of views and lack of available technical data — in fact no detailed consideration was given to the matter in the Geneva Conferences.

2. There are only two proposals on this topic, namely, the Draft Articles on Archipelagos introduced by Fiji, Indonesia, Mauritius and the Philippines (A/AC.138/SC.II/L. 48) and the United Kingdom Draft Articles on the Rights and Duties of Archipelagic States (A/AC. 138/SC. II/L. 44). In addition, the Draft Articles on Territorial Sea introduced by the Delegation of Uruguay (A/AC. 138/SC. II/L. 24), the draft submitted jointly by Ecuador, Panama and Peru (A/AC. 138/SC. II/L. 27) as also the Chinese Working Paper on Exclusive Economic Zone contain provisions with regard to archipelago.

3. The points which require consideration on this topic are as follows :

(i) the definition of a mid-ocean archipelago and an 'archipelagic State' ;

(ii) whether and in what circumstances a special regime can be recognised applicable to mid-ocean archipelagic States which would enable those States to draw baselines for the purpose of delimiting their territorial sea from the outermost points of the outermost islands forming part of an archipelago ;

(iii) If the special regime applicable to archipelagos is based on certain distance or other criterion as between the islands comprising the archipelagic State would it be permissible for that State to apply the special regime to different groups of islands forming part of an archipelago or the archipelagic State ;

(iv) What would be the character of the waters enclosed within the group of islands forming the archipelago and the right of navigation therein and overflights ;

(v) In the event of a special regime being accepted for the purpose of the drawing of baselines in relation to

the territorial sea, would any special provision be required in the matter of continental shelf, economic zone or exclusive fishery zone ?

4. On the first question the Four Power Draft (Fiji, Indonesia, Mauritius and the Philippines) contains a comprehensive definition of both the expressions "archipelagic State" and "archipelago" (see Article 3). The United Kingdom Draft in Article 1 fulfils the purpose of a definition by prescribing the conditions under which a State can declare itself as an archipelagic State. Article 12 of the Uruguayan Draft, Article 3 of the joint proposal of Ecuador, Panama and Peru, and Section 1 paragraph (6) of the Chinese Working Paper contain provisions to indicate as to what is to be regarded as an archipelagic State.

5. On the second question, the O.A.U. Declaration of May 1973 has endorsed the principle that the baselines of any archipelagic State may be drawn by connecting the outermost points of the outermost islands of the archipelago for the purpose of determining the territorial sea of the archipelagic State. The joint proposal of Indonesia, Fiji, Mauritius and the Philippines also proceeds on this basis (Article II of the Draft Articles). Article 12 of the Uruguayan Draft and Article 3 of the joint draft of Ecuador, Panama and Peru contain similar provisions. Section 1 paragraph 6 of the Chinese Working Paper, though not very specific on this issue, appears to proceed on the same concept. The United Kingdom Draft makes detailed provisions indicating some limitations.

6. On the third question, the United Kingdom proposal would appear to contemplate that in cases where it is not possible to treat the whole of the State as one archipelago according to the criteria suggested in the proposal a part or parts of that State which fulfil the conditions may be declared as an archipelagic State. Although in the Four Power proposal there is no such provision, such a possibility is not excluded and this may well be fitted in having regard to the flexibility in the definition of the archipelagic State (Article 1 of the Draft).

7. On the fourth question, Article III of the Four Power draft designates the waters within the baselines as "archipelagic waters" over which the archipelagic State is to enjoy sovereign rights. The Uruguay Draft as also the joint draft of Ecuador, Panama and Peru consider those waters to be internal waters. The United Kingdom draft also recognises the sovereign rights of the archipelagic States in the waters enclosed within the perimeter.

As regards the right of navigation and overflight the United Kingdom draft contemplates a dual regime of passage. Articles 7 and 8 of the draft provide that in those parts of the archipelagic waters which are being used as routes for international navigation the regime of passage would be that of 'straits', whilst in the remaining parts of the waters the principle of 'innocent passage' would apply. The Four Power Draft contains detailed provisions in this regard in Articles 4 and 5 based primarily on the concept of 'innocent passage'. Articles 8 and 9 of the Draft deals with the question of passage of warships. The Uruguayan Draft in paragraph 12 contemplates 'innocent passage' for passage of ships through archipelagic waters whereas the joint Draft of Ecuador, Panama and Peru provides for passage "in accordance with the provisions laid down by the archipelagic State."

