The proposals submitted by the delegations of the United States, United Kingdom, France, Italy, Japan, Tanzania contain detailed provisions regarding the system of issuing licences for the exploration and exploitation of the sea-bed resources. In that connection, some of these proposals also envisage establishment of subsidiary organs. Consideration of these issues would appear to be of immense importance.

Marine Pollution

The problem of marine pollution is one of the key issues for consideration in the forthcoming Conference on the Law of the Sea. It is envisaged that a suitable framework of law in relation to the marine environment could be formulated on the basis of general guidelines and principles for the preservation of the marine environment recommended by Governments from time to time. Some of the principles reflecting the common provisions contained in various proposals submitted before the U.N. Sea-bed Committee, and also in the Declarations of O.A.U. and Santo Domingo are discussed below :

(*1*) *It is recognised that all States have an obligation under international law to protect the marine environment and remove any danger of pollution.*

The Declaration of Santo Domingo recognises the duty of every State to refrain from performing acts which may pollute the sea and its sea-bed, either inside or outside its respective jurisdictions. Similarly, the Declaration of the Organisation of African States contains the right of every State to manage its resources pursuant to its environmental policies and an obligation towards prevention and control of pollution of the marine environment. Principle 21 of the Stockholm Declaration provides that in accordance with the Charter of the United Nations and the principles of international law, States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and also have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or the areas beyond the limits of national jurisdiction.

This cardinal principle of international law is also recognised in various draft proposals submitted before the United Nations Sea-bed Committee. Article 1 of the Canadian draft, Principle (a) of the Australian draft, Article 2, paragraph 1 (a) of the Maltese draft, Article I of the U.S. draft, Article VII of the Kenyan draft, Article III of the Norwegian draft, paragraph 2 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay contain such provisions.

(*2*) *States should take appropriate measures either individually or jointly, to preserve and protect the marine environment.*

The Declaration of the Organisation of African States provides that States should take all possible measures, individually or jointly, so that activities carried out under their jurisdiction or control do not cause pollution damage to other States and to the marine environment as a whole. Article 2, paragraph (b) of the Maltese proposal, Article 2 of the U.S.S.R. draft, Principle (a) of the Australian draft, Article III of the Norwegian draft, Article II (I) of the Canadian draft, Article VIII of the Kenyan draft and paragraph 8 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay stipulate provisions to this effect.

(*3*) *In the formulation of their national legislation, States should take into account relevant international Conventions and standards developed by competent international organisations so that there could be proper harmonisation between national and international measures.*

The Declaration of the Organisation of African States stipulates that in formulating such measures, States should take maximum account of the provisions of existing international or regional pollution control conventions and of relevant principles and recommendations proposed by competent international or regional organisations. Article II(2) of the Canadian draft, Principle (b) of the Australian proposal, Article VIII of the Kenyan draft, Article VI of the Norwegian draft and paragraph 8 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay contain such provisions

(4) *States are obliged to guard against transferring damage or hazard from one part of the environment to another.*

Article XV of the Kenyan draft, Principle (e) of the Australian draft, paragraph 24 of the draft submitted by Ecuador, El-Salvador, Peru and Uruguay and Article XIII of the Norwegian draft incorporate such provisions.

(5) *States should support and contribute effectively to international programmes drawn up for expanding scientific knowledge and research on various aspects of prevention of pollution of the marine environment. To achieve that end States should cooperate on global, regional and national basis.*

Articles 4 and 6 of the Soviet draft, Article V of the Canadian draft, and Principle (d) of the Australian draft, Article XIV of the Kenyan draft, paragraphs 11 and 13 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay and Article V of the Norwegian draft contain such provisions.

(6) *States should cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.*

The Declaration of Santo Domingo stresses the need for recognition of international responsibility of physical or juridical persons damaging the marine environment and suggests drawing up of an international agreement, preferably of a world-wide scope. Article VII of the Canadian draft, Article 3 of the Soviet draft, Article XVIII of the Kenyan draft, Article XX of the Norwegian draft, paragraph 7 of the draft submitted by the delegation of Ecuador, El-Salvador, Peru and Uruguay and the proposal submitted by the delegations of Trinidad and Tobago also contain provisions on this aspect.

