interests in such a manner as to be incompatible with the interests of the international community in general and the interests of developing countries in particular. The Delegate was convinced that the Japanese proposals on fisheries provided a rational approach which, after some adaptation and elaboration, could accommodate the conflicting interests of various countries to the widest extent possible. As regards the concept of economic zone, the Delegate said that although in principle he agreed with the argument for a wider belt of economic zone, nevertheless he was not satisfied with the way the Kenyan draft articles were presented.

The Observer for BRAZIL said that in extending its territorial waters to the limit of two hundred miles, Brazil had in mind its national interests of economic, political and sociological nature. He, however, explained that this act of extension of jurisdiction should not be taken as a threat to the freedom of the seas, especially to the freedom of navigation, once this was guaranteed by the national legislations of countries which had adopted such a limit. As for fishing position of his country, the Observer pointed out that his country had established a zone of 100 miles within its territorial sea where fishing activities could be conducted by its national fishing vessels only. Beyond that zone, upto 200 miles, fishing activities might be conducted by both Brazilian and foreign fishing vessels.

The Observer for CANADA emphasised that the problems of the Law of the Sea constituted an indivisible whole, requiring an overall solution rather than a piecemeal and patchwork approach. On the question of pollution, the Observer recalled the contribution made by his Delegation in various international forums. As regards the rights and interests of land-locked States, he recognised that indeed there were certain very special problems and satisfactory solutions to those problems could be found by making multilateral efforts. As regards the concept of exclusive economic zone, the Canadian Observer welcomed the Declarations of Santa Domingo and Yaounde Seminar and the proposal submitted by the Kenyan Delegation on the exclusive economic zone. In his view, these historic documents put



forward in clear and helpful terms the concept of economic zone — patrimonial sea — which was increasingly gaining recognition as being rich in promise for the future development of the Law of the Sea. The Observer concluded that it was inappropriate and unwise to draw arbitrary and unnecessary distinction between developed and developing coastal States in such a manner as to damage the interests of one group without advancing the interests of the other.

Resuming the discussion in the meeting held on Friday the 12th of January, the Observer for the UNITED STATES OF AMERICA stated that it was almost universally recognised that the classic division of the seas into two jurisdictional categories, namely the territorial sea and the high seas, was too rough a legal division to solve the real problems of States. He thought that it was now becoming apparent that just as the territorial sea was too rough a tool to harmonise navigation and resource interests, economic jurisdiction that was completely coastal in its elements was also inadequate to the task of harmonising divergent interests with respect to resources. Accordingly, coastal State jurisdiction over fisheries and sea-bed resources should be tampered by international treaty standards and compulsory dispute settlement procedures. An international approach to regulating pollution from ships was considered necessary to protect free navigation and for practical reasons. He stated that the three inter-connected and fundamental issues relating to machinery envisaged for the international sea-bed regime were : first, the structure of international machinery; second, the nature of the exploitation system; and third, protection of consumers' interests. He was hopeful that deliberations in the Committee would make an important contribution to a timely and successful law of the sea conference.

The Observer for PERU stated that the limits of the territorial sea must be established by each State in accordance with reasonable criteria taking into consideration the geographic, geologic, ecologic, economic, social and national security factors. For that reason and in order to meet the realities and the needs of the various States, he added, it would be necessary to accept the plurality of limits of the territorial sea on regional or

sub-regional basis. The maximum limit of the sea, however, in his view, should not exceed two hundred nautical miles. The Observer explained that the States that had proclaimed their sovereignty over the 200-mile limit did not intend to restrict the transit of foreign ships and aircraft upto that limit, but only to ensure the proper utilisation of natural resources which they needed for their own development, to prevent damages from marine pollution and to supervise scientific research activities. The Observer stated that confinement of the sovereignty of coastal States to a narrow zone of territorial sea and the recognition of only preferential rights on areas adjacent to that sea, was a limitation on the possibilities of development for a majority of coastal countries in benefit of a minority of maritime powers whose financial and technological capacity allowed them to exploit advantageously the said areas, deepening in this way the gap between the rich and the poor countries. In his view, it was necessary to modify the classical attributes of the territorial sea, and he believed that this could be done on the occasion of the next international conference on the Law of the Sea.