8. On the fifth question no proposals have been put forward so far presumably because of the assumption that once a decision is taken about the delimitation of the territorial sea of the archipelagic State other matters would automatically follow. This assumption may not always be helpful and may in fact stand in the way of several States accepting the special regime for the archipelagic States. Some discussion on this question is therefore necessary.

Rights and Interests of Landlocked States

The position of landlocked States vis-a-vis the Law of the Sea is a matter of particular importance to the Asian-African community in view of the fact that out of 29 landlocked States in the world, six happen to be in Asia and 14 in Africa.

2. Two comprehensive proposals have been put forward before the U.N. Sea-Bed Committee on this topic, namely, the Seven-Power Draft Articles relating to landlocked States sponsored by Afghanistan, Bolivia, Czechoslovakia, Hungary, Mali, Nepal and Zambia (A/AC.138/93) and an independent proposal by Bolivia (A/AC.138/92). In addition, provisions regarding the rights of landlocked States are found in the various proposals on the International Sea-Bed Regime as also in the proposals concerning Economic Zones. The draft formulations prepared by a drafting Group for the A.A.L.C.C. Special Study Group on Landlocked States also contain useful material which may be considered.

3. The main questions which require consideration on this topic are :

(a) Right of access to the sea and transit through the territory of a State or States for purposes thereof — question of reciprocity ;

(b) Transit through international rivers for the purpose of access to the sea including navigational rights in such rivers ;

(c) Sharing of benefits in the resources of the sea, particularly in the Exclusive Economic Zones of neighbouring coastal States of the region ;

(d) The access to the international sea-bed area beyond the limits of national jurisdiction ; and

(e) Participation in the international regime for the sea-bed and in international machinery.

4. On the first question, the matter for consideration is whether the right of a landlocked State of access to the sea should be worked out on the basis of bilateral or multilateral agreements and secondly, whether the concept of reciprocity should find a place in the agreements with the transit state. It has been urged that since the right of transit already exists in international law, exercise of that right should not be made the

subject-matter of any agreement, bilateral or multilateral, because in so doing the very right may become precarious and might, in fact, be negatived in certain cases. It has also been stated that the right of access to the sea of the landlocked State would hardly be a right if it was to be made subject to agreement with the transit States and questions have been posed as to how the right of landlocked State could be properly protected if the negotiations with transit States failed. On the other hand, it is said that even though the right of transit and access existed, the exercise of such right had to be regulated in consultation with the transit State especially in the matter of prescribing the transit routes etc. which are to be made available for the purpose. Practical difficulties in entering into bilateral agreements in certain regions have been experienced and on that ground it has been suggested that the transit State should be under an obligation to act in good faith and the subject-matter of the agreement between the landlocked and the transit states should be confined to specifying details with regard to the exercise of such right. Articles II and III of the Seven-Power Draft (A/AC. 138/93) proceed on the basis that the right of landlocked States to free access to and from the sea forms an integral part of the principles of international law. The Bolivian proposal also contains similar provisions. Proposition II of the principles recommended by the A.A.L.C.C. Special Study Group also proceeds on the basis that each landlocked State has the right to free access to and from the sea, but Proposition III makes the transit of persons and goods of landlocked States through a transit State dependent on bilateral and multilateral agreements and on the principle of reciprocity.

On the question of reciprocity, it has been stated on the one hand that this concept was out of place because the requirement of transit of the landlocked States was based on necessity arising from the geographical disability from which a landlocked State suffers and it could not therefore be equated with any possible need for transit by a coastal State through a landlocked State. The other view is that, although the right of transit for a landlocked State is qualitatively different, the element of reciprocity may be relevant to strengthen the right of the landlocked State and to promote co-operation between the two

States. Article 16 of the Seven-Power Draft provides that since free transit of landlocked States forms part of their right of free access to and from the sea which belongs to them in view of their special geographical position, reciprocity should not be a condition of free transit of landlocked States but may be agreed upon between the parties concerned. The Bolivian Draft also incorporates substantially the same provision.