(7) *A coastal State would enjoy necessary rights and powers to exercise effective control and implement its enforcement measures.*

Some proposals envisage that a coastal State should be able to take action to prevent, mitigate or eliminate dangers to its coastlines resulting from the accidents on the high seas. The Thirteen-Power proposal (proposal submitted jointly by the delegations of Australia, Canada, Colombia, Fiji, Ghana, Iceland, Iran, Jamaica, Kenya, Mexico, New Zealand, Philippines and United Republic of Tanzania), the Four-Power proposal (proposal submitted jointly by the delegations of Ecuador, El-Salvador, Peru and Uruguay), the proposals of the delegations of Canada, France, Japan, Kenya, Malta, Netherlands, Norway and the United States contain relevant provisions on this matter.

(iii) SUMMARY RECORD OF DISCUSSIONS HELD AT THE FIFTEENTH SESSION

At its second meeting held on 8th January 1974, the Committee began its discussion on the Law of the Sea. The Rapporteur of the Working Group and the Sub-Committee on the Law of the Sea reviewed the developments which had taken place since the Fourteenth Session of the Committee held in New Delhi in January 1973. He gave an account of the progress of the work done in the First Committee of the General Assembly of the United Nations during the XXVIII Session and at the First Session of the United Nations Plenipotentiaries Conference of the Third Law of the Sea Conference held in New York in December 1973.

The Chairman of the A.A.L.C.C. Study Group on Land-locked states made a detailed statement. He felt that the land-locked states should not think about their own self interest alone, but ought to see that the interests of all nations, coastal and non-coastal, landlocked and disadvantaged as well as transit and maritime countries should be realised equally in the forthcoming conference and within the framework of equality and justice. In his view, to create problems for implementation of the right of access to and from the sea, or to ask too much in violation of other legal rights such as the right of free navigation and communication and the principle of common heritage of mankind would not be beneficial to anyone.

On the question of Economic Zone or Patrimonial Sea, he said that it should not be rejected outright. However, recognition of such regime should in no way be in conflict with freedom of navigation, over flights, laying of cables and pipelines and above all the rights and interests of the landlocked states. As regards fishery, he said that coastal states should recognize the right of landlocked states to fish on equal footing subject to

certain conditions such as the obligation not to transfer that right or lease to a third party. In regard to straits, he thought that, although it was closely related to the question of the breadth of the territorial sea, the different character of each strait and its localized or international or universal aspect, as well as the political, geographical and security aspect of each of the straits would have to be considered individually.

On the question of international regime for the sea-bed, he supported a strong and powerful international authority in which not only coastal and marine powers, but land-locked and other disadvantaged states should participate in proportion to their number, needs and geographical location. Lastly, on the question of rights and interests of land-locked countries, he stressed that right of free access to and from the sea was an established legal right just as the right of way in common law. However, it was closely linked with technical facilities such as the means of transport, sea ports and free access to territorial sea and economic zone as well as reaching to the sea-bed and ocean floor beyond the limits of national jurisdiction for the purpose of exploration and exploitation of the resources. Commenting on the formulations prepared by the Secretariat, he said that paragraph 2 of principle 2 of the formulation sought to leave the right of free access at the mercy of the coastal states. Further, principle 5, under which the routes of transit should be determined by coastal states would create obstacles in the way of free access and free transit and might destroy the whole concept of right of access for land-locked countries by introducing the element of reciprocity.

The delegate of *Iran* felt that because of the complex nature of the problems and the special geographical, economic and social factors involved in the use of the seas, it was not possible to reach agreement on each and every issue, and adopt a completely unified stand on all the subjects relating to the Law of the Sea. In his view, conservation of the living resources of the sea, fisheries management and protection of the marine environment and anti-pollution measures were amongst the various fields on which the Coastal States of a narrow sea could co-ordinate their efforts. To illustrate his point of view, the

