The Santo Domingo Declaration approved by the meeting of Ministers of the Caribbean States dated June 7, 1972 also recognises certain rights of coastal States in an area adjacent to the territorial sea which is to be called the patrimonial sea.

The proposals submitted before the United Nations Sea-Bed Committee all proceed on the basis that the coastal States have certain rights in an area of the sea adjoining their coasts beyond the limits of the territorial sea (see Article I of the Draft Articles on Resource Jurisdiction of the Coastal States beyond the Territorial Sea proposed by the Delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore ; Articles I and II of the Draft Articles on Exclusive Economic Zone proposed by fourteen African States ; Article IV of the Draft Articles submitted by Argentina ; Article I 'A' of the Working Paper submitted by the Delegations of Australia and Norway ; Article II of the Working Paper submitted by the Chinese Delegation ; Article IV of the Draft Articles on Treaty submitted by Colombia, Mexico and Venezuela ; the Working Paper submitted by Iceland ; Article II of the Proposals submitted by Pakistan ; Article IV of the proposals submitted by Uganda and Zambia ; Article I of the United States Draft Articles for a Chapter on the Rights and Duties of States in the sea-bed economic area).

If such a right is recognised what should be the breadth of the area over which these rights could be exercised.

5. On this question, the Resolution adopted by the Summit Conference of Non-aligned nations, the O.A.U. Declaration as well as the Santo Domingo Declaration provide for a maximum breadth of 200 miles to be measured from the appropriate baselines.

Some of the proposals introduced before the U.N. Sea-Bed Committee also adopted the maximum breadth of 200 miles (see Article III of the Draft Articles on Exclusive Economic Zone introduced by fourteen African States ; the Working Paper submitted by the Delegations of Australia and Norway ; Article II of the Working Paper submitted by the Chinese Delegation ; Article 8 of the Draft Articles introduced by

Colombia, Mexico and Venezuela ; the Working Paper submitted by Iceland and the Proposals submitted by the Delegation of Pakistan). Certain proposals, however, do not indicate any limit for the zone (see Draft Articles submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore ; Draft Articles proposed by Uganda and Zambia ; Draft Articles proposed by the United States). Some of the proposals also provide that the limits of the zone shall be fixed in accordance with certain criteria which take into account the geographical, geological, biological, ecological, economic and national security factors of the coastal States establishing the zone (see Article 5 of the Argentina Draft, Article I of the proposal submitted by 14 African States and the proposal of Iceland). The Draft Articles presented by Argentina provide for 200 miles or such greater distance coincident with the epicontinental sea.

What should be the nature of the rights to be exercised by the coastal State in such areas.

6. On this question, the Non-aligned Declaration stipulates that the purpose of establishment of a zone is for "exploiting natural resources and protecting the other conected interests of their peoples without prejudice either to the freedom of navigation and overflight, where applicable, or to the regime relating to the continental shelf". The O.A U. Declaration provides that "in such zone, the coastal States shall exercise permanent sovereignty over all the living and mineral resources and shall manage the zone without undue interference with the other legitimate uses of the sea, namely, freedom of navigation, overflight and laying the cables and pipelines." This declaration also considers that "scientific research and the control of marine pollution in the economic zone shall be subject to the jurisdiction of the coastal State."

The Santo Domingo Declaration recognises that "the coastal State has sovereign rights over the renewable natural resources which are found in the waters, in the sea-bed and in the subsoil" of the patrimonial sea. This Declaration further provides that "the coastal State has the duty to promote and the right to regulate the conduct of scientific research within

the patrimonial sea as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area."

The Draft Articles proposed by Afghanistan, Austria, Belgium, Balivia, Nepal and Singapore contemplate that the coastal States, subject to certain restrictions and reservations as contained in the proposal, have the right to explore and exploit all living and non-living resources in the zone. They further provide that a coastal State may annually reserve for itself a part of the maximum yield of fishery resources of the zone.