It may be stated that the O.A.U. Declaration of May 1973 has endorsed in principle the right of access to and from the sea by the landlocked African countries as also the right of landlocked and other disadvantaged countries to share in the exploitation of the living resources of neighbouring economic zones on equal basis as nationals of coastal States. The Declaration adopted by the Fourth Summit Conference of Non-aligned Nations in September 1973 has also stressed the need to establish a preferential system for geographically handicapped developing countries including landlocked countries in respect both of access to the sea and of the exploitation of living resources in zones of national jurisdiction.

5. On the second question, Article 12 of the Seven-Power Draft provides that landlocked State shall have the right of access to and from the sea through navigable rivers which pass through its territory and the territory of a transit State or forms a common boundary between those States and the landlocked State.

6. On the third question, it has already been stated that both the O.A.U. Declaration and the Declaration adopted at the Fourth Summit Conference of Non-aligned States recognise the right of landlocked States to share in the benefits of the resources of the sea and particularly in the zones of national jurisdiction or exclusive economic zones established by the neighbouring coastal States. The proposals concerning the regime of such zones also contain provisions to safeguard the rights of landlocked States. There are, however, two matters on which differing views exist, namely (1) whether the benefit of participation on an equal footing with the coastal States concerned should be restricted to exploitation of the living resources

or should they include both living and non-living resources; and (2) whether this right of participation should be confined to the nationals of landlocked States or should they have the competence to grant leases or licences in respect of such rights and to have foreign assistance in their participation. The O.A.U. Declaration seems to contemplate a share in the exploitation of the living resources only and most of the proposals on economic zones follow the same pattern. The Bolivian Draft, however, provides that developing landlocked States should have the same obligations and rights as the contiguous developing coastal States with regard to participation in the living resources of the seas adjacent to the region, the natural resources of the continental shelf and those living in the sea-bed or subsoil thereof within the limits of national jurisdiction/exclusive economic zones. Similar provisions are also found in the proposals of Uganda and Zambia on Economic Zones.

7. On the fourth question, Article 17 of the Seven-Power Draft provides that landlocked States shall have the right of free access to and from the area of the sea-bed in order to enable them to participate in the exploration and exploitation of the area and that landlocked States shall have the right to use all means and facilities for this purpose with regard to traffic in transit.

8. On the fifth question various drafts on international machinery provide for the participation of landlocked States. The Seven-Power Draft in Article 18 contemplates that in any organ of the international sea-bed machinery in which not all member States could be represented, in particularly its Council, there should be an adequate and proportionate number of landlocked States both developing and developed. Article 19 of this Draft advocates that the decisions in any organ of the machinery on questions of substance should be made with due regard to the special needs and problems of landlocked States.

International Regime for the sea-bed and ocean floor beyond the limits of National Jurisdiction

The Declaration of Principles contained in the U.N. Resolution 2749(XXV) of 17 December 1970 sets out the general

principles to govern the nature, scope and basic provisions of the international regime and the machinery. Principle 1 solemnly declares that the sea-bed and the ocean floor, and the sub-soil thereof, beyond the limits of national jurisdiction as well as the resources of the area, are the common heritage of mankind.

The Declaration of Santo-Domingo *inter alia* proclaims that the sea-bed and its resources, beyond the patrimonial sea and beyond the continental shelf not covered by the former are the common heritage of mankind.

Similarly, the Organisation of African Unity Declaration on the issue of the Law of the Sea, reaffirms the belief of African States in the Declaration of Principles, embodied in resolution 2749(XXV). These principles, as the authors of the Declaration believe, should be translated into treaty articles to govern the area. In their view, particularly the principle of common heritage of mankind should in no way be limited in its scope by restrictive interpretations.

More recently, the Resolution concerning the Law of the Sea adopted at the fourth Summit Conference of the non-aligned countries also reaffirms that the resources of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind. Further, the Resolution stresses the need to take the Declaration of Principles adopted by the United Nations as a basis for establishing an international regime.

