

III. Matters taken up by the Committee under Article 3(c) of the Statutes

1. *International Shipping Legislation (Bills of Lading)*
(Taken up by the Committee at its Accra Session as arising out of the work of UNCITRAL).
2. *International Commercial Arbitration*
(Taken up by the Committee at its Accra Session as arising out of the work of the UNCITRAL).

IV. LAW OF THE SEA

(i) INTRODUCTORY NOTE

At the initiative of the Government of Indonesia, the subject "Law of the Sea, including questions relating to the Seabed and the Ocean Floor" was included in the programme of work of the Committee.

At its Accra Session held in January 1970, the Committee resolved to commence its preparatory work on the Law of the Sea. It was also decided that the Committee's activities with regard to the assistance to be given in preparation for the proposed UN Conference on the Law of the Sea as also affording of facilities for exchange of views should not be confined to member States of the Committee alone but should be offered to all Asian African States.

In the following year at the Colombo Session, the topics on which the discussion focussed included :

- (i) Breadth of the Territorial Sea;
- (ii) Rights of coastal States in respect of fisheries in areas beyond the territorial sea;
- (iii) Exploration and exploitation of the sea-bed including the question of national jurisdiction over the sea-bed, the concept of trusteeship over the continental margin, the type of regime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction;
- (iv) Islands and the archipelago concept;
- (v) International straits, and
- (vi) Preservation of the marine environment.

It was decided to constitute a Sub-committee comprising of all the participating member States of the Committee and a

working group composed of the representatives of Ceylon India, Indonesia, Japan, Kenya and Malaysia. Mr. Pinto from Ceylon was appointed as Rapporteur of the Sub-committee.

The Working Group held its first meeting in New Delhi in June 1971. The discussions centered round the working paper prepared by the Rapporteur and special working papers prepared by other members of the Working Group on questions of fisheries, archipelagos, international straits and international machinery for the proposed sea-bed area.

The report of the Working Group was subsequently submitted to the Sub-committee on the Law of the Sea, which met in Geneva from the 15th to 17th July 1971.

The Sub-committee besides considering the report of the Working Group also discussed certain matters relating to the Summer 1971 Session of the UN Sea-bed Committee. The Sub-committee *inter alia* recommended that :

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.

The Committee also decided to invite non-member countries in Asia and Africa to attend the Lagos Session as observers.

The Law of the Sea Working Group of the Committee held another meeting on 26th August 1971. Its members were asked to prepare working papers on international regime for the sea-bed area beyond national jurisdiction, fisheries, archipelagos, economic zones and international straits for consideration at the Lagos Session of the Committee.

The Lagos Session was held from January 18 to 25, 1972. Deliberations on the Law of the Sea were concentrated on the seven topics, 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) position of land-locked states. The members of the Working Group on the Law of the Sea presented the following papers :

- (i) Preliminary draft and outline of a Convention on the sea-bed and the ocean floor and the sub-soil thereof beyond national jurisdiction prepared by the Rapporteur of the Sub-committee on the Law of the Sea, Mr. C.W. Pinto of Sri Lanka;
- (ii) "Proposed regime concerning fisheries on the High Seas" prepared by Japan; and
- (iii) "The Exclusive Economic Zone Concept" prepared by Kenya. There were two working papers submitted by the delegations of Indonesia and Malaysia on '*The concept of Archipelago*' and on '*International Straits*' respectively. Another working paper on the position of land-locked states was submitted by Ambassador Tabibi of Afghanistan. After an inconclusive debate, the Sub-committee adopted its report which subsequently was submitted to its Inter-sessional Meeting held in Geneva during July 1972. At this meeting Japan's proposal on 'fisheries' and the joint proposal of Indonesia and the Philippines on '*Archipelagic States*' formed the basis for discussion. The delegate of Kenya submitted '*revised draft articles on the Exclusive Economic Zone*'. The deliberations in the Committee centered mainly on these topics and related matters.

The Fourteenth Session of the Committee was held in New Delhi in January 1973. The subject of the Law of the Sea was again taken up as a priority item. At its meeting on 10th January 1973, the Working Group on the Law of the Sea recommended that deliberations in the Committee, both in the plenary and the sub-committee, should be confined to the following topics :

- (i) Fisheries, exclusive economic zone;
- (ii) Rights and interests of land-locked states;

- (iii) International Machinery for the Sea-bed; and
- (iv) Marine Pollution.

During the course of the meetings, the Delegation of India introduced a set of Draft Articles on Exclusive Fisheries Zone. The Rapporteur's report containing the gist of the discussion during the session and the Indian draft Articles together with the text of questions posed by the Delegation of Japan were submitted to the member governments for their comments and suggestions. It was decided that the Sub-committee should hold its next meeting in Geneva for a period of three days immediately prior to the Summer Session of the U.N. Sea-bed Committee. Further, it was decided that the Study Group on Landlocked States constituted by the Committee should meet at the earliest. The Study Group accordingly, met in New Delhi from 22nd to 26th March, 1973.