The Delegate of the ARAB REPUBLIC OF EGYPT felt that the concept of freedom of fishing and its permissiveness might lead to conflicting claims and could be detrimental to the promotion of friendly relations among States. In his view, among the various approaches to the equitable solution of the problem of fishing were the recognition of two basic ideas relating to preferential or exclusive rights for the coastal State. He pointed out that there were certain basic differences between those two approaches on the one hand and those on the other which arose from the desire to maintain the present situation as much as possible, and only allowing minimum changes in the present regime of fisheries. Such proposals helped to create monopoly by developed States over certain living resources which were economically advantageous, like the so-called highly migratory fishery, and to control the growth of the fishing industries, particularly of those who had recently started national programmes for development. He agreed with the view that the rights of States should not be tied to their scientific and technological advancement. Such a course would only deepen, and not lessen, the gap between the rich and poor countries.



On the question of land-locked countries, the Delegate expressed his concern over the difference of opinion between the land-locked countries and the group of less developed countries as a whole.

The Delegate of SIERRA LEONE stressed that his Delegation considered the whole question of the Law of the Sea not only from an economic point of view but from a security point of view as well. The Delegate said that by a legislation adopted in 1971, the limits of Sierra Leone's territorial sea had been extended to two hundred nautical miles. He, however, categorically stated that the adoption of two hundred nautical miles of territorial sea need not alarm any one because his country had no intention to interfere with normal oceanic or maritime traffic.

The Delegate of the PHILIPPINES said that the exclusive economic zone concept submitted by Kenya was a laudable effort towards achieving a balance between the interests of the individual State and the international community. In his view, the Kenyan draft recognised the economic needs of the coastal States. He felt that the use of oceans as a means of communication and transport was well protected in that draft. As regards the proposal of Japan on fisheries, the Delegate said that it was a commendable effort at accommodation and merited serious consideration. He appreciated the special needs and problems arising from the relevant geographical circumstances of the land-locked States. He, however, felt that a country that was not land-locked but 'sea-locked' or as was the case of archipelagos sea-engulfed, the situation was not very different. He said that while such a country had easy access to the sea, it had also to put up with the hazards and travails that the sea might bring. The Delegate expressed his great concern over the pollution of the waters of the Pacific Ocean bordering the Philippines' archipelago. On the question of international sea-bed regime and machinery, the Delegate said that it must be effective and should function not by the mandate of some States only, but by all the States. Finally, the machinery should also in his view, have authority to exploit resources directly.

The observer for the U.S.S.R. touching upon the question of breadth of the territorial sea stated that his country had

proposed that each State should have the right to establish the breadth of its territorial sea within the limits of no more than twelve nautical miles. A limit exeeding twelve nautical miles, he said, would place international navigation under the control of coastal States and would interfere with international communications and foreign trade, including that of developing countries. Refering to the problems of fishing, he said that all States, particularly developing States, should be given a fair opportunity to exploit fishery resources in order to meet the needs of their peoples and, at the same time, provision should be made for the future development of fishing industry and the increase in the catch. The representative of U.S.S.R. explained in detail the provisions on freedom of navigation through straits used for international navigation, as submitted by his delegation to the U.N. Sea-bed Committee in 1971 and 1972. Finally, he stated that greater effort should be made in order to complete the preparatory work for the third international conference on the Law of the Sea.

The Delegate of INDONESIA said that as far as his country was concerned, its most vital interest was naturally the question of the recognition of the concept of archipelago. With regard to the question of fisheries, the Delegate thought that in order to protect its special interest, a coastal State was entitled to fix a zone where it would exercise exclusive fishing rights. The Delegate was happy to note that his suggestions on the exclusive economic zone concept were reflected in the principles of draft articles on exclusive economic zone presented by Kenya. The Delegate expressed his concern over the increase in traffic of tankers and supertankers through Indonesian waters or high seas adjacent to it, and thus exposing his country to pollution danger especially by oil coming from ships in case of accident, damage or other causes during their passage.

