the 9th January, 1974, the delegate of the *Philippines* emphasised that the archipelagic position essentially meant the very life of an archipelago as one nation, its waters, its land and its people as one indivisible whole. He stated that, especially last year, the concept has been given concrete articulation and that recognition has been given to the fact that particular and distinct rules must be applied to the waters of an archipelago.

He appreciated the recognition given to the concept of archipelago in the Organisation of African States Declaration on the issue of the Law of the Sea, adopted at Addis-Ababa in May 1973. The Declaration, as he saw it, stated succinctly and accurately the archipelagic position. It recognised that the waters within the baselines of an archipelago were distinct from the territorial sea outside the baselines and that the waters within the baselines together with the islands of the archipelago constituted integral parts of the archipelagic state itself. In his view, it was clear that the rights of archipelagos over the waters within the baselines could not possibly be less but should be greater than those which they had over the territorial sea which lay outside the baselines.

Commenting on the formulations prepared by the A.A.L.C.C. Secretariat, the delegate said that, some of the suggestions or proposals would have the effect of destroying the concept itself. He explained that like many of the issues of the Law of the Sea, the archipelagic position had basically two aspects : namely, that of navigation and that of resources exploitation both living and non-living. On navigation his delegation was prepared to grant the rights of innocent passage through designated sea lanes. He could not accept the contention of some states to grant the right of free passage through those sea lanes or the right of innocent passage through all the waters of the archipelagos. He reiterated that those waters were within the baselines and they were integral parts of the archipelagos. Any free passage through waters of the archipelago would constitute such an intrusion into the archipelago itself that the concept would become substantially meaningless.

As to resource exploitation, the suggestion that foreign

fishermen who had been fishing in the waters of the archipelago should be allowed to continue fishing there was also not acceptable to his delegation. He asked how other states could possibly have fishing rights over waters of an archipelago when such rights are not enjoyed in territorial seas. He recalled that waters of an archipelago were *within*, not outside, the baselines of the state.

He stated that although the waters of an archipelago were integral parts of its territory and subject to the state's dominion and sovereign power, his country would be prepared to grant to other states certain privileges over those waters, but not any right such as that of free passage which would render the concept meaningless and the integrity of the archipelagic state an illusion.

The observer for *Canada* said that as regards the natural resources of the continental shelves, the law and practice of states had already determined that coastal states had the exclusive sovereign right to exploit and any restrictions of whatsoever form were not acceptable to his delegation. However, exploitation of the sea-bed resources beyond the continental margin should be for the benefit of mankind as a whole and that of developing countries in particular. In his view, the success of any new Authority with the overall responsibility for sea-bed activities in the international area could be assured only by a pragmatic approach taking due account of the economic factors involved such as investments, production and marketing.

With respect to the living resources of the sea, he said that for most of the fish species it was the coastal state that would be best able to manage and conserve them. In his view, the essential consideration for any sound management system should be that the stocks should be treated as a whole. He felt that it would be a folly to exercise control to any arbitrary limit which may be totally devoid of meaning in respect of the natural habits of fish species. This, however, did not imply that the needs and practices of other fishing nations should be ignored. His country was prepared to let others acquire a just portion of the maximum sustainable yield, provided those foreign activities were

conducted with due respect for the management and catch requirements of the coastal state. Finally, he made brief comments on the question of the marine environment and the freedom of navigation.

The observer for the *United States of America* said that one of the major attributes of sovereignty was the right to communicate freely and equally on the sea with the rest of the world without any interference by any other state. However, the proposals for territorial sea broader than 12 miles, and the proposals to apply a traditional innocent passage regime to the straits used for international navigation had posed a serious problem. This, however, did not imply that accommodation of the interests of coastal states bordering straits and other routes of communication was impossible.

On the question of resource jurisdiction beyond the territorial sea, he recognised that a coastal state might have a primary interest in the management and utilisation of resources in a broad area beyond its territorial sea and should be able to protect that interest. In his view, however, the coastal states, interests were not the only relevant interests and provision would also have to be made to protect the interests of others. The salient points stressed by him were :

(i) international treaty standards in the context of coastal states' jurisdiction to prevent interference with navigation and other uses,

(ii) to prevent pollution of the marine environment,

(iii) to protect the integrity of such foreign investment as was permitted in accordance with the terms of any exploitation contracts made,

(iv) to share some of the revenues from exploitation of the vast petroleum resources of that area with the international community principally for the benefit of developing countries, both coastal and land-locked, and

(v) to ensure the peaceful and compulsory settlement of disputes.

With respect to fisheries beyond the territorial sea, he stressed, in the context of broad coastal state management, first, a duty to conserve fish stocks, second, a duty to permit full utilisation of fish stocks to the extent that coastal state fishermen could not, for the time being, fully utilise the stocks. This, of course, would be subject to reasonable coastal state regulations including reasonable coastal state license fees. Third, a reasonable formula to deal with the situation in which a particular stock of fish could not sustain both an expanding coastal state fishing capacity and foreign fishing at levels that were traditional prior to the entry into force of the treaty. Fourth, special treatment for particular kinds of fish stocks such as anadromous species and highly migratory species. Finally, in order to assure the adherence to those standards, compulsory settlement of disputes.