The Study Group on Land-locked States prepared certain tentative draft propositions. The Report of the Study Group along with draft propositions were sent to the members States and other Asian-African States for their consideration and comments. Subsequently, the Report was placed before the Inter-sessional meeting of the Sub-committee on the Law of the Sea held in Geneva from 28th June to 30th June 1973. The deliberations in the Sub-committee concerned topics such as the Exclusive Economic Zone, including the Exclusive fishery zone, Rights and Interests of land-locked States as well as of the near land-locked or geographically disadvantaged States, archipelagos, straits and marine pollution. The elaborate exchange of views on these topics clarified the positions of several Asian-African States. The successful conclusion of this meeting marked another milestone in the work of the Committee on the topic of the Law of the Sea. Next in the chronological order of the Committee's work on the Law of the Sea is the deliberations in the fifteenth session held in Tokyo from January 7 to 14, 1974. At its meeting on 7th January, 1974 the Working Group on the Law of the Sea recommended that the study prepared by the Secretary-General along with the draft formulations should be taken as a reference and an aid to discussion. It was also decided

that the first set of topics for consideration should be the question of Straits used for International Navigation, Archipelagos and Rights and Interests of Land-locked States. The other topics for consideration included: Continental Shelf, Concept of Economic Zone, Patrimonial Sea, Fisheries including Fishery Zone, International Regime for the Sea-bed including International Machinery and Marine Pollution or preservation of the Marine Environment. Intensive discussions, however, were held in the Sub-Committee of the Whole on three subjects, namely (1) Rights and Interests of Land-locked States, (2) Archipelagos, and (3) Straits. The Report of the Sub-committee was subsequently circulated to the member Governments.

(ii) NOTES ON TOPICS RELATING TO THE
LAW OF THE SEA TO SERVE AS AN
AID TO DISCUSSION

1. The Concept of Economic Zone/Patrimonial Sea
2. Fisheries
3. Straits used for International Navigation
4. Archipelagos
5. Rights and Interests of Landlocked States
6. International Regime for the Seabed and Ocean floor beyond the Limits of National Jurisdiction.
7. Marine Pollution.

Concept of Economic Zone — Patrimonial Sea

The concept of an Economic Zone/Patrimonial Sea in essence, as would be clear from the various declarations and proposals, appears to contemplate recognition of certain rights of coastal State for the purpose of exploitation of the resources of the sea in an area adjacent to their coasts and certain other connected rights.

2. In this connection, six questions would appear to arise for consideration, namely (1) Whether such rights should be recognised in an area of the sea beyond the territorial waters of the coastal State ; (2) If such rights are recognised what should be the breadth of the area over which these rights could be exercised ; (3) What should be the nature of the rights to be exercised by the coastal State in such areas ; (4) What rights, if any, would States other than the coastal State have in this area ; (5) What rights should the adjoining landlocked States have or

be permitted to enjoy in this area, and (6) Whether the regime of economic zone/patrimonial sea, if adopted, be universal in character or could it be of differing nature depending on the particular conditions of each region.

3. There are at present ten proposals and Working Papers for consideration which have been introduced before the U.N. Sea-Bed Committee, namely : (i) Draft Articles introduced by the delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore.

(A/AC. 138/SC. II/L. 39) ; (ii) Draft Articles on Exclusive Economic Zone introduced by 14 African States (A/AC. 138/SC. II/L. 40) ; (iii) Draft Articles presented by Argentina (A/AC. 138/SC. II/L. 37) ; (iv) Working Paper submitted by Australia and Norway (A/AC. 138/SC. II/L. 36) ; (v) Working Paper submitted by the Chinese Delegation (A/AC. 138/SC. II/L. 34) ; (vi) Draft Articles jointly presented by Colombia, Mexico and Venezuela (A/AC. 138/SC. II/L. 21) ; (vii) Working Papers submitted by Iceland (A/AC. 138/SC. II/L. 23) ; (viii) Proposal by Pakistan (A/AC. 138/SC. II/L. 52) ; (ix) Proposal by Uganda and Zambia (A/AC. 138/SC. II/L. 41) ; and (x) Draft Articles introduced by the United States (A/AC. 138/SC. II/SR. 40).

4. On the first question, namely, whether such rights should be recognised in an area of the sea beyond the territorial waters of the coastal State, it may be noted that the Fourth Summit Conference of the Non-aligned countries held in Algiers in September 1973 has supported "the recognition of the rights of coastal States in seas adjacent to their coasts and in the soil and sub-soil thereof within the zones of national jurisdiction not exceeding 200 miles." (See paragraph 2 of the Resolution concerning the Law of the Sea).

The O.A.U. Declaration on the issues of the Law of the Sea adopted by the Council of Ministers in May 1973 also contains the following : "The African States recognise the right of each coastal State to establish an exclusive economic zone beyond their territorial sea whose limits shall not exceed 200 nautical miles."