delegate referred to the bilateral agreements reached on the continental shelf of the Persian Gulf, which he felt, had clearly vindicated the fact that the problems involved in the delimitation of the areas under national jurisdiction were by no means insurmountable in a narrow sea. Speaking about his Government's proclamation of October 30th, 1973 establishing the outer limits of Iran's exclusive fishing zone in the Gulf and the Sea of Oman, the delegate said that Iran's action was based on historic fishing rights on the Iranian Coastal inhabitants as specified in the Law of April 12, 1959 regarding the territorial Sea of Iran. Moreover, it was mainly designed to prevent foreign fishing fleets from unauthorized exploitation of the living resources of the seas adjacent to Iranian Coast. Further, in determining the outer limits of Iran's exclusive fishing zone, two criteria had been taken into account. In the Persian Gulf, the outer limits of the zone had been set at the outer limits of the superjacent waters of Iran's continental shelf. Accordingly, where the continental shelf of Iran had been delimited by agreement with other Gulf States, the outer limits of Iran's fishing zone would correspond to the continental shelf line as specified in the agreements; and where Iran's continental shelf had not been delimited under a bilateral agreement, the fishing zone would be determined by a median line equidistant from the baselines of the two countries. In the Sea of Oman where the continental shelf dropped abruptly at a short distance from the Coast, a distance criterion of 50 miles had been adopted. Lastly, the delegate considered that the establishment of a regional fisheries Commission composed of fisheries experts of all the Gulf States could be usefully conceived of as a measure to ensure the rational use of the seas adjacent to the coasts of the Gulf States.

The delegate of *Indonesia* reiterated the archipelagic principles introduced by his delegation in the UN Sea-bed Committee (Document A/AC-130/SC II/L-15). The delegate felt that the most encouraging development to the archipelagic concept was the endorsement of the archipelagic principles by the African states in the OAU Declaration of 1973. He expressed his delegation's ardent wish that the support to the concept of archipelago would continue to grow further.

On the question of passage through straits used for international navigation. the delegate referred to the UN Document A/AC-138/SC II/L-18 and said that the document attempted to strike a balance between the need of other countries to pass through national straits used for international navigation and the needs of Coastal States themselves to protect their "peace, good order and security." He explained that the aforesaid document was not at all intended to obstruct international navigation, as some powers, motivated by their own interests to maintain their global military mobility, would like the world to believe. On the contrary, it was an attempt to facilitate international navigation, including the quickest possible passage of the military vessels, yet at the same time avoiding the possible negative effects of such navigation to the "peace, good order and security" of the Coastal States, especially those poor and militarily weak coastals in the Asian-African world.

In regard to other problems for consideration in the forthcoming conference on the Law of the Sea, the delegate said that the future law of the sea must be able to ensure economic development of the developing countries, safeguard the security and political stability of developing and militarily non-powerful coastal states, and give the developing countries more chance and possibilities to participate in national development and management of the ocean resources and space beyond the limits of national jurisdiction.

Commenting on the paper prepared by the Secretariat, the delegate said that he could not accept Section C dealing with archipelagic waters. Provisions of Paragraphs 2 and 3 of Section C, he thought, was tantamount to denying the archipelagic states the possibility to control the resources in the economic zone. Another paragraph which his delegation could not accept was paragraph 3 in which some waters of the archipelago was amputated or chopped off to become straits where the regime of passage would be different. In his view, there would be a clear recognition of the innocent passage for foreign vessels through sea lanes in the archipelagic waters. and any amputation of archipelagic concept piece by piece would make it meaningless.

The delegate of *Sri Lanka* elaborated his government's position on the question of the Rules of Procedure for the forthcoming conference on the Law of the Sea. He favoured incorporation in the Rules a provision for decisions at the plenary stage to be taken by a majority of two-thirds of the states present and voting. Other proposals such as those for larger majorities, e.g., three-fourths or nine-tenths, or decision by a specified number of the participants casting positive votes, were not acceptable to his delegation. Further, he stressed that the problem of competing texts, in the absence of a single "basic proposal" such as had been provided in the past by the International Law Commission, should also be recognized and resolved in an orderly and equitable manner.

On the question of establishment of the regime and machinery to govern the sea-bed and ocean floor beyond the limits of national jurisdiction, the delegate felt that much new ground was to be covered. In his view if the envisaged international authority was asked to issue licences for exploration and exploitation, the adoption of detailed operational rules to give effect to such a licensing system could not be avoided. If, on the other hand, it was decided to adopt a system whereby the international authority could itself be solely responsible for exploration and exploitation of the area beyond national jurisdiction, but would normally contract with state or private enterprises possessing the requisite financing and technological capacity in order to carry out such exploration and exploitation, then a different set of operational rules could be required.

