposal envisage any arrangements whereunder developing coastal States with little national fishing equipment and gear could lease the equipment, material and men of distant-water States ? Similarly could they license their vessels ?

(h) One of the advantages of an exclusive fishing zone was that developing coastal States could license distant-water fishing craft as a source of additional revenue.

Summing up the discussions on fisheries, the Chairman pointed out that while there appeared to be a growing consensus on according the coastal States an increasing share of fisheries adjacent to their territorial waters under concepts of economic, exclusive or preferential zones, the crucial question was one of jurisdiction.

Economic Zone :

The elaboration of this concept took place at one of the plenary sessions. The Sub-Committee, however, discussed various aspects :

(a) The economic zone was not the same as the territorial sea, to the extent that there were certain limitations on the coastal States' jurisdiction in the area of its economic zone. Instances of these limitations are freedom of navigation, freedom of cable laying etc.

(b) It was asked whether it was necessary to give the area a different name if it was fully under national jurisdiction.

(c) Would the declaration of an economic zone *per se* impede threats to the national security of coastal States ? What was the position of the economic zone *vis a vis* the freedom of scientific research ?

(d) While the proposals on economic zone drew a distinction between such zones and zones of complete national jurisdiction, the concept by itself did not cover all activities. There was also the danger that under the concept, the resources of the sea-bed may not be fully covered. Hence it was necessary to think of other terminology to describe the area adjoining the territorial sea and clearly define its attributes so that jurisdictional criteria could be satisfied.

(e) The concept of economic zone should be defended on very precise grounds. What, for instance, was the jurisdictional difference between economic and contiguous zones ?

Summing up the Chairman pointed out that while the concept of economic zone was acceptable to the majority of developing countries, there was need for greater clarity in defining the jurisdictional aspects.

Archipelago :

The following comments were made and queries raised :

(a) There have been no legal decisions which may be cited as authority for accepting the archipelagic concept.

(b) Refuting this, the answer was given that the legal source of the archipelagic concept was general international law and even treaty.

(c) What was the situation of navigation, where the internal waters of an archipelago joined two stretches of open sea ?

(d) How do bathymetric conditions affect the character of the inland waters ?

(e) How is the territorial sea measured ? If the right of innocent passage is recognised through the internal

waters, what is the difference between internal waters and the territorial sea ?

(f) If the idea of exclusive fisheries zone or economic zone is accepted, then where will these commence in the case of an archipelago ?

(g) Have the authors of the archipelagic concept related the proportionality of the size of the islands to the bodies of water surrounding these, for purposes of viewing these as internal waters ?

(h) Suggestion was made, that to obtain more legal support, the archipelagic States fix the maximum length of their baselines for the measurement of the territorial waters.*

In reply to some of the queries, the following points were made :

(a) The archipelagic position does not contravene any rule of international law and, in fact, finds support in the principles enunciated by the International Court of Justice in the *Anglo-Norwegian case* with respect to coastal archipelagos. The case also did not lay down uniform distance between baselines for all geographical areas.

A contrary rule which would instead provide for territorial seas around each island, say of 12 miles, would only create pockets of high seas within the archipelago of such small size as to be of no substantial value to the international community but would be destructive of the integrity and unity of the archipelagic State.

(b) The baseline from which the territorial sea of an archipelago is to be projected consists of connecting lines joining appropriate points of the outermost islands of the archipelago. All waters within

* Added at the request of the delegation of Indonesia.

the baseline are internal waters and all waters seaward up to certain limits constitute the territorial sea. This is the archipelagic position.

(c) The archipelagic question is entirely different from the question of the territorial sea. The status of waters within the baselines is that of internal waters and not territorial sea. There is a further difference between the two in that navigation through inland waters was not unrestricted.

(d) Shipping is subject to all the rules and regulations governing innocent passage. Besides where it is vital to allow a communication lane between two points, this will be permitted.

(e) The Convention on Territorial Sea does not draw any distinction between the size of an island and the width of the territorial sea surrounding it. Hence the proportional relationship between the size of island and waters surrounding it does not arise.

(f) The question of the maximum length of the baseline, so that group of islands could be considered as a unit and thus an archipelago is one of the questions which failed to be settled since long time ago.*

(g) The suggestion with regard to the question of the maximum length of baseline is noted.*

Land-locked countries

The question was asked whether land-locked countries had ever considered making Articles 3 of the Convention on the High Seas automatically binding on all States, as hitherto, only State parties signatory to the Convention were bound by its provisions. In reply it was stated that the rights of transit of land-locked countries were completely dependent

*Added at the request of the delegation of Indonesia.

upon bilateral arrangements. This position was unsatisfactory and should be changed. The right of transit of land-locked countries should be based on international conventions.

A further question was asked as to what obligations were acceptable to land-locked countries in return for free and unfettered transit. In reply it was stated that the legitimate interests of the transit State should be respected with respect to security, fiscal conditions etc. It was pointed out that the right of transit for land-locked countries was a limited right and the obligations were important.

Some further comments on this question were :

While the principal right of land-locked countries for transit has been recognised in conventions, the precise modalities embodying the practical arrangements between the land-locked country and the transit country needed to be worked out bilaterally. Thus while the right has been granted under the Convention and while the principle of transit is recognised, practical aspects such as choice of routes, question of reciprocity etc. are left to bilateral arrangements. Land-locked countries should also consider not just question of transit and access to the sea but also questions of their interests *vis a vis* the resources of the seas. Emphasising these aspects, one delegate felt that land-locked countries had hitherto paid excessive attention to the question of transit and too little attention to the question of reciprocity. There are several instances where coastal States may want the right of transit through land-locked countries *vis a vis* the resources of the sea; this is as important as the question of transit and the share and participation of land-locked countries in the exploitation of the resources should be the subject of regional discussions and arrangements.