With respect to the deep sea-bed, where the principal resources of interest for the foreseable future consisted of manganese nodules, in his view, three major interests were involved :

(i) the interest of potential investors in reasonable, non-discriminatory and stable conditions of open access,

(ii) the interests of both immediate and ultimate consumers of the metals produced, and

(iii) the interests of the international community in assuring that the resources of the area were exploited for the benefit of mankind as a whole. Finally, the representative made detailed comments on the issue of procedures for compulsory settlement of disputes.

The observer from *Australia*, speaking about the passage through straits used for international navigation that comprised wholly of territorial waters stated that a balance must be achieved between the interests of the straits state and those of the flag state. He was inclined to support a right of free

transit — a right more restricted than the right of free passage but which would include a right for the vessels to pass through a strait without prior notification, but not to stop, except in an emergency, nor to manoeuvre, except to the minimum necessary for self-defence and good navigation. Further, he thought that states bordering straits should have certain rights in respect of navigation in the straits. The rights envisaged, in addition to those now exercised in some straits in the form of traffic separation schemes, were those relating to customs, fiscal, immigration and sanitary matters and also the right to regulate scientific research and to make regulations for the prevention and control of pollution.

As regards the concept of archipelago, the representative was willing to support the concept provided that satisfactory criteria could be developed to confine the number of archipelagos that would be recognized by the new convention to those which were genuinely archipelagic in character.

On the question of economic zone, he referred to the proposal submitted by his delegation together with the delegation of Norway, which expressly recognized the right of the coastal state to establish an economic zone up to a maximum distance of 200 nautical miles from the applicable baselines for measuring the territorial sea. Also on the issue of fisheries, he considered that the coastal state should have the right to establish a zone of exclusive fishery jurisdiction extending up to a distance of 200 nautical miles.

On the question of the continental shelf, he said that there already existed an important body of international customary law as well as the 1958 Geneva Convention, which any new law on the subject must take into account. He agreed with the observer from Peru that the existing rights of the coastal state extended to the outer edge of the Continental Margin.

Lastly, he made few brief observations in relation to the envisaged machinery to govern the international sea-bed regime.

The delegate of *Tanzania* considered that the United Nations Sea-bed Declaration on Principles Governing the Sea-bed and Ocean-floor and Sub-soil thereof, beyond the limits of national jurisdiction, established a concept of common heritage of mankind which was of a legally binding nature. In his view, an important task of the forthcoming conference would be to draft the rules aimed at detailing the contents and the implications of the common heritage, and set up the appropriate machinery to ensure equitable use of the heritage. As far as the views of his delegation were concerned, he advocated that the machinery to be set up must have the power to explore and exploit the area, to regulate the activities in the area and to handle equitable distribution of benefits. The delegate felt that only through controlling the means of production that the machinery would be able to ensure equitable distribution of benefits and pay due attention to the interests of the developing countries. A licensing system, *per se*, as proposed by certain developed countries in the United Nations Sea-bed Committee would not grant the machinery complete control of exploration and exploitation. While strongly supporting the concept of Exclusive Economic Zone, the delegate referred to the proposal A/AC. 138/SC.II/L.40 and said that the concept of economic zone should not indeed worry anyone since inspite of its exclusivity, it would also accommodate the interests of land-locked states to share the living resources of the area. Similarly, the interests of neighbouring developing states would be taken care of by giving them reciprocal preferential treatment within the area. The exclusiveness would come only in so far as distant water fishing fleets were concerned. Further, the concept would envisage a wider area for proper conservation of the living resources affected by over exploitation and the increasing marine pollution. In his view, adequate conservation could not, therefore, be practically effected without greater control by Coastal States.

The delegate of *Nepal* felt that the sizeable number of developing land-locked countries of the world, owing to their geographical handicaps and inadequate physical infrastructure, were not able to reap the benefit of international trade and

commerce. In his view, if the developing land-locked countries had the right to progress and prosper along with other members of the world community on equal footing, the right of free and unrestricted access to and from the sea be guaranteed to them.

The delegate referred to the historic U.N. Sea-bed Declaration (U.N. Resolution 2749) and said that that Declaration would remain like a vague dream or a fascinating fiction if the land-locked countries would not have the right to participate in the exploration and exploitation of the sea-bed and its resources. He welcomed the proposal to establish an international regime and appropriate machinery to ensure the equitable sharing of such resources beyond the limits of national jurisdiction. For the benefit of all mankind he hoped that the land-locked countries would be represented adequately and proportionately in such machinery or organ. At the same time, he was unhappy to note the growing tendency to unilaterally extend the limits of national jurisdiction by several states. He appealed to the nations, having means to exploit sea-bed resources pending a new convention and in total disregard of the appeal of the world body and the world leaders.

In connection with exclusive economic zone or fishery zone, the delegate said that the exclusiveness should not in any way exclude the land-locked countries from the exercise of their right over such zone. He firmly asserted that, in the event of establishment of any such exclusive zone, the rights and interests of land-locked countries should not be jeopardized and the land-locked countries should not be deprived of their due share in the resources of the sea whether living or non-living.

The observer for the *U.S.S.R.* felt that new realities resulting from recent scientific developments and technological progress made it necessary to work out some new regulations, some new safeguards for interests of states and some new rules in the field of the law of the sea. In his view, there was no other way to establish rules of international law except the way of negotiations and mutually agreed solution of questions as to the content as well as precise formulations of the new rules to

govern the relations between states, their rights and obligations as well as the legal regime for sea areas and the ocean floor.