Resuming the discussion in the meeting held on Saturday the 13th of January, 1973, the Delegate of NEPAL stated that the condition of economic under-development of land-locked countries was directly related to their distance from the sea, and, by and large, the land-locked countries belonged to the category



of the least developed among the developing countries. In his view, all land locked countries sought transit and access only for trade and development purposes and none had far-flung interests outside their borders. He, therefore, stressed that the forthcoming Conference on the Law of the Sea should reaffirm the importance of transit and access, as well as the obligation of transit coastal countries to accord favourable treatment to the transit trade of land-locked countries in terms of the clearly defined rules and principles of international law. In his view, the new regime under the common heritage principle should fully take into account particularly the questions of representation, participation and sharing of benefits in conformity with the spirit of the United Nations Sea-Bed Declaration of 1970. He also stated that the interests of land-locked countries in fisheries in areas outside the territorial waters should be protected.

The Delegate of INDIA outlined the development plans of fishery resources along the coast of India. He felt that since the highly migratory fishery resources of the seas were now being over-fished, they might become depleted and even extinct, unless some global regulations were made and an effective regulatory body established. The Delegate considered that the developing countries of the world had a special stake in establishing a fair international legal order for the proper distribution and utilisation of the fishery resources of the sea and the oceans. In his view, the concept of exclusive fishery zone should be separated from the concept of territorial sea, which, according to him, served a different purpose altogether. The delegate then introduced a set of draft articles on fisheries which *inter alia* provided that a coastal State shall exercise exclusive jurisdiction and control over the resources of the exclusive fishery zone, the outler limit of which will be settled after negotiation. The exclusive fishery zone would, however, lie outside the territorial sea. If the breadth of this zone was narrow, the interests of the coastal State in the fishery resources of the area adjoining the exclusive fishery zone should also be protected.

The Observer for SPAIN said that though his country was one of the chief fishing powers, she shared the aspirations of the

coastal developing countries and was ready to lend them her support even against her own immediate interests, in order that, in accordance with a principle of international social justice, the preferential rights of the said country might be laid down which would be to the long term advantage of everybody concerned. The right to exploit, preserve and explore the natural resources of the high seas adjacent to their coasts, inherent in the littoral States, according to him, was fully justified when its exercise was practised in accordance with reasonable and equitable criteria and within the framework of a general solution on this subject, its essential purpose being to raise the standard of living of the sea-board populations. Seaboard States, he added, should, therefore, be entitled to establish special maritime jurisdictions with a view to preserving, regulating and using the live resources of the sea adjoining their coasts. And of course when adopting such measures, they would be bound to take into account - through the channel of negotiation - third-party States' interests, in reasonably participating in the fishing thus regulated.

At the end of the aforesaid general discussion, the matter was referred to the Sub-Committee on the Law of the Sea, which is composed of the entire membership, for study and submission of a report. The Sub-Committee held four meetings between 13th and 17th of January, 1973 and a report was drawn up on its work by the rapporteur which was considered by the Committee in the plenary session held on the 18th of January, 1973. The Committee decided that the Draft Articles presented by the Delegation of India on Fisheries together with the text of the questions posed by the Delegation of Japan be submitted to the member Governments with the request that the Governments may give their concrete comments and suggestions on the Draft Articles to the Secretary-General within one month from the close of the session, if possible.

## (iv) REPORT OF THE RAPPORTEUR ON THE WORK OF SUB-COMMITTEE ON THE LAW OF THE SEA DURING THE FOURTEENTH SESSION

| | |
|---|---|
| *Chairman* | Mr. J.D. Ogundere (Nigeria) |
| later : | Mr. A.A. Adediran (Nigeria) |
| *Rapporteur* | Dr. S.P. Jagota (India) |

### 1. Organisation of work

The Working Group on the Law of the Sea, which met on 10th of January 1973, recommended that the discussions on the Law of the Sea, both in the plenary and in the Sub-Committee, be confined to the topics set out below, viz.

(1) Fisheries. Exclusive Economic Zone;
(2) Rights and Interests of Land-lockd States;
(3) International Machinery for the Sea-Bed; and
(4) Marine Pollution.

2. Dr. S.P. Jagota of India was elected rapporteur in the place of Mr. C.W. Pinto of Sri Lanka, who had resigned.

3. The subject was discussed in the four plenary meetings during the session at which eleven delegations and nine observers made statements.

4. The Sub-Committee on the Law of the Sea held four meetings on the 13th, 15th and 17th January 1973. The discussion held therein is summarised, subject-wise, below.