The proposal introduced by fourteen African States contemplates that the establishment of an exclusive economic zone shall be for the benefit of the peoples of the State concerned and their respective economies in which they shall have sovereignty over the renewable and non-renewable natural resources for the purpose of exploration and exploitation. Furthermore, within the zone the State concerned is to have exclusive jurisdiction for the purpose of control, regulation and exploitation of both living and non-living resources of the zone and their preservation and for the purpose of prevention and control of pollution. This proposal clarifies that the rights to be exercised over the economic zone shall be exclusive and no other State shall explore and exploit the resources therein without obtaining the permission of the coastal State. The proposal elaborates in Articles VI and VII the nature of the rights in the zone.

The Draft Articles presented by Argentina provide that a coastal State shall have sovereign rights over the renewable and non-renewable natural resources living and non-living which are to be found in the said area (see Article 7). The same is the position in the Working Paper submitted by Australia and Norway (see Article I A & B) ; in the Chinese Working Paper (see Article 2 (2) ; the Draft Articles of Treaty presented by Colombia, Mexico and Venezuela (see Article 4) ; the Working Paper submitted by Iceland ; and the United States Draft (Article I).

In addition, the right of the coastal State to take regulatory or conservation measures are provided for in the Argentine

Draft for various purposes (see Articles 9, 10, 11 and 21 of the Draft). Similar provisions also appear in the other proposals (see the Chinese Draft Article 2(6) ; Article 5 of the Draft Articles of Treaty presented by Colombia, Mexico and Venezuela).

The various proposals also contemplate the right of the coastal State to carry out scientific research and to take measures to prevent pollution within the zone (see Article VII (c) and (d) of the proposal of the 14 African States ; Articles 11, 12 and 22 of the Argentine proposal ; Articles 5 and 6 of the Draft Treaty introduced by Colombia, Mexico and Venezuela). The O.A.U. Declaration vests the jurisdiction in this regard in the coastal State (see paragraph 8 of the Declaration). The Santo Domingo Declaration considers it to be the right and duty of the coastal state to promote and regulate the conduct of scientific research and to adopt necessary measures to prevent marine pollution (see paragraph 2 of the Declaration on Patrimonial Sea).

What rights, if any would other States have in this area.

The O.A.U. Declaration of May 1973 proceeds on the basis that within the zone of economic jurisdiction there should be no interference with the legitimate uses of the sea namely, freedom of navigation, overflight and laying cables and pipelines (see paragraph 7 of the Declaration).

The Santo Domingo Declaration also contains similar provisions (see paragraph 5 of the Declaration on Patrimonial Sea).

The various proposals introduced before the U.N. Sea-Bed Committee clearly recognise the principle of freedom of navigation, right of overflight and the right to lay submarine cables *subject only* to such restrictions as may be necessitated by the exercise of the legitimate rights of the coastal State over the zone (see the Draft Articles introduced by 14 African States, Article IV ; Draft Articles introduced by Argentina—Article 13 ; Article 2 (4) of the Chinese Working Paper ; Articles 9 and 10 of

the Draft Treaty introduced by Colombia, Mexico and Venezuela ; Article 4 of the United States Draft).

The proposal introduced by Afghanistan and five other States further provides that landlocked and coastal States which cannot or do not declare a zone shall have the right to participate in the exploration and exploitation of the *living resources* of the economic zone of neighbouring coastal States on an equal and non-discriminatory basis. The proposal also contemplates certain arrangements and guidelines in this connection (see Article II). The proposal also provides for exploitation of a certain proportion of the living resources within the Zone by other States as well subject to certain payments being made. Further, the proposal contemplates making of certain contributions by the coastal State to an International Authority for sharing by all States in an equitable manner (See Article III). The Argentine proposal contains provisions for enjoyment of a preferential regime by certain states within a region or sub-region which for geographical or economic reasons do not or cannot claim jurisdiction over a zone (see paragraph 8). The Chinese Working Paper provides that other States may engage in fishing, mining and other activities pursuant to agreements reached with the coastal State (see para. 2 (5).

What should be the rights of the adjoining land-locked States in this area.