On the question of fisheries, while appreciating the special concern of the coastal states, he said, that the coastal developing countries were justified in their demand for inclusion in a future convention on the law of the sea such provisions and rules as would reflect and protect their national interests in respect of living resources near their coasts. However, at the same time, the interests of other states engaged in fishing on the high seas should be taken into account as well. In his view, the solution of the problem of the conservation and regulation of exploitation of living resources in coastal sea waters could only be found on the basis of the principle of reasonable, rational combination of legitimate interests of all countries.

On the question of regime of straits, he referred to the proposal submitted by his delegation in the U.N. Sea-bed Committee, which, in his view, contained provisions for ensuring security and other specific interests of the coastal states of the straits as also provisions confirming the principle of freedom of passage.

The observer for the *United Kingdom* said that his Government subscribed to the twin proposition recently endorsed by the General Assembly of the United Nations that the problems of ocean space needed to be considered as a whole and that it was desirable that a convention on the Law of the Sea should secure the widest possible acceptance. He was glad to note that some common ground was emerging between countries which might on the face of it appeared to be separated by geography and by other circumstances. He referred to the proposal made by the delegation of Iran concerning regional co-operation and developments. Like Iran, his country also recognised the importance of the median line as a criterion for the delimitation of continental shelves of opposite and adjacent countries. Further, on the question of regional arrangements and regional co-operation, he traced the various developments that had taken place in his region. In regard to the concept of archipelago, he reiterated the views expressed by his delegation at the U.N.

Sea-bed Committee meeting in Summer 1973. Again, he emphasised that the archipelagic principles must be enunciated in the form of objective criteria defining the rights and duties of states within the framework of an international agreement.

The observer for *France* stressed the fact that the forthcoming conference on the Law of the Sea will have to work out a convention acceptable to practically all nations. The task, in his view, was a very ambitious and difficult one. Interests at stake were many and various and they came very close to those fields which were fundamental and very sensitive. However, he felt, that those were not the difficulties which could not be overcome if everyone wished to solve them in a spirit of understanding and conciliation. He outlined his Government's position on certain issues relating to the Law of the Sea. In the first place, his Government recognised the maximum limit of 200 miles for exercise of national jurisdiction over the sea-bed. Secondly, his Government was in favour of a *de jure* recognition of the rights of the states over adjacent seas concerning fishing. However, in his view, the exercise of those rights should be determined on a regional basis.

Resuming the discussion in the meeting held on Friday, the 11th January, 1974 the observer for *Argentina* noted that his country along with other Latin American states had had an approach to matters related to national maritime sovereignty and jurisdiction of Coastal State, which was now more and more shared by many states of all regions, and remarked that this fact could be regarded as a major trend constituting the basis for the satisfactory solution, which might be agreed upon by the Third U.N. Conference on the Law of the Sea. In this connection, he recalled the most recent declarations, conclusions, and Resolutions, (Montivideo 1970, Lima 1970, Santo Domingo 1972, Yaounde 1972, O A.U. 1973, and Non-Aligned Summit Meeting 1973), as well as proposals submitted to the U.N. Sea-bed Committee, including the Argentine draft articles contained in document A/AC. 138/S.C. II/L. 37 (Volume III of the Committee Report of 1973, A/9021). He gave an outline of the general principles incorporated in such draft, stated the scope of the sovereign right of the coastal state over the water area

which may extend up to 200 miles, according to geographical, geological and other factors involved, and mentioned among these factors, the one referred to by the delegate of Iran, namely, the criterion of the 200 meter isobath as an additional element that was taken into account. He stressed that freedom of navigation and overflight applied to the adjacent maritime area of the territorial sea which might extend up to 12 miles. He explained that other rights and interests were accommodated by the Argentine draft, and elaborated its provisions regarding land-locked countries as well as countries not extending its sovereign rights over an area beyond the 12 miles territorial sea. As to the continental shelf the observer of Argentina recalled that its government proclaimed its sovereignty over it long ago, and quoted internal laws of 1944, 1946 and 1966, the latter containing the delimitation criteria of Article 1 of the 1958 Geneva Convention. Since he also fully recognised the existence of an international sea-bed area as the common heritage of mankind, in his view, it was clear that a more precise definition of the national-international sea-bed boundary was to be established. To that end he maintained that the departure had to be present international law, which in his view recognised the coastal state's sovereignty over the whole submerged land-mass territory up to the outer edge of the continental margin. In this connection he referred to several rules of customary law and other elements supporting his opinion including their I.C.J. Judgement on the continental shelf of 1969. Further, in his view, this departure, as the draft of Argentina proposed, was to be complemented with another criterion, namely, a distance up to 200 miles, to achieve a satisfactory solution. And he mentioned as following this approach the Santo Domingo Declaration, the Declaration and Resolution of the Non-Aligned Countries approved in Algiers in 1973, and several draft articles introduced by the delegations to the Sea-bed Committee, including those of Colombia, Mexico and Venezuela ; Australia and Norway, and China. Finally, he was firmly of the view that it was not realistic to expect that coastal states would relinquish any part of their continental margin, even if this went beyond 200 miles, as it was not realistic to assume the possibility of renunciation by any State of a part of its land territory.