His delegation was inclined to favour a position whereby the international authority could have sole responsibility for the exploration and exploitation of the sea-bed beyond national jurisdiction. but would enter into contractual arrangements for the discharge of those responsibilities. The operational rules in this case, would prescribe the basic legal framework of the contractual arrangements to be entered into with the entity carrying out exploration or exploitation activities on behalf of the international authority, as well as particular rules for such activities as scientific research, general survey and exploration, feasibility study, construction, exploitation, handling of

production, recovery of project costs, marketing and in certain circumstances. transportation as well. In addition. rules would be necessary for adequate supervision and control of the contracting agency by the international authority through requiring prior consultation and submission of designs, specifications and work programmes, as well as through regular inspection and reporting.

In regard to the basic subjects of the territorial sea and the exclusive economic zone, the delegate stressed the need for securing mutual accommodation of the interests of coastal, landlocked and other geographically disadvantaged states, bearing in mind the over-riding and all-pervasive community of interests of those countries as economically deprived and technologically backward.

Lastly, as regards the question of transit of ships through straits used for international navigation that lay within the territorial sea of the coastal states, the delegate considered that it should be restricted to "innocent passage". Moreover, if it could be possible to work out objective criteria by reference to which the "innocence" or otherwise of a vessel's transit were to be assessed, the principle of "innocent passage" might well offer an acceptable basis for discussion with those major maritime powers supporting a concept of "free transit" through straits.

The delegate of *Japan* expressed the view that the Law of the Sea Conference was the ultimate manifestation of the sovereignty and sovereign equality of states and each participating state had the right to ensure that its own interests were properly reflected in the formulation of the treaty provisions in harmony with the interests of others. While sharing the view that there could be no genuine or meaningful reconciliation of interests unless the view-points of developing countries were clearly identified and fully appreciated, he felt that solutions to the problems which beset the community of nations did not lie in the imposition of the views of any section of that community. In stressing the need for mutual concessions, the delegate said that a greater and fairer chance should be reserved to those countries which had hitherto been denied under the traditional legal

regime the opportunities to participate fully in the utilization of the resources of the sea, in particular, the developing countries and the geographically disadvantaged states. To that extent, advanced maritime states, and where necessary, the geographically advantaged states would be required to make concessions so as to accommodate the developing countries and the less advantaged states.

Commenting on the proposals for the establishment of a broad coastal state resource jurisdiction, such as the proposed Exclusive Economic Zones or the Patrimonial Sea, the delegate said that unless the rights and interests of other states were duly protected and accommodated, it would accentuate rather than diminish the existing inequities due to geographical accidents and would not contribute towards promotions of peace and welfare of the mankind of tomorrow. In other words, efforts should be made in search of a new legal regime in which a greater portion of the world's oceans would be reserved for the fair and equitable utilization by all members of the international community. He sincerely hoped that the working paper on Fishery submitted by his delegation to the U.N. Sea-bed Committee in the summer of 1972, with certain modifications, could provide a useful basis for a pragmatic accommodation of the conflicting interests among states concerned in the field of the exploitation of the marine living resources.

On the question of straits used for international navigation, the delegate said that his country attached great importance to the recognition of rules which would accord international shipping an unimpeded right of passage through such international straits. This, however, did not mean that ships on passage should be free from application of any regulation by the coastal state concerned. In his view, they must comply with the coastal state's laws and regulations enacted in accordance with the accepted international rules and standards regarding, *inter alia*, preservation of the marine environment. He was convinced that, if an agreement could be reached on this newly defined right of passage through straits applicable to international shipping, it would be highly beneficial for the international

community as a whole by providing it with an efficient maritime transport.

In regard to the problem of archipelago, the delegate was prepared to give it sympathetic consideration for its recognition in international law in an appropriate form. However, he felt that the establishment of a regime of archipelago could, unless the legitimate interests of other states were accommodated, result in a substantial curtailment of the rights previously enjoyed by them respecting various uses of the sea.