### Fisheries

5. On this subject the Japanese proposal, which may be found on pages 341-351 of Volume III of the Brief of Documents prepared for the 1973 New Delhi session of the AALCC, was

referred to. Another proposal regarding the exclusive fisheries zone was made by the Indian Delegation in the plenary meeting on the 13th January 1973. A copy of this proposal is annexed to this report.

6. A number of delegates spoke on the Indian proposal. Clarifications were sought by the Delegation of Japan which were later circulated among the members of the Sub-Committee and are annexed to this report.

7. The concept of exclusive fishery zone found general support in the Committee. The Delegation of Japan reserved their position. According to them, the fishery resources beyond the 12-mile territorial sea are to be considered as the object of the common interest of the international community, which must be utilised by the coordination of all the States concerned, keeping a balance between the interests of the coastal States and those of the distant water fishing States. It is on this conception that the Japanese proposal for a regime of fisheries on the high seas (UN Doc. A/AC. 138/SC. II/C. 12) was prepared. The concept of the exclusive fishery zone suggested by the Indian Delegation is difficult to accept for the Japanese Delegation insofar as the coastal State is to claim the exclusive interests on fisheries within the zone in such a way that, in some cases, it may only allow foreign fishing vessels to come to fish. The word "may" in Article 4 is based on the concept of exclusiveness. In addition, this concept of exclusive fishery zone would be contrary to proper conservation of the fishery resources because, under this concept, each coastal State may apply in an arbitrary manner the measures it deems fit.

In the Indian draft, regulations to be made for the fisheries outside the limits of the exclusive fishery zone are not clearly defined and the clause concerning the settlement of disputes is far from clear.

The Japanese Delegation, which put some questions for clarification purposes, reserved the right to comment on these problems after the ideas behind these suggestions have been clarified.



8. One other delegate (Republic of Korea) said that he neither supported nor opposed the Indian proposal, and that he would present his government's views on this subject at a later stage.

9. Comments were also made by a number of other delegations. The Delegate of Sri Lanka, while supporting the concept of exclusive fishery zone, emphasised that the historic rights of coastal States in such zone must be protected. The Delegate of Egypt wanted the information about the fishing capability of a coastal State to be notified to a designated authority. The Delegate of Indonesia wanted that the outer limit of the exclusive fishery zone need not be uniform and that in fixing it the special economic and social interests of the coastal State should be borne in mind. Some other questions were also raised. The Delegate of India agreed to bear these in mind and answer them in his future presentation on the subject.

10. The Indian Delegate suggested that the draft articles may be examined by the various member governments, and concrete comments and suggestions for improvement of the draft may be sent by them to the Secretary-General, if possible, within one month after the close of the session. These might then be passed on to the Government of India so that these could be given the most earnest consideration by them before the beginning of the next session of the U.N. Sea-Bed Committee in March 1973.

11. This view was supported by the delegates.

**Exclusive Economic Zone**

12. The concept of exclusive economic zone found general support in the Sub-Committee. Statements were made by the Delegates of India, Sri Lanka and Kenya clarifying that this concept protected the economic interests of the coastal State in the zone adjoining its coast, including their interests in the resources of the sea-bed, the sub-soil, and of the water column. The concept of exclusive fishery zone, it was stated, was subsidiary to the exclusive economic zone. The two concepts should, therefore, be regarded as complementary rather than contradictory.

13. Reservation was made by one delegate to this concept.

**Land-locked States**

14. The Chairman of the Special Study Group of Land-locked States, Ambassador Tabibi of Afghanistan, introduced his working paper in the Sub-Committee on the 17th January 1973, and emphasised that the special interests of the land-locked States, which required international recognition and protection, related to the following :

(1) Free access to the sea (in both directions); and
(2) Adequate sharing of the resources of the sea including the sea-bed.

15. He traced the history of the evolution of the first concept and indicated how it had gradually been recognized at the 1958 Conference on the Law of the Sea, the Convention on Transit Trade of Land-locked States in 1965, and in subsequent developments. The access to the sea should include the access to the resources of the sea, including those of the continental shelf, the fishery zone, and the high seas. He said that the land-locked States had a special interest in the resources of the sea and the sea-bed, which had been declared by the U. N. General Assembly in 1970 as the "common heritage of mankind". Accordingly, the interest of the land-locked States must be protected in the regime to be established for the sea and the sea-bed as well as in the distribution of benefits arising from the exploitation of these resources. In his view, these interests would be better protected if the zone of exclusive coastal jurisdiction was a restricted one.