The delegate of *Ghana* summed up the reasons for the failure of the 1958 and 1960 Geneva Conferences on the Law of the Sea as follows : firstly, the excessive zeal of developed countries to develop international law instead of codifying existing principles by introducing for the first time the vital interests of coastal states in wide areas off their coasts and leaving superjacent waters as high seas ; secondly, the adherence of developed countries to the traditional view of narrow territorial waters and thirdly the attempt by developing countries to obtain broader jurisdiction over their adjacent waters. In his view, the various conflicting, interests, although complex in nature, could be resolved in the spirit of accommodation and goodwill. He traced the recent developments in the technology of the Sea-bed exploitation and said that scientific research in marine environment was a concomitant and necessary prerequisite to the development of advanced technology relating to the sea. In his view, national security considerations had raised the question of control of scientific research with a view to limiting their abuse.

He felt that the task of the forthcoming law of the sea conference would be to resolve the conflicts between the major maritime powers, which possessed the world's largest merchant shipping fleet, navies with global strategic interests and distant water fishing fleet and therefore demanding maximum mobility or in the other words "free transit" and the maintenance of the *status quo* on the one hand, and the developing coastal states with rapidly increasing population depending on the seas for food and raw materials and therefore interested in extending their jurisdiction over waters adjacent to their coasts. Further, he said that the extension of his country's territorial waters from 12 miles to 30 miles was considered essential not only because of the national security considerations, but also to protect the marine environment from pollution. On a regional level Ghana was an important fishing nation and therefore stressed the need for recognition of regional arrangements whether on bilateral or multilateral basis giving fishing rights to countries within the region. Lastly, he said that his government fully supported the decisions of the O.A.U. as contained in the O.A.U. Declaration on issues relating to the law of the sea.

The observer for *Spain* described the peculiar geographical characteristics of his country and stated that his country attached great importance to the issues relating to the law of the sea. He felt that the views of his Government were very close to the views of the Afro-Asian countries, and in general of the countries of the third world. Although, his country's declared territorial sea limit was six miles he recognised that establishment of a twelve mile territorial sea was entirely in accordance with the international law. Like many other delegations, he also shared the view that the normal rule of navigation through territorial seas, including the straits, was that of innocent passage. However, he was also aware of the need for a re-examination and a precision of that concept, taking into account the technological and scientific developments and the need to grant all required guarantees to peaceful international maritime navigation. He referred to the proposal submitted by his delegation together with the delegations of Indonesia, Malaysia, the Philippines, Yemen, Cyprus, Greece and Morrocco to the U.N. Sea-bed Committee (L. 18). In that connection, he said that the innocent passage principle referred only to shipping and had nothing to do with the passage of aircraft.

On the question of archipelago, he fully supported the positions of Indonesia, the Philippines, Fiji and Mauritius and stated that some principles of the archipelagic states should be applied "mutatis mutandis" to the archipelagos of "mixed states". Concerning the continental shelf, his delegation supported the principle that the breadth of the continental shelf should be measured according to the criteria of distance on the surface up to a distance of 200 miles. In his view, it was essential to find some solution to take into account the vested rights exercised by some states beyond the limit of 200 miles. On the question of economic zone, he accepted the principle that the coastal state had functional jurisdiction beyond the territorial sea for the preservation and exploitation of the resources of the zone. To that end, the coastal state enjoyed certain rights to take measures to regulate fishing and to protect the natural resources of the zone. However, at the same time, while exercising such right, the coastal state should also take

into account the interests of the third states and allow their nationals to fish under the following conditions : if the coastal states do not fish 100% of the permissible catch, fishing activities be carried out in accordance with the regulations established in the zone and there be mutual benefits to the economies of both the coastal and third states. Concerning the regime of the sea-bed, he supported the idea of a strong international machinery with broad powers, including the possibility of direct disposal of resources either by itself, or in association with others. As far as marine pollution was concerned, he advocated the principle of zonal approach and referred to the proposal submitted by his delegation together with sixteen countries to the U.N. Sea-bed Committee (L. 56). Concerning scientific research, he could also accept the zonal approach and supported the proposal tabled in the U.N. Sea-bed Committee by Pakistan and other countries, that explicit authorization was required for carrying out scientific research in areas within the jurisdiction of a coastal state. Lastly, he subscribed to the view that the rights and interests of the land-locked and other geographically disadvantaged states needed special consideration.

The observer for *Cyprus* said that the two topics of the Law of the Sea which were of direct concern to his country and also of great interest to many other Asian-African states were : firstly, the principle of the median line and secondly, the position of islands. Regarding the former, he recalled that his country was a proponent of the proposal in the Sea-bed Committee to the effect that in the case of states, the coasts of which were opposite or adjacent to each other, failing agreement between them to the contrary, neither of the states should extend their territorial waters beyond the median line, every point of which was equidistant from the nearest point of the base-lines, continental or insular. In his view, this principle firmly based upon customary international law and codified in the 1958 Geneva Convention on the territorial sea and contiguous zone was consistent with the requirements of equity. Moreover, it also protected the interests of small and weak states, since it provided for a residual rule which would apply, failing a freely negotiated agreement to the contrary, and would thus discourage