Regarding the question of marine pollution, the delegate said that, it was a multi-facet problem requiring a truly comprehensive approach. In his view, two different world community interests needed to be reconciled : on the one hand, the effective preservation of the marine environment and, on the other, the protection of the rights of states to the legitimate uses of the sea, regarding in particular the right of navigation. As regards the ships, the principle of flag-state jurisdiction would have to be supplemented by an approach which would recognize a greater responsibility in the hands of the coastal state. However, a mere extension of jurisdiction of the coastal state would not be considered apppropriate, unless the interests of the international community in the maintenance of the freedom of communication were safeguarded. In that connection, he referred to the proposal submitted by his delegation to the U.N. Sea-bed Committee concerning enforcement competence of the coastal state. According to that proposal, a coastal state might, in a limited area adjacent to the territorial sea, enforce internationally accepted rules and standards for the prevention of marine pollution in cases where a violation of such rules and standards had taken place.

Finally, he thought that, to ensure effective control of marine pollution, the concept of port state jurisdiction could be given serious consideration.

The observer from *Peru* described the whole gamut of the problems relating to the Law of the Sea as a confrontation bet-

ween a minority of maritime powers, and a majority of developing countries. In his view, the former today, as ever, persisted in a conservative position intended to maintain narrow limits of national sovereignty and jurisdiction for utilizing and exploiting the seas in accordance with economic and military objectives that might secure them a shared hegemony over the world. The latter, more today than ever, had assumed a progressive position and demanded the right to dispose of the resources existing in the adjacent seas as a means to free themselves from foreign domination and to promote the development and welfare of their people. Facing that crucial controversy, an increasing number of medium powers shared the position of the third world countries and supported the recognition of extensive maritime zones, in which they might protect their national interests up to a 200-mile limit which had thus become the basic element of any international agreement and an irreplaceable symbol of the new Law of the Sea. Further, the representative of Peru outlined in detail the areas of agreement which, in his view existed among coastal countries of different degrees of development who shared the new philosophy of the Law of the Sea.

On the question of straits used for international navigation, the representative of *Peru* supported the position of the countries which maintained the concept of innocent passage as the proper regime to be applied, supplemented by more precise regulations for reconciling the rights and interests of those coastal and other states. With regard to the regime for archipelagos, he fully supported the concepts and principles proposed by the Archipelagic States. In his view, those principles represented a logical solution to various problems which arise from the particular position of those countries, while respecting at the same time the interests of international communication.

On the question of the continental shelf, he considered that the sovereign rights of coastal states must be preserved up to the continental margin, even if it extended beyond the 200-mile limit as no other country could claim a better right to the submerged part of the territories of particular state than that state itself.

Lastly, speaking about the concept of the economic zone, the representative said that, since that formula had gained ground, the Governments of the conservative powers were now directing their efforts to undermine the unitary concept of the 200-miles zone through the distinction of the regimes applicable on one hand to the Sea-bed and on the other hand, to the superjacent water. Such a division, in his view, pretended to ignore the interdependence of respective spaces and of the activities carried out in them, which required a single authority to regulate the management of the zone with regard to natural resources, pollution, scientific research, the implacement and use of installations in the sea, its soil and sub-soil.

The delegate of *Pakistan* considered that the interests of the land-locked and transit states were inter-connected and inseparable. In his view, the question of transit was essentially bilateral in character. Elaborating his point of view, the delegate observed that the access to the sea through the territory of a transit state was something which the land-locked states enjoyed only through bilateral and multi-lateral agreements among the states concerned. There was no connection between the concept of the freedom of the high seas and the question of access to and from the sea and transit through another state. He observed that the existing international law on the subject as embodied in the convention on the territorial sea and the contiguous zone of 1958 and the Convention on Transit Trade of Land-locked States of 1965 expressly supported his point of view. Also, he had strong reservations to the assertion that the right of transit was unqualified and un-encumbered, or fully established. Lastly, the delegate clarified that his observations should not be construed to mean that he did not sympathize with the special problems of land-locked states. The objective solution, as he considered, was that since the right of transit of land-locked states could be interpreted only as an encroachment on the sovereignty of the transit state, the extent to which the transit state was willing to place limitation on its sovereignty should be determined by itself and on the basis of bilateral agreements between the parties concerned.

Resuming the discussion in the meeting held on Wednesday,