The Declaration adopted at the Fourth Summit Conference of Non-aligned countries has stressed the need to establish a preferential system for geographically handicapped developing countries including land-locked countries in the matter of exploitation of *living resources* in the zones of national jurisdiction. The O.A.U. Declaration of May 1973 also recognises that the landlocked and other disadvantaged countries are entitled to share in the exploitation of *living resources* of neighbouring economic zone on equal basis as nationals of coastal States (see paragraph 10 of the Declaration). The proposal of Afghanistan and five other countries equates landlocked countries with other geographically disadvantaged States for special treatment as provided in Article II of the proposal. The Draft Articles

introduced by 14 African States provide that nationals of developing landlocked States and other geographically disadvantaged States *shall enjoy the privilege* to fish in the exclusive economic zone of the neighbouring States. The proposal, however, leaves the modalities of such enjoyment to be determined by agreement (Article VIII). The Chinese Working Paper provides that a coastal State, shall, in principle, grant to the landlocked and shelf-locked States adjacent to its territory common enjoyment of a certain proportion of the rights of ownership in its economic zone (see Article 2 (3).

Economic Zone on a Regional Basis

The proposal introduced by Uganda and Zambia proceeds on a basically different criterion from other proposals. It would be noticed that in this proposal all the rights in the economic zone both in fishing and non-living resources are to be reserved for the exclusive use of States in the regional or sub-regional area. The regulation, supervision and management of resources are also to vest in regional Commissions.

Fisheries

There are four broad aspects relating to the subject of fisheries which need consideration. These are—

(i) the right of the coastal State to take conservation measures for protection of fishery resources in areas adjoining its territorial sea; the manner of exercise of such rights ; the norms applicable, if any, for such measures and the manner of enforcement of the measures ;

(ii) conservation measures on the high seas, participation of States in adoption of such measures, enforcement provisions, international machinery ;

(iii) the right of the coastal State, if any, to establish an exclusive fishery zone for the purposes of exploitation ; the rights of the coastal State in the fishery

resources of such a zone, if established; the rights of neighbouring landlocked States and other States, if any, in such a zone; measures for enforcement; breadth of the zone;

(iv) special rights, if any, of coastal States in the fishery resources of the sea adjoining their territorial sea; the rights of other States in the resources of the area; norms, if any, for sharing of the resources.

2. With regard to the first and second aspects, it is now fairly well-settled that a coastal State has a special interest in conservation measures in areas adjoining its territorial sea, but differing views are held on the other issues which need to be discussed.

The third aspect is closely linked with the concept of exclusive economic zone and is contemplated either as an integral part of such a zone or as a fishery zone simpliciter. The principles applicable to an exclusive economic zone or a fisheries zone appear to be the same or at any rate similar.

The fourth aspect can be and has been viewed from two different angles, namely (a) as an alternative to the concept of a fishery zone and (b) as a right complementary to but independent of the concept of a fishery zone.

3. There are altogether nine specific proposals on Fisheries which were introduced before the U.N. Sea Bed Committee. Some of the proposals concern all the aspects mentioned above whilst others deal with certain specific matters. In addition, the proposals on economic zone contain provisions on Australia and new Zealand—Principles for a Fishery Regime (A/AC.138/SC.II/L.71); Canada—Working Paper on the Management of the Living Resources of the Sea (A/AC.138/SC.II/L.8); Canada, India, Kenya, Madagascar, Senegal and Sri Lanka—Draft Articles on Fisheries (A/AC.138/SC.II/L.38); Ecuador, Panama and Peru—Draft Articles on Fisheries (A/AC.138/L.12); U.S.A.—Working Paper (A/AC.138/SC.II/L.20); U.S.A. — Revised Draft Articles (A/AC. 138/SC-II/L-9); U.S.S.R.—Draft Articles (A/AC.138/SC.II/L.6) and Zaire—Draft Articles (A/AC.138/SC.II/L.60).