any temptation on the part of larger and stronger states to claim the lion's share in an equal negotiation conducted in legal vacuum. At the same time, it was not an unflexible or rigid rule, but fully admitted the possibility of a freely negotiated agreement modifying the median line principle. While his country's proposal before the U.N. Sea-bed Committee related specifically to the application of the median line principle with regard to territorial waters, the delegate explained that the underlying considerations and its logic made it relevant *mutatis mutandis* also to the question of the delimitation of the continental shelf and also to the new concept of the economic zone in cases of states opposite or adjacent to each other. Regarding the second topic, the position of islands, the representative said that his country's fundamental position and that of other island states, many of which were located off the coasts of Asia and Africa, was that islands were in the same position in so far as jurisdictional zones were concerned, including territorial waters, continental shelf, economic zone etc. as continental territories, and that no artificial distinction should be created at the expense of islands, whether consisting of island or archipelagic state, or of mixed, i.e., continental and insular states. However, if any such distinction was to be made, that in principle should be in favour and not at the expense of islands since the majority of cases and in the nature of things, their populations depended on the resources of the sea for their development and survival much more than the populations of continental territories which could rely on the resources of the hinterland.

The delegate of *Iraq* felt that there was an increasing realisation that the law of the sea would play a very important role in the future of the community of nations. He, therefore, sincerely hoped that the forthcoming conference on the Law of the Sea should accommodate the interests of all the states, large or small, geographically advantaged or disadvantaged. According to him, geographically disadvantaged state would include land-locked states, self-locked states, states with short coastlines, states located on semi-enclosed seas, or any other states which were not in direct contact with the international sea-bed area and were not able to derive the same benefits from the high seas

as the other coastal states did due to their peculiar geographical position. He was of the view that while extending their jurisdiction, coastal states should take into consideration and accommodate the interests of land-locked states and other geographically disadvantaged states in the same area. Since high seas were becoming more vital to the world community, the delegate thought that the realisation of the interests of all states located on the semi-locked seas was becoming more necessary. In his view, high seas should be a sphere of co-operation and such co-operation should be based on the needs of all states to benefit from the fishing and non-fishing resources of the seas. In that way only, the interests of states could be protected and respected, irrespective of the fact that certain states were with short coastlines or shelf-locked. While stressing the need for regional arrangements, the delegate said that they should be based on the principle of equity and justice and these should be embodied in the conventions to be concluded in the forthcoming conference on the law of the sea. However, these regional arrangements should neither affect the legal status of the superjacent waters nor impede the freedom of navigation of the semi-enclosed seas. As regards the international regime for the sea-bed the delegate said that the envisaged authority should undertake exploration and exploitation of the resources of the Sea-bed area under its control. Finally, in his view, the concept of common heritage of mankind could be given a meaning only when the special needs of developing countries, whether they were geographically advantaged or disadvantaged, were taken into consideration.

The delegate of the *Republic of Korea* attached great importance to the spirit of genuine co-operation between developing and developed countries for the orderly development of law in the interest of all nations regardless of their geographical situations. Regarding the problem of straits used for international navigation, he said that problem should be solved in a way that would protect the security of the Coastal State or States as well as the general interests of international trade and navigation. He considered that the interests of the Coastal State or States in respect of sanitary and pollution control, conservation of resources and fishery should equally be

guaranteed. His delegation maintained that the Coastal State enjoyed exclusive jurisdiction over the continental shelf for the preservation and exploitation of its resources. The delegate recognised the difficulties in reaching a generally acceptable standard limit of so-called economic zone and hoped that other states would be allowed by agreement with the Coastal States to engage in fishing and other mutually beneficial activities in the direction of technical and economic co-operation in fishery or other productive activities, especially among developing and developed countries.

On the question of rights and interests of the land-locked states, the delegate said that the freedom of transit and the fair rights of access to and from the sea should be assured. Further, in his view, the benefits in the resources of the sea of neighbouring coastal state should be shared in equitable way with the coastal state concerned.

The observer for the *Federal Republic of Germany* supported the principle of the freedom of the sea outside territorial waters. In his view, the interest of freedom of navigation and naval communications was the basic pre-requisite for world trade and the freedom of research in the oceans. He, therefore, considered that an extensive extension of territorial waters or unilateral extension of fishery zones were contrary to international law. His delegation advocated worldwide and regional standards for maritime environmental protection and towards that end he did not regard the idea of national control zones outside the territorial waters to preserve marine environment as the advantageous one. It was the view of his delegation that all geographically disadvantaged countries whether land-locked or shelf-locked should participate to the greatest possible extent in the exploration and exploitation of the Sea-bed resources.

The discussions on the Law of Sea were resumed on Monday, the 14th January, 1974. The Delegate of *Sierra Leone* commented upon some of the issues raised in the study prepared by the Secretary-General. While fully supporting the concept of Exclusive Economic Zone, the Delegate said that the

coastal State should have exclusive jurisdiction in that zone for the purposes of control, regulation and exploitation of the living resources of the sea, as also prevention and control of pollution. On the question of fisheries, he emphasised the importance of the protection of the rights and interests of the coastal State. In his view, the 1958 Geneva Convention on Fisheries recognised the coastal State's right to adopt measures for the conservation of the living resources of the high seas even beyond the limits of its territorial sea. He referred to a Bill, pending before his country's Parliament, in which provision was made for the exploration and exploitation of the continental shelf adjacent to the coast of his country. In order to accommodate the interests of other States, a provision was also made under which foreign fishermen could fish in the territorial waters of Sierra Leone provided the requisite licence was obtained.