There are as many as 26 proposals before the U.N. Sea-bed Committee on this issue. There are also a number of problems that require to be considered and these are briefly discussed below :

I. First is the problem of defining the area of the sea-bed that lies beyond the national jurisdiction on which no substantial progress could be made so far. The various proposals submitted before the U.N. Sea-bed Committee and the aforesaid Declarations are either silent or tentative. The Working Group I of

the Sub-Committee I after considering these proposals has finally adopted four alternatives which are as follows :

A

(i) The limit of the sea-bed to which these Articles apply shall be the outer limit of the continental shelf established within the 500-metre isobath.

(ii) In areas where the 500-metre isobath referred to in paragraph 1 of this draft is situated at a distance of less than 100 nautical miles measured from the base-lines from which the territorial sea of the coastal States is measured, and in areas where there is no continental shelf, the limit of the sea-bed shall be a line every point on which is at a distance of not more than 100 nautical miles from the nearest point on the said baselines.

OR (B)

The Area shall comprise the sea-bed and the sub-soil thereof seaward of the outer limit of the coastal sea-bed area in which the coastal State by virtue of Article...(of the Convention...) exercises sovereign rights for the purpose of exploring and exploiting the mineral resources of the coastal sea-bed area.

OR (C)

The Area shall comprise the sea-bed and ocean space and subsoil thereof beyond the limits of national jurisdiction.

OR (D)

The limit of the sea-bed to which these Articles apply shall be the outer lower edge of the continental margin which adjoins the abyssal plains or when that edge is at a distance of less than 200 miles from the coast, up to that distance.

II. Another problem closely related to the question of the limits of the area is whether the regime should apply only to the

sea-bed or it should apply to all ocean space beyond national jurisdiction.

Among the proposals submitted before the U.N. Sea-bed Committee, the United States, United Kingdom, U.S.S.R., and Japan's proposals affirm that the envisaged international regime should not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters. The Canadian draft recognises the intimate relationship between activities on the sea-bed and those in the superjacent waters and suggests that the proposed Convention should provide for a sort of "peaceful co-existence" between surface activities and bottom activities. In contrast, the authors of the Maltese draft take an extreme view. They consider it necessary to enlarge the scope of the regime to include ocean space as a whole and its resources beyond national jurisdiction. In their view, it would be an illusion to pretend that a future international regime would have no effect on the legal status of the superjacent waters or on the exploitation of resources other than minerals.

III. Next is the question of scope of the regime. Consideration of the scope of the regime appears to raise at least two important problems ; one relates to the resources that are to be covered by the regime. The approach adopted in various proposals reveals the divergences of view.

The United Kingdom draft reproduces the definition of the term "natural resources" as adopted in the 1958 Convention on the Continental Shelf[1], and considers that this definition could equally be applied to the sea-bed area beyond the national jurisdiction.

The Polish working paper considers that the scope of the

1. Article 2, paragraph 4 of the 1958 Geneva Convention on the Continental Shelf defines "natural resources" as "the mineral and other non-living resources of the sea-bed and the subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the seabed or the subsoil."

international regime should be confined to exploitation of the mineral resources of the sea-bed and the ocean floor and subsoil thereof beyond the limits of the Continental Shelf. It stipulates that the regime would not be concerned with any activity conducted on the surface of the seas and oceans nor in the waters thereof, unless such activity constituted part of an exploratory or exploiting activity with regard to mineral resources of the international area ; in particular the organisation would not deal with the extraction of minerals from sea-water. While supporting the concept that the regime should not apply to the living resources of the sea-bed, the Polish draft elaborates that the exclusion of matters relating to the biological resources of the sea-bed and the ocean floor from the competence of the organisation is prompted by the desire to retain homogeneity of its functions. Moreover, it considers the problem of the living resources of the sea-bed and the ocean floor beyond the limits of the Continental Shelf is one which is of small, if at all of any practical importance.

The Canadian draft considers it both premature and unnecessary at this stage to come to a definite view one way or another on the possible applicability of the international sea-bed regime to living sea-bed resources. On the other hand, the 13-Power Latin American draft stresses that the regime should cover not merely the living and non-living resources of the area but also, if it is to be consistent with the concept of common heritage of mankind, the whole of the area itself and all activities directly or indirectly related to its utilisation.

IV. Another relevant aspect for consideration in relation to the scope of the regime would appear to be the question whether the international machinery should be empowered to explore and exploit the international area of the sea-bed.