Conservation Measures

The development of the law which recognises the special interest of coastal States to take conservation measures for the protection of fishery resources in waters adjoining their coasts dates back to various proclamations and national legislations which followed the failure of the Hague Codification Conference of 1930. The Truman Proclamation of 1945 (United States Presidential Proclamation No.2668) took the matter one step further by proclaiming establishment of conservation zones and by subjecting fishery activities within such zones to the regulation and control of the United States.

The Geneva Convention of 1958 on Fishing and Conservation of the Living Resources of the High Seas recognises in Article 6 the special interest of the coastal State in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea. Article 7 of this Convention recognizes the right of the coastal State to take unilateral measures of conservation for aforesaid purposes, subject to the condition that negotiations with other States concerned have not led to any agreement within a period of six months. These measures are to be binding on other States also if there is urgent need for application of the measures, if the measures adopted are based on scientific findings and if there is no discrimination in form or in fact against foreign fishermen.

The various proposals which have been introduced before the U.N. Sea Bed Committee either on Fisheries or on Exclusive Economic Zone contain provisions with regard to conservation and management of fisheries. The general trend in all these proposals is to recognise the special interest of the coastal State in this matter particularly in areas adjacent to its territorial sea or fishery zone. Some of the proposals contemplate an exclusive jurisdiction for the coastal State in the matter of conservation and regulation in the belt of the sea adjacent to the territorial sea whilst in areas outside such belt a lesser right is claimed (See,

for example, Articles II, III, IX and X of the Principles for a Fishery Regime introduced by Australia and New Zealand ; Articles 1. 8, 9 and 10 of the Draft Articles introduced by Canada, India, Kenya, Madagascar, Senegal and Sri Lanka ; Article A of the proposal submitted by Ecuador, Panama and Peru). The proposals of Japan and the Soviet Union, however, only recognise the special right of the coastal State in certain circumstances (See Article 2.4 of the Japanese proposal and Article 5 of the Soviet Draft).

Exclusive Fishery Zone

The concept of an Exclusive Fishery Zone appears to have its origin in the Canadian proposal made before the Geneva Conference in 1960 containing the *six plus six* formula i.e. a territorial sea of six miles and a further exclusive fishery zone of six miles. The position today has gone much further and the concept of an exclusive fishery zone is now linked with the concept of an Exclusive Economic Zone. The States which claim an Exclusive Economic Zone consider exclusive right in fisheries within the zone as a part of the concept of an Exclusive Economic Zone. The proposals on Exclusive Fishery Zone are also based on the same principle as the Exclusive Economic Zone, namely, the enjoyment of exclusive right in the matter of exploitation of the resources of the area. The proposals on Fisheries put forward by Australia and New Zealand (A/AC. 138/SC.II/L.71) ; the proposal of Canada, India, Kenya, Madagascar, Senegal and Sri Lanka (A/AC.138/SC.II/L.38) ; the proposal of Ecuador, Panama and Peru (A/AC.138/SC.II/ L.60) follow this basis. Moreover, all the proposals on Exclusive Zone/Patrimonial Sea contain provisions for exclusive fishing rights within the zone.

Special Rights of Coastal States in the Fishery Resources adjoining their Territorial Sea

The special rights of the coastal State in the fisheries in waters adjoining their territorial sea appear to have been recognised in Article I of the Geneva Convention 1958 on Fisheries even though in a somewhat limited way. The

proposals of Japan (A/AC.138/SC.II/L.12) and that of the Soviet Union (A/AC.138/SC.II/L.6) recognise certain preferential rights for the coastal States in the fishery resources of the area adjoining their territorial sea even though Japan and the Soviet Union do not recognise the concept of the Exclusive Economic Zone. Some of the proposals claim preferential rights in the areas adjacent to the Exclusive Fisheries Zone as an additional right to their exclusive rights in the Fisheries Zone (See the joint proposal of Canada, India, Kenya, Madagascar, Senegal and Sri Lanka ; the proposal of Ecuador, Panama and Peru as also the proposal of Argentina on Economic Zone).

Straits used for International Navigation

One of the crucial issues which has been left unresolved by the two Geneva Conferences on the Law of the Sea is the question of passage through straits used for international navigation and other related issues. This topic is closely linked with the question of the breadth of the territorial sea. Both the United States of America and the Soviet Union attach considerable importance to this matter ; it is also of special importance to the countries of Asia and Africa as there are a large number of straits in this region which are normally used for international navigation.