On the question of archipelagos, he reaffirmed his delegation's support to the concept evolved in the OAU Declaration of May 1973. His delegation was of the view that in the determination of the nature of maritime spaces between islands which constituted archipelagos, the interests of the archipelagic State should be paramount. Furthermore, the baselines of archipelagic States should be drawn connecting the outermost islands of the archipelagos, for the purpose of determining the territorial sea of the archipelagic States.

Finally, on the subject of the rights and interests of land-locked and semi-land-locked States, his delegation subscribed to the view that all land-locked and semi-land-locked States should enjoy the right of access to and from the sea, including the right of transit through another State for that purpose. Further, he advocated that land-locked and semi-land-locked States should be allowed to participate in the benefits of the living resources of the sea of coastal States. The Delegate also suggested establishment of regional areas for the exploitation of the regional resources within the economic zone, thus accommodating the needs and interests of land-locked States.

The Observer for *Cuba* stressed that the limits of the

maritime sovereign jurisdiction should be established in accordance with social and economic needs of each and every country and taking into account the geographical realities. She reiterated her delegation's support to the proposal for extension of maritime jurisdiction upto 200 miles. However, she stressed that the new Law of the Sea should also take into consideration the variation in different regions. She did not favour the idea of representation in the forthcoming Caracas Conference of those territories which are still under colonial rule.

The Observer for *Uruguay* was of the view that the revision and reformulation of the old institution of territorial sea was one of the fundamental tasks imposed by the evolutionary process of the Law of the Sea for its indispensable and urgent adaptation to the present day international reality. In his view, a new flexible structure, based on the plurality of regimes in the Territorial Sea, should primarily take into consideration :

(1) That the seas adjacent to the coasts of different regions of the world vary in geographical, geological, biological and ecological characteristics. The recognition of this fact had the important legal consequence that the extent of the sovereignty of coastal States might vary according to those characteristics within a maximum universal limit ;

(2) That those situations, determined by nature and by political, economic, social and cultural factors, arising out of the present structure of the international community, justified or required in certain circumstances, and with due respect to the rights of other neighbouring coastal States on the same sea, the extension of the sovereignty of coastal States over their adjacent sea upto limits as broad as was reasonably necessary in order to maintain their security, to preserve the integrity of their marine environment, to explore, conserve and exploit the natural resources of that sea and to ensure the rational utilisation of those resources in order to promote the maximum development of

their economy and to raise the level of living of its peoples.

He referred to the draft articles submitted by his delegation to the U.N. Sea-bed Committee in 1973. Outlining the basic objectives underlying those articles he said that attempt had been made to reach an equitable harmonisation of the interests of coastal States with those of other States and the international community. To that end, a distinction was made between territorial seas whose breadth did not exceed 12 nautical miles and wide territorial seas belonging to the states which, in accordance with the characteristics of their adjacent coastal sea, had extended their sovereignty to distances over 12 miles upto a maximum of 200. In the first case, the legal regime of the territorial sea was unitary, maintaining the classical formula of innocent passage. In the second case, technical, legal and political reasons justified a larger protection of the interests of other States within zones exceeding the 12-mile belt, specially navigation, overflight and other means of international communication. In this case, a dual regime was envisaged. In the zone between the coast and an internal limit of 12 miles, the applicable regime would be similar to the first case, recognising within that zone the right of innocent passage ; and beyond that internal limit upto the exterior limit of the territorial sea, the freedom of navigation, overflight and laying of submarine pipelines and cables, without restrictions other than those expressed in the regulations enacted by the coastal state with regard to its security, the preservation of the environment, the exploration, conservation and exploitation of resources, scientific research and the safety of navigation and aviation adopted by it in conformity with international law.

Furthermore, the draft also took into account some special situations such as the archipelagic States, supporting the formulations submitted by the delegations of the Philippines, Indonesia, Mauritius and Fiji (A/AC. 138 SC. II/L. 48). As regards the special position of land-locked states, the Uruguyan draft ensured the exercise of the right of free access to the territorial sea through coastal States which were their neighbours or belonged to the same sub-region and preferential fishing

rights through bilateral or sub-regional agreements, in that area of their territorial sea which was not reserved exclusively for their nationals.

The observer for *Ecuador* felt that the old principle of the freedom of the sea had been replaced by the new concept of common heritage of mankind. The new concept expressly recognised the fact that the exploitation of the sea could not be concentrated in the hands of a small group of great powers. He stressed the need for making a distinction between the sea under the sovereign jurisdiction of the coastal State and the international sea where all states had the same rights and the same duties. In his view, some of the questions which required serious consideration included : protection of the rights of states whose continental platform extended beyond the limit of 200 miles ; delimitation of the boundaries of adjacent or opposite coastal states ; the regime of straits used for international navigation ; the concept of archipelago and the position of land-locked and other geographically disadvantaged states. He was satisfied with the progress made towards the creation of an international authority to govern the administration of the sea-bed area lying beyond the limits of national jurisdiction. However, he felt that the establishment of a new legal order for the use and exploitation of the ocean was far from being a simple academic exercise. On the contrary, that was a task where the political and socio-economic interests were of fundamental importance. He expressed his concern over the use of coercive measures by certain states against those which defended their maritime sovereignty. Further, he considered it unreal to assume that states which had established or exercised a right of sovereignty over the sea, the sea-bed and sub-soil upto a limit of 200 miles would renounce that right. Such renunciation would in fact be a renunciation of sovereignty which, in his view, might endanger the development and welfare of the peoples of those states.