The Declaration of Santo-Domingo specifically provides that the Area should be subject to the regime to be established by international agreement, establishing an international authority empowered to undertake all activities in the area, particularly the exploration, exploitation, protection of the marine environment and scientific research, either on its own, or

through third parties, in the manner and under the conditions that may be established by common agreement.

The Declaration of the Organisation of the African Unity also affirms that the international machinery should be invested with strong and comprehensive powers, which would also include the right to explore and exploit the area.

The Resolution of the fourth Summit Conference of the Non-Aligned countries also stresses the need to set up an international authority to undertake, under its effective control either directly or by any other means on which it may decide, all activities related to exploration of the zone and exploitation of its resources.

Amongst the various drafts submitted before the U.N. Sea-bed Committee, the French proposal, the U.S.S.R. proposal, the Polish draft, the United Kingdom draft expressly oppose the view that the proposed international machinery should have direct operational powers. The Canadian draft, while suggesting slow and cautious approach, does not rule out the possibility of entrusting the proposed machinery with the power to engage in exploitation at some future stage, particularly if that would facilitate full participation by the developing countries in the exploration of the sea-bed resources by means of joint ventures with the international machinery.

The proposal submitted jointly by the delegations of Afghanistan, Austria, Belgium, Hungary, Nepal, Netherlands and Singapore suggests that the decision should be left to the Authority itself The sponsors of the proposal consider that even if the exploration and exploitation of any particular part of the international area by the authority itself might not be economically profitable, it might, however, be useful for developing countries in connection with the training of personnel and the transfer of technology and "know-how".

Under the Tanzanian draft, all activities of exploration and exploitation of the resources of the area and other related activities should be conducted by or on behalf of the

International Sea-bed Authority, or by a Contracting Party or natural or juridical persons under its or their sponsorship, all subject to the general supervision and control of the International Sea-bed Authority. Article 16 of the draft further provides that the International Sea-bed Authority would either itself explore and exploit the International Sea-bed area by means of its own facilities or would issue licences to Contracting Parties.

The proposal submitted jointly by the delegations of Chile, Colombia, Ecuador, El-Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela, does not envisage delegation of power to exploit. The sponsors of the proposal consider that since the concept of common heritage applies to both the area itself and the resources of the area, the International Authority should supervise the area itself and ensure that any activities carried out in it would not impair the heritage of which it is the trustee.

V. The next issue relates to the powers and functions of the Authority in general, as well as the powers and functions of its organs. In that connection, perhaps the most crucial problem that would require serious consideration would appear to be the composition and decision-making procedures of the executive organ of the Authority. At the same time, a cautious approach would also be necessary while defining Authority's powers concerning control of price fluctuations for certain minerals and implications of exploitation of the resources of the area, including their processing and marketing.

The Declaration of the Organisation of African Unity considers that the machinery should be invested with strong and comprehensive powers. Among others, it should deal with equitable distribution of benefits and minimize any adverse economic effects by the fluctuation of prices of raw materials resulting from activities carried out in the area. It should distribute equitably among all developing countries the proceeds from any tax (fiscal imposition) levied in connection with activities relating to the exploitation of the area. It should protect the marine environment, regulate and conduct scientific research.

In regard to the structure of the Council, the Declaration suggests that its composition should reflect the principle of equitable geographical distribution and it should exercise most of the functions of the machinery in a democratic manner.

Generally speaking, the proposals submitted before the U.N. Sea-bed Committee contemplate comprehensive powers and functions of the Authority and its organs which, for the sake of convenience, could be grouped in broad categories, namely :

(i) Constitutional ;

(ii) Administrative ;

(iii) Recommendatory ;

(iv) Approval ; and

(v) Supervision and Management.

Furthermore, some proposals also stipulate the details in regard to the powers and functions covering :

1. Promotion of international co-operation in the international area ;
2. Safeguarding the marine environment ;
3. Maintenance of the ecological balance ;
4. Preparation of guidelines and rules relating to equitable sharing of benefits derived from the area ;
5. Ensuring participation of landlocked and other geographically disadvantaged states in exploration and exploitation of the Area ;
6. Providing guidelines for appropriate agreements and arrangements between landlocked or other geographically disadvantaged states and transit states ;
7. Promotion of scientific research in the Area.