International Machinery

The following comments were made on this subject :

1. One delegate mentioned that if the limits of national jurisdiction were too wide, such as 200 miles, the international area left for exploitation will have not many resources of value. Accordingly, the question of considering the adequacy of an international regime will be of academic interest only because all the valuable resources will be distributed among coastal States.

2. Another delegate mentioned that the continental shelf of his country by the depth criterion would run to 500 miles and, therefore, even 200 miles may not be enough. Accordingly, the question of establishing an adequate international machinery was not an academic question.

3. Some delegates questioned the validity of the remark that with the 200-mile national sea-bed area, no resources will be left for the international sea-bed area. It was pointed out that so long as the depth criterion was recognised for continental shelf, countries with larger continental shelf would continue to exploit petroleum and other resources of the shelf up to or beyond 200 miles. On the other hand, mineral and metal resources of commercial value have been discovered on the deep ocean floor and sea-bed technology has developed to the extent of retrieving them and separately the metals concerned. The commercial exploitation of these minerals was thus a reality and if an appropriate international machinery was not established, the resulting situation would lead to the advanced States' complete freedom to acquire them without any limitation. This would create more conflict. Hence it would be desirable to exploit the sea-bed resources in an orderly manner.

Regional Arrangements

The Chairman emphasised the need for ensuring that regional arrangements were in conformity with the general

principles of the international legal order on the sea-bed. One delegate emphasised the utility of regional arrangements in solving problems which arise from the geographical variations of the coast of neighbouring countries as well as from the situation of the land-locked countries. Another delegate mentioned that regional arrangements should in the beginning be limited to the question of conservation *simpliciter*. As to arrangements for sharing the resources of the sea, which was a more difficult question, it would be useful to collect adequate facts before propositions are built up.

Another delegate raised a number of questions regarding the concept of regional agreements including the following :

(1) What is a region ? Is a region to be determined on grounds of geography or on political considerations ? It may be that a country is so situated that, for political reasons, no regional arrangements are possible.

(2) What should be the content of regional co-operation ?

(3) What will be the rights of coastal countries even within the framework of a regional arrangement ?

(4) When should a regional agreement commence ? Should it enter into force only after the Law of the Sea Conference in 1973 or it could be concluded even prior to that Conference, as it has been done in the case of some Latin American countries and also in the case of some regions of Africa ?

(5) What should be the limit of national jurisdiction in relation to the regional arrangement ? Could members of a regional arrangement have different national limits ? Should historical rights be

recognised, whatever be the limit of national jurisdiction otherwise agreed upon ?

The Chairman suggested that these points should be given detailed consideration by the Committee in its further work.

SUMMARY RECORD OF DISCUSSIONS HELD AT THE THIRTEENTH SESSION

The subject "Law of the Sea including questions relating to peaceful uses of the sea-bed and the ocean floor, and the sub-soil thereof lying beyond the limits of national jurisdiction" was a priority item on the agenda of the thirteenth session of the Committee held in Lagos. Deliberations on the subject took place in the plenary meetings held on the 20th (two), 21st (two), 22nd, 24th and 25th of January, 1972, and in the Sub-Committee composed of all the Members.

In the first plenary meeting the Committee, accepting the recommendations of the Working Group on the Law of the Sea, constituted at the twelfth session, decided to devote itself at the present session to seven topics on the subject, namely : (1) international machinery for the sea-bed (2) fisheries (3) economic zones (4) territorial sea and straits (5) regional arrangements (6) archipelagos and (7) the position of land-locked States, and as regards the method of discussion at the current session, that the Secretary-General should first make a statement indicating the progress made on the subject in the Committee as also in the United Nations which then should be followed by introductory statements by the members of the Working Group on the topics mentioned above. Thereafter, the Member Delegations and Observers were to have the opportunity of stating their views to be followed by detailed discussions in the Sub-Committee. Accordingly, the Secretary-General made a statement regarding the work which had already been done on the subject in the Committee as also in the U.N. Sea-bed Committee.

In the second plenary meeting the President invited the members of the Working Group to introduce the topics on

which they had made special study. The delegate of India introduced the working paper on international machinery for the sea-bed lying beyond the national jurisdiction prepared by the Committee's Rapporteur, Mr. C.W. Pinto of Ceylon, as the Rapporteur was unable to be present. The delegate emphasised three important questions dealt with in that paper, namely the definition of national jurisdiction, the regime governing exploitation of sea-bed resources in the areas outside the national jurisdiction, and the establishment of suitable machinery. He explained in some detail the provisions contained in the Rapporteur's paper regarding the proposed machinery.

The delegate of JAPAN, in his capacity as a member of the Working Group, introduced the working paper on the regime concerning fisheries on the high seas which his Government had prepared to serve as the basis for discussion at the thirteenth session of the Committee. He said that in the present practice of nations, it would be reasonable to conclude that the freedom of fishing, namely the unrestricted right to fish on the high seas, had been modified as the need to regulate fishing activities when and where a risk of over-exploitation existed had come to be recognised by all nations. He stated that the general obligation of States to take and to co-operate in the taking of necessary measures for the conservation of fishery resources must be considered as already established in the legal order of the high seas. He pointed out that in the working paper prepared by Japan an attempt had been made to find out an equitable balance between the interests of coastal fisheries and those of distant-water fishing on the high seas. He felt that the overriding consideration should not be to secure the monopolistic enjoyment of the resources of the high seas only by the coastal States at the expense of the interests of the distant-water fishing States, or *vice versa*, but to reconcile them in such a manner that those resources could be utilised, as they should be, for the benefit of all mankind, rationally and durably.