V. TRADE LAW

(i) INTRODUCTORY NOTE

The trade law subjects taken up by the Committee at the Tokyo Session were matters arising out of the work of the United Nations Commission on International Trade Law (UNCITRAL). At this Session, the Committee considered in detail two subjects.

The Sub-Committee on Trade Law consisting of nine member States, namely, the Arab Republic of Egypt, Iraq, India, Indonesia, Japan, Pakistan, Sierra Leone, Sri Lanka and Tanzania held five meetings. Three of these meetings were devoted to discussions on Bills of Lading — one of the topics on International Shipping Legislation. Two meetings were allotted to discussions on International Commercial Arbitration.

The Sub-Committee discussed Bills of Lading with special reference to the liability of the carrier for delay and the scope of application of the Brussels Convention of 1924. Under the latter topic, two specific matters came up for consideration : the first being the question of the geographical applicability of the Convention as set out in Article 10 of the Convention and amended by Article 5 of the 1968 Protocol. The second question was the applicability of the Convention to ocean carriage under informal documents that evidenced the contract of carriage which may be regarded as documents of title and to oral contracts of carriage. Some other questions were also considered, namely :

(i) the appropriateness of the information required by Article 3(3) of the Brussels Convention to ocean carriage under informal documents, and whether the Convention should specify certain information that must be included in the Bill of Lading if it is to be considered negotiable.

(ii) the validity and effect of Letters of Guarantee given to secure a clean Bill of Lading, and

(iii) the legal effect of the Bills of Lading in protecting "Good Faith" purchasers of Bills of Lading and whether provisions additional to those contained in Article 3(4) of the Brussels Convention and Article 1(1) of the Protocol are desirable.

On International Commercial Arbitration, the discussions proceeded on the basis of the work done by the UNCITRAL with a view to formulating certain conclusions which could be presented to the UNCITRAL so that they may be taken into consideration by that body. The topics which came up for discussion were firstly, the merits of International Arbitration as against ad hoc Arbitration. Secondly, problems regarding constituting an arbitral tribunal. Thirdly, the question of the "venue"of arbitration. Fourthly, the applicable law to determine the rights and obligations of parties under the contract which is the subject matter of arbitration. Fifthly, the procedure in Arbitration. Sixthly, arbitral awards, and the seventh was the enforcement of Foreign Arbitral Awards.

(ii) SUMMARY RECORD OF DISCUSSIONS HELD DURING THE SESSION

At the fifth plenary meeting held on 11th January 1974, the Committee proceeded to hear statements from Delegates and Observers on subjects relating to international trade law.

The Observer from UNCITRAL stated that he would like briefly to describe some of the most recent developments in UNCITRAL which may be of interest to the Committee. Firstly, the General Assembly had decided to hold the United Nations Conference on Prescription (Limitations) in the International Sale of Goods at the U.N. Headquarters in New York from the 20th May to the 14th June of this year. The UNCITRAL draft convention itself and the commentary thereon prepared by the UNCITRAL Secretariat had already been circulated to Governments. An analytical compilation of comments received from Governments and interested international organisations on this draft convention would soon be issued. These documents would constitute the main documents of the Conference. The purpose of the Convention was to provide a concrete set of rules governing the limitation period within which parties to the international sale of goods must institute legal proceedings to exercise their rights or claims under the contract. He was happy to state that most of the States which had submitted observations welcomed the draft as a significant and positive step taken by UNCITRAL for the unification of the law of international trade and had indicated that the UNCITRAL draft provided a good and suitable basis for a convention on the subject. Most of these States generally agreed that it was expedient to harmonize rules on limitation in the field of international sale of goods because the existing divergencies in national rules governing limitation created difficulties in practice. In this connection, he recalled that at the New Delhi session of the Committee last year, the Sub-

Committee on International Sale of Goods had devoted a great deal of time to the examination of the provisions of the UNCITRAL draft and had generally approved its approach as a workable compromise. This view of the Committee, together with constructive comments for improvements, has been reflected in the preparation of the analytical compilation of proposals. He was convinced that the general approval of the UNCITRAL draft and the guidelines which had been provided by this Committee would provide a useful basis for the success of the United Nations Conference on the subject this year.

With regard to uniform rules governing the international sale of goods, work was directed toward the worldwide unification of the rules governing the obligations of sellers and buyers under contracts of international sale of goods. The central task was to ascertain what modifications in the rules embodied in the Uniform Law on the International Sale of Goods (ULIS) annexed to the Hague Convention of 1964 might render these rules capable of wider acceptance by countries of different legal, social and economic system. Work towards this end by a Working Group had considered the rules on the obligations of the seller, and significant simplification of the law had been achieved by the consolidation into a single unified system of the various provisions of ULIS relating to the remedies of the buyer.