16. A short discussion followed this presentation. Views were expressed that the right of land-locked States should be subject to reciprocity and that since most of the land-locked States were developing countries their interest lay in aligning their views with the viewpoint of the developing countries in the Group of 77, particularly in relation to the limits of exclusive coastal jurisdiction. It was suggested that the land-locked States should consider supporting the coastal interests and secure



protection of their reasonable interests in the zones reserved for them, apart from getting an adequate share of the benefits from the resources of the sea and the sea-bed. This view was opposed by another delegate who suggested that the resources of the sea and the sea-bed, being the common heritage of mankind, included the interests of the land-locked States, and therefore these should not be reserved exclusively for the coastal States.

17. It was agreed that the Special Study Group on the Land-locked States should hold its meetings urgently and consider the various issues involved and, if possible, submit its report on progress achieved to the next session of the Sub-Committee and, if possible, give its concrete formulations on the subject.

**International Machinery**

18. Statements were made on this subject by the Delegates of India and Sri Lanka. It was recalled that the subject of international machinery and the draft articles prepared on the subject by Mr. Pinto of Ceylon, were introduced and elaborately discussed at the AALCC session held in January 1972 at Lagos. It was further stated that since the UN Sea-Bed Committee had only recently started substantive discussion on this subject, we need not discuss in depth the various issues involved in this question. Depending upon the progress achieved in March 1973 on this subject, a further discussion on this question could be taken up by the Sub-Committee at the inter-sessional meeting, if one was held. However, the chief features of the proposal of Sri Lanka were again elaboratated by the delegations.

**Marine Pollution**

19. For lack of time the subject of marine pollution could not be considered in depth. Request was, however, also made by the Delegate of Egypt for the preparation of comprehensive material on the subject by the Secretariat, particularly on the question of liability arising from pollution damage.

Sd/-
(S.P. Jagota)
Rapporteur
18.1.1973

**ANNEX-I**

## DRAFT ARTICLES ON FISHERIES
(as proposed by INDIA on 13.1.1973)

### Article—1

A coastal State shall exercise exclusive fisheries jurisdiction and control in a fisheries belt, the outer limits of which are..... nautical miles measured from the outer limits of territorial waters. The area covered by such belt is hereinafter described as "the exclusive fisheries zone".

### Article—2

Each coastal State shall notify to the Authority established for the purpose by the Conference on the Law of the Sea the limits of the exclusive fisheries zone defined by coordinates of latitude and longitude and marked on large scale charts officially recognised by that State within a period of.....

### Article—3

Where the coasts of two or more States are opposite or adjacent to each other and the limits of the exclusive fisheries zone overlap, such States shall, by agreement, precisely delimit the boundary separating their respective zones and inform the Authority of such agreement. In the absence of an agreement, and unless another boundary line is specified by special circumstances, the boundary shall be the median line, every point of which is equidistant from the nearest point on the baseline from which the outer limits of the respective exclusive fisheries zones are measured. If the parties agree, the Authority shall assist them in concluding a satisfactory agreement with regard to the limits of their respective zones.

### Article—4

The coastal State shall have exclusive rights of exploration and exploitation of the living resources of the exclusive fisheries zone. It alone shall adopt measures for the conservation and development of these resources. It shall determine the optimum sustainable yield from these resources. If such yield is not



exploited by the coastal State itself, whether due to its lack of technological capability or otherwise, it may allow nationals of other States to fish in the zone, subject to such regulations as may, *inter alia*, relate to the following :—

(a) licensing of fishing vessels and equipment;

(b) limiting the number of vessels and the number of units of gear that may be used;

(c) specifying the gear permitted to be used;

(d) fixing the periods during which the prescribed species of fish may be caught;

(e) fixing the size of fish that may be caught;

(f) fixing the quota of catch, whether in relation to particular species of fish or to catch per vessel over a period of time or to the total catch of nationals of one State during a prescribed period.

2. The regulations prescribed by the coastal State shall not discriminate between the nationals and vessels of one foreign State and another.