2. A strait, in the traditional sense for the purposes of international law, has been understood as forming a passage between two parts of the high seas. International Conventions of the type of the Lausanne Convention of 1923 and Montreux Convention of 1936 were usually concluded for the purpose of regulating the passage of ships through straits. The question of the delimitation of the territorial waters in straits as also the question of passage through straits were discussed both at the Hague Codification Conference of 1930 and the Geneva Conferences of 1958 and 1960.

3. There are six proposals on this topic namely the joint Eight Power proposal (A/AC.138/SC.II/L.18) and the proposals of Fiji (A/AC.138/SC.II/L.42), Italy (A/AC.138/SC.II/L.30), Poland (A/AC.138/SC.II/L.49), U.S.A. and U.S.S.R.

4. The main questions that arise for consideration in relation to this topic are :

(a) What should be the definition of a "strait used for international navigation". Is it the geographical position, or the width of the strait or the volume of traffic that passes through the strait ?

(b) What should be the nature of the passage of ships through straits which fall within the territorial waters of a State or States and the right of overflight for aircraft. In this connection should any distinction be made between straits which are less than 6 miles in width and those which are wider, also as between straits lying off major international routes and those which are used by international shipping ?

(c) If the principle of freedom of navigation and overflight is recognised in respect of passage through straits or certain categories of straits, should any restrictions or limitations be recognised on such right in respect of any class or category of ships or aircraft such as Government controlled vessels, warships, submarines and aircraft used for military purposes ?

5. On the first question, it may be stated that the Soviet proposal would appear to contemplate that straits lying off the major international routes and used by the coastal states only may well be considered to be outside the regime of straits used for international navigation. The Maltese Draft (A/AC.138/SC.II/L.28) appears to interpret the phrase "straits used for international navigation" as meaning straits which, because of their characteristics, e.g. width and depth are of such a nature that they permit the passage of ships of types and classes normally used in voyage between one state and another. No other draft proposal attempts any definition.

6. On the second question, the view which had been hitherto held is that in the absence of special treaty provisions, the character of passage through straits, which fall within the

territorial waters of a state or states, is *innocent passage*. The concept of freedom of navigation in its application to straits is new. This has been advocated having regard to the consideration that with the recognition of a 12-mile belt for the territorial sea, a large number of straits would fall within the territorial sea of a state or states. It is obvious that "freedom of passage" would be applicable in respect of those parts of straits which lie outside territorial waters, but the question is whether this concept should be applicable over the belts which fall within the territorial sea. Another question which may also require consideration is in the event of the concept of "freedom of navigation" being recognised should this also be applicable to straits which are less than six miles in width. The Italian proposal (A/AC.138/SC.II/L.30) makes the concept of "innocent passage" applicable to the straits which are not more than six miles wide, straits which lie between coasts of the same state and the straits which are near other routes of communication. The O.A.U. Declaration of May 1973 has endorsed the principle of innocent passage through straits. This basis has also been adopted in the proposals put forward by Fiji (A/AC.138/SC.II/L.42) and the eight power proposal (A/AC.138/SC.II/L.18). The concept of freedom of navigation is the basis of the proposals of U.S.A. and U.S.S.R. The Maltese proposal (A/AC 138/SC.II/L.28) follows an altogether different basis.

7. On the third question it may be stated that even the Montreux Convention of 1936 contained certain restrictions. (See Articles 2 to 7 and 8 to 22 of the Convention). The Soviet proposal also appears to suggest certain limitations.

Archipelagos

The concept of archipelago as applied to archipelagic States as also the question of establishment of a special regime concerning mid-ocean archipelagos are matters of special interest to some of the member States of the Committee. These questions were generally discussed in the Hague Codification Conference 1930, in the International Law Commission as also during the Geneva Conferences on the Law of the Sea in 1958 and 1960 but no conclusions could be reached due to wide divergence