With regard to the General Conditions of Sales and Standard Contracts, the Commission continued its programme for the development of a set of general conditions of sale that might voluntarily be adopted by the parties to contracts of international sale of goods with respect to various commodities. Such model contract provisions could facilitate international trade by providing a clear and balanced formulation of the obligations of the parties. On the basis of a study by the Secretary-General on the feasibility of developing such general conditions applicable to a wider range of commodities, the Commission at its Sixth Session requested the Secretary-General to continue his work on this subject and to prepare a set of uniform general conditions in co-operation with the regional economic commissions and with interested trade associations,

chambers of commerce and similar organisations from different regions.

With regard to the subject of International Payments, work was directed towards the preparation of uniform rules applicable to a special negotiable instrument for optional use in international transactions. After the Secretariat of UNCITRAL had submitted to the Fifth Session of UNCITRAL in 1972 a draft uniform law on international bills of exchange used in effecting international payments and a commentary thereon, which had been prepared in consultation with international organisations, including banking and trading institutions, the Commission had requested the Secretariat to extend the draft to include promissory notes, and established a Working Group on International Negotiable Instruments to consider this draft. The Working Group had met in January 1973 and reviewed a substantial portion of the draft uniform law.

With regard to International Commercial Arbitration, the Commission at its Sixth Session considered various proposals contained in the Report of its Special Rapportour, Dr. Ion Nestor, on this subject in the light of comments submitted by States members of the Commission and recommendations made by the Secretary-General. The Commission requested the Secretary-General to prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade, and in preparing this draft, the Secretary-General was requested to consult with regional economic commission of the United Nations, and with centres of international commercial arbitration, and to give due consideration to the ECE and ECAFE Rules. He also informed the Committee that upon a recommendation by UNCITRAL, the General Assembly had now invited States which had not ratified or acceded to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to consider the possibility of adhering thereto. The item of International Commercial Arbitration had been placed on the Agenda before the present session of this Committee accompanied by a very impressive study on the subject prepared by the Secretariat of the Committee. He felt sure that the work of the Committee in this field would contribute greatly to the

formulation of universally acceptable rules on International Commercial Arbitration by identifying the problems which arose in the Asian-African region.

In the field of International Shipping Legislation, the Commission was continuing its examination of the rules governing the responsibility of ocean carriers for cargo embodied in the 1924 Brussels Convention on Bills of Lading, and the Brussels Protocol of 1968. The Commission had established a Working Group of twenty-one members, and had requested the Working Group to take action directed towards the removal of uncertainties and ambiguities in these rules and the establishment of a more balanced allocation of risks between the cargo owner and the carrier. Substantial progress had already been made by the Working Group, including preparation of legislative provisions setting forth the basic rules governing the responsibility of the carrier. These provisions included a unified rule as to burden of proof. The Working Group had also prepared draft provisions on arbitration clauses in Bills of Lading. Decisions had also been taken with regard to the rules on limitation of the carrier's liability to follow the basic approach of the Brussels Protocol of 1968, with certain revisions to remove ambiguities and to take account of problems presented by containerized transport. The Working Group had also drafted provisions dealing with the effect of transhipment of goods on the responsibility of the contracting carrier and of the on-carrier, the effect of measures to save life or property at sea, and the period of limitation within which legal or arbitral proceeding may be brought against the carrier. The work of the Working Group was continuing efficiently, supported by a spirit of compromise which had made it possible to reach agreement on a large number of difficult issues. The problems to be considered at the next meeting of the Working Group included the liability of the carrier for delay, the scope of application of the Convention, the contents of the contract of carriage of goods by sea, the validity and effect of letters of guarantee given to receive a clean Bill of Lading from the carrier and the protection of good faith purchasers of a Bill of Lading. To assist the Working Group to solve these problems, the Legal Counsel of the United

Nations had circulated a questionnaire, to which the Secretariat of this Committee had responded promptly by submitting a detailed analysis of the problems. This reply was also being considered at this Session by the Sub-Committee on UNCITRAL subjects. He believed that any indication of general views of the Committee, which consisted of 24 important States of the Asian-African region would command serious attention by UNCITRAL.

He also referred to the UNCITRAL decision endorsed by the General Assembly to hold an international symposium of teachers and prospective teachers of international trade law. The Commission had considered means to intensify training and assistance in international trade law with special regard to the needs of developing countries. To this end, the Commission had requested the Secretary-General to organise, in connection with its eighth Session in 1975, an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law.

Lastly, he added that the General Assembly at the 28th Session had decided to increase the membership of the Commission from 29 to 36. Out of the seven additional seats, two seats each are distributed to Asian States and African States. As the result of necessary elections, conducted at that session of the General Assembly, the following States from the Asian-African region are presently represented in UNCITRAL : From Asian States : Cyprus, India, Japan, Nepal, Philippines, Singapore and Syria. From African States : Egypt, Gabon, Ghana, Kenya, Nigeria, Sierra Leone, Somalia, Tanzania and Zaire.

The observer from the *Hague Conference on Private International Law* stated that his organisation was a specialised inter-governmental organisation with limited aims dealing with the unification of conflicts rules. It had established relations with international organisations like the United Nations and this Committee.

He conceded that questions of private international law were not so important as questions relating to the law of nations.