3. The privileges allowed for the nationals of a land-locked State to fish in the exclusive fisheries zone shall be determined by a bilateral agreement concluded between the coastal State and the land-locked State or shall be such as are determined regionally or by the convention adopted at the Conference on the Law of the Sea in 1973-74.

### Article—5

A coastal State has a special interest in the maintenance of the productivity of the living resources of the area of the sea adjacent to the exclusive fishery zone.

### Article—6

For the living resources of the sea outside the limits of the exclusive fishery zone, regulations may be made for their exploration, conservation, development and exploitation by the States of the region concerned, if the fish stock is of limited migratory habits The States of the region may establish these regulations

either by entering into an agreement or convention or by requesting the international fishery commission of the area to formulate these regulations for the region, subject to ratification by them.

**Article—7**

In respect of fisheries of highly migratory habits outside the limits of the exclusive fisheries zone, regulation for conservation and development as well as exploration and exploitation shall be made by the Authority established by the Convention adopted at the Law of the Sea Conference in 1973/1974.

**Article—8**

All fishing activities in the exclusive fisheries zone and the rest of the sea shall be conducted with reasonable regard to the interests of other States in the uses of the sea. In the exercise of their rights, the other States shall not interfere with fishing activities in the exclusive fishery zone.

**Article—9**

The jurisdiction and control over all fishing activities in the exclusive fisheries zone shall lie with the coastal State concerned. Any dispute or difference concerning the limits of the respective zones, the application or validity of the regulations, or the interpretation or application of these articles shall be settled by the judicial institutions of the coastal State concerned.

2. Appeal from the decision of the judicial institution on the question of the interpretation or application of these articles may lie to a forum agreed upon between the coastal State and the other State concerned.

3. Any disputes concerning the fishing activities outside the protected fisheries zone, whether arising out of the regulations or concerning the interpretation or application of these articles, shall be referred to the Authority established by the Convention adopted at the Law of the Sea Conference in 1973/1974 for its decision. The decision of the Authority shall be binding on the parties to the dispute, and will be implemented by them forthwith.

**Article—10**

(Final clauses, if necessary).

**ANNEX-II**

## THE QUESTIONS PUT TO THE INDIAN DELEGATION FOR THE CLARIFICATION PURPOSES

by *Prof. S. Oda of JAPAN*

1. There is no reference to the high seas in the Indian draft. Is it intended in this draft that the areas beyond the territorial sea, including the exclusive fishery zone, still be considered as a part of the high seas ?

2. If the extent of the exclusive fishery zone is to be uniformly fixed, what will be the merit of notifying to the Authority the limits defined by coordinates of latitude and longitude in each case ? Is it the intention of the author to apply the same procedures also in case of the territorial sea and the continental shelf ?

3. It is understood that, under the Indian draft, the coastal State is entitled to prescribe fisheries regulation, apply it to foreign fishing vessels in the exclusive fishery zone, and, in case of violation, to seize the foreign fishing vessels, take them to its own port, punish their captain/master and confiscate the vessels at its own court under its own procedure. If this is the case, the exclusive fishery zone would not be different from the territorial sea, as far as fisheries regulations are concerned. The question may be raised, as to why, in the Indian draft, a provision is specifically prepared to the effect that the coastal State **may** (not **shall**) allow foreign nationals to fish in the zone in some specific cases. It is submitted that even within the limit of the territorial sea, the coastal State **may** always allow foreign nationals to fish therein according to its own discretion.

4. If the coastal States only **may** (but not **shall**) allow foreign nationals to fish in the exclusive fishery zone, why have the regulations to be applicable to foreign nationals, such as enumerated in Article 4, paragraph 1 to be specified ?

5. It is provided in the Indian draft that the coastal State **may** allow foreign fishing vessels to come to fish in its exclusive fishery zone on the **non-discriminatory basis** among the foreign States, if the optimum sustainable yield is not fully exploited by the coastal State. If the coastal State introduces foreign capital of any specific countries to set up joint ventures for fishing industries, is this interpreted as contradictory to the said rule of non-discrimination ?

6. The rule of non-discrimination among foreign States under Article 4, paragraph 2, is specifically applicable in the exclusive economic zone, but not in the territorial sea. However, in case that the regulations are prescribed in terms of limiting the number of fishing vessels, fixing the quota of catch, etc. how can this rule work in effect ?

7. In connection with limited migratory habits beyond the exclusive fishery zone (Article 6), is it the intention of the author to exclude non-regional States from fishing in that region ? It may also be asked how the regulations made by the States of the region concerned are to be enforced upon the fishing vessels of the respective States of the region and of the non-regional States.

8. With regard to highly migratory habits (Article 7), how are the regulations made by the International Authority to be enforced upon fishing vessels ?

9. The idea behind Article 9 does not seem to be quite clear. What does paragraph 1 mean ? If the concept of the exclusive fishery zone is to be accepted under the new rule of international law, there would be no doubt that the full jurisdiction be exercised by the coastal State, and then paragraph 1 would not make any sense.

10. Article 9, para. 2 is so much different from the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes of 1958. It will be appreciated that the idea behind the paragraph be fully explained. For instance, does "appeal



from the discussion of the judicial institution" mean an appeal by any foreign individual prosecuted on the ground of the violation of the fisheries regulation of the coastal State, or an appeal by a foreign State whose nationals are punished at the judicial court of the coastal State ?

*These Questions are only for Clarification Purposes and should not be interpreted either in Favour of or Against the Indian Draft.*

# V. THE LAW RELATING TO INTERNATIONAL RIVERS

# (i) INTRODUCTORY NOTE

The subject "Law of International Rivers" had been referred to this Committee for consideration under Article 3 (b) of its Statutes by the Governments of Iraq and Pakistan. Although the subject is fairly vast it became clear from the preliminary statements made by the delegations of the referring governments at the ninth session of the Committee, held in New Delhi in December 1967, that the topics which they wished the Committee to consider related to some particular aspects of the problem. Iraq appeared to be primarily interested in two questions, namely, (a) definition of the term "international rivers", and (b) rules relating to utilisation of waters of international rivers by the States concerned for agricultural. industrial and other purposes apart from navigation. Pakistan's primary concern also appeared to be with regard to the uses of waters of international rivers, and more particularly, the rights of lower riparians.

It has been well-recognised that protection of the legitimate rights of the States concerned in the waters of international rivers is a matter to be regulated by rules which would be acceptable to the international community as a whole. As has been pointed out by several jurists and writers, there are certain rules on the subject which are already in existence derived from international custom, practices among nations, opinions of jurists, decisions of courts and provisions of treaties and conventions. In recent years, a great deal of work in the field has been done by various learned institutions and bodies such as the Institute of International Law, the International Law Association, the Inter-American Bar Association, New York University School of Law and the Economic Commission for Europe. The most notable and comprehensive study prepared so far in this field may be found in the formulations adopted by the International Law Association at its 1966 Conference which are known as the Helsinki Rules. The General Assembly of the United Nations by a decision taken at its twenty-fourth session

had requested the International Law Commission to formulate the draft rules on this subject after taking into account the work done by other bodies, and the same is now pending consideration of the Commission.

This Committee at its ninth session after a preliminary exchange of views on the subject directed the Secretariat to collect the relevant background material on the issues indicated in the statements made by the delegations and to prepare a Brief for consideration of the Committee. One of the main issues that arose in the course of discussions at that session was how far the rules developed and practised by European nations would be applicable to the problems which arise in the Asian-African region having regard to the different geophysical characteristics of the rivers and the needs of the people for varying uses of the waters. Some of the delegates stressed on the urgent need for the development of the law in a manner that would reflect the Asian-African viewpoint. Opinions were also expressed that the draft principles adopted by the International Law Association and the Institute of International Law did not meet the situation faced in certain Asian and African countries.

The Committee at its tenth session held in Karachi in January 1969 took up the subject for further consideration on the basis of the material placed before it by the Secretariat with a view to formulate its recommendations on the subject in the form of draft principles. The Committee took note of the views and opinions expressed from time to time by jurists and experts on various questions, the decisions of the Permanent Court of International Justice, federal courts and arbitral tribunals as well as the work already done by learned institutions and bodies. The Committee also had before it the relevant provisions of treaties and conventions with regard to international rivers in Asia, Africa, Europe and the Americas. The Committee at that session by resolution No. X (6) appointed a Sub-Committee to give detailed consideration to the subject and to prepare a draft of articles on the Law of International Rivers, particularly in the light of the experiences of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilisations and legal systems for consideration at the



Committee's next session. The Committee also directed its Secretariat to assist the Sub-Committee and to collect relevant background data in the light of the discussions at the Committee's tenth session. It also requested the member governments to indicate points on which they desired further data to be collected by the Secretariat.

The Sub-Committee appointed at the Karachi session met in New Delhi in December 1969 to consider the matter in the light of the suggestions made by the member States of the Committee and further material collected by the Secretariat in pursuance of the aforesaid resolution No. X (6). The matters taken note of by the Sub-Committee included the question of formulation of the definition of an international river ; the general principles of municipal waters rights existing between owners of adjacent land under different municipal systems ; the decisions of courts and arbitral tribunals on disputes relating to water rights between independent States and constituent States of the federation, general principles governing the responsibility of States and the doctrine of abuse of rights ; river pollution ; rights of riparians regarding the uses of waters of international river basins ; and State practice regarding settlement of river water disputes. At this meeting the Delegate of Pakistan placed a set of ten draft articles for consideration of the Sub-Committee and the Delegate of Iraq also placed before the Sub-Committee a set of draft principles consisting of 21 articles. The Delegates of Iraq and Pakistan desired that the Sub-Committee should proceed to discuss the subject on the basis of the draft formulations presented by them, whilst the Delegate of India desired that the Sub-Committee should take the Helsinki Rules as the basis for discussion. As the discussions in the Sub-Committee were not conclusive, it was agreed that the matter should be further discussed at the next session of the Committee.

At the Accra session held in January 1970, the Delegates of Iraq and Pakistan submitted a joint draft consisting of 10 articles which they wished the Committee to take up as the basis for discussion. The Delegate of India also submitted a proposal that the Helsinki Rules adopted by the International Law Association in 1966 should be the basis of the Committee's

study and, to begin with, the first 8 articles of the Helsinki Rules should be taken up. No progress could be made at the Accra session on this subject as the discussions centred around procedural matters and there was not sufficient time to discuss the substantive issues.

At the Colombo session of the Committee held in January 1971, following the discussions in the plenary, it was decided to appoint a Sub-Committee comprising of the representatives of Ceylon (now Sri Lanka), Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Nigeria, Pakistan and the U. A. R. (now Arab Republic of Egypt) to give detailed consideration to the subject. The representative of Ceylon (Sri Lanka) and the representative of Japan were elected as the chairman and the rapporteur to prepare a working paper consisting of a set of draft articles amalgamating, as far as possible, the propositions contained in the joint proposal of Pakistan and Iraq and in the Helsinki Rules. The rapporteur submitted his working paper containing ten (I to X) draft propositions, which were accepted by the Sub-Committee as the basis of discussion. However, due to lack of time, the Sub-Committee was able to consider only the draft propositions I to V and it recommended consideration of the rest of the propositions at an inter-sessional meeting to be convoked prior to the thirteenth session of the Committee. The Sub-Committee accordingly met again in Colombo from 6 to 10 September 1971 when it considered the draft propositions I to X.

At the thirteenth session of the Committee held in Lagos, the subject was taken up for further consideration by the Standing Sub-Committee as reconstituted at that session. During the meetings of the Sub-Committee it was observed that the draft proposals prepared by the rapporteur did not cover all aspects of the Law of International Rivers and that they were silent in particular on the rules relating to navigational uses of such rivers. The Sub-Committee accordingly agreed to take up other aspects of this subject including navigation, pollution, timber floating etc. in its future sessions. The Sub-Committee also agreed that the Committee should direct the Secretariat to prepare a study on the subject of the right of land-locked



countries to access to the sea through international rivers. It was further agreed that the new draft proposals with appropriate commentaries thereon should be prepared by the rapporteur of the Sub-Committee and circulated through the Secretariat to members of the Sub-Committee before the next session.

During the fourteenth session of the Committee held in New Delhi in January 1973, the matter was again considered by the Standing Sub-Committee. Although the Sub-Committee exhausted its consideration of the revised draft formulations and commentaries prepared by the rapporteur, it was unable to agree on a set of propositions on the Law of International Rivers. It was, however, able to analyse the problems critically and extensively and thereby could identify several areas which it recommended for further study by the Committee at an appropriate time in the future. The subject will accordingly be taken up by the Committee at one of its future sessions.