(i) INTRODUCTORY NOTE

The subject "The Law of the Sea including questions relating to Sea-Bed and Ocean Floor" was referred to the Asian-African Legal Consultative Committee for consideration by the Government of Indonesia under Article 3(b) of the Committee's Statutes. Having regard to the developments in the field which had taken place by reason of technological advances and evolution of new legal norms since the two Geneva Conferences on the Law of the Sea held in 1958 and 1960 and the proposal for convening of a Third U.N. Conference on the Law of the Sea, the Committee at its Accra Session held in 1970 decided to include the subject as a priority item on the agenda of its next session. The Committee's decision was primarily motivated by the consideration of assisting member governments of the Committee to prepare themselves for the then proposed U.N. Conference and also to enable them to have an exchange of views on important issues prior to the holding of the Conference. The Committee at the same time decided that similar assistance should be offered also to non-member Asian-African Governments following upon the role it had played in connection with the preparation for the Law of Treaties Conference.

Prior to the Tehran Session (1975), the Committee had discussed in sufficient detail important issues on the subject in four of its regular sessions held in Colombo, Lagos, New Delhi and Tokyo during 1971, 1972, 1973 and 1974 respectively. In addition, a Sub-Committee of the Whole, consisting of the entire membership, had met during these sessions and also had three inter-sessional meetings in Geneva during the summer of 1971, 1972 and 1973 in order to give detailed consideration to several issues of importance to the countries in the Asian-African region. The Committee had also established a Working Group composed of seven representatives as well as a Special Study Group on Land-Locked States. These groups held meetings during inter-sessional periods and their reports were

considered by the Sub-Committee of the Whole and by the Committee at its regular sessions.

In addition to the representatives of member governments, a large number of non-member Asian-African States were represented at the Committee's sessions and Sub-Committee meetings on invitation and participated in the discussions. The representatives of States outside the region, both developed and developing, as also international organisations from all over the world were also allowed to participate in the plenary sessions of the Committee in order to enable the member governments of the Committee to have the benefit of the views of those governments reflected in the Committee's deliberations. This was considered desirable having regard to the fact that in preparing for the Third Law of the Sea Conference the member governments of the Committee and other Asian-African governments would as of necessity have to take note of the various viewpoints and interests.

The work of the Committee during the period of four years ending with the Tokyo Session (1974) had closely followed the programme of work of the U.N. Sea-Bed Committee which had been functioning as a preparatory Committee for the Third Law of the Sea Conference. In fact, several proposals introduced in the U.N. Sea-Bed Committee have their origin in the discussions in this Committee. Voluminous material and documentation had been collected and prepared by the Committee's Secretariat with a view to acquainting the member governments with the problems involved, their background and other relevant information. Apart from general exchange of views on preparatory work for the Third Law of the Sea Conference, both substantive and procedural, the Committee's work had been concentrated primarily on ten topics, namely (i) Territorial Sea ; (ii) Continental Shelf ; (iii) Straits ; (iv) Archipelagos ; (v) Fisheries ; (vi) Exclusive Economic Zone ; (vii) Rights and Interests of Land-locked States ; (viii) Marine Pollution ; (ix) International Regime for the Sea-Bed and International Machinery ; (x) Regional Arrangements. On each of these topics the Committee's Secretariat had prepared comprehensive studies containing introductory notes as also notes on the general background and development in relation to the topic, comparative analysis of the various proposals presented to the U.N. Sea-Bed Committee, summary of the views expressed by the various Delegations before the U.N. Sea-Bed Committee and the Asian-African Legal Consultative Committee, extracts from relevant proclamations, national legislations, treaties and agreements including opinions of jurists. Due note was also taken of the decisions taken and deliberations held at the various other forums, both governmental and non-governmental as they contained formulations of governmental policy at the highest level.

The first phase of the Committee's work with regard to this subject may be said to have been concluded with the preparation of documentation and the exchange of views that had taken place during the four-year period ending with the Tokyo Session held in January 1974. The next phase of the work on this subject in which this Committee has been called upon to assist is to analyse the work of the Third Law of the Sea Conference at its various sessions, to identify broad areas of agreement that have emerged at those sessions and to attempt possible solutions where differences exist.

The Tehran Session of the Committee was held after the Caracas Session of the Third Law of the Sea Conference and just on the eve of the Geneva Session of the Conference. Consequently, the main work of the Committee at this session was to evaluate the work done at the Caracas Session and to discuss issues where further clarifications and consultations were necessary preparatory to the Geneva meeting of the U.N. Conference. The topics discussed in detail at the Tehran Session were the following :

(i) Economic Zone/Patrimonial Sea ;

(ii) Continental Shelf ;

(iii) Regime of Archipelagos ;

(iv) Limits for National Jurisdictional Zones ;

(v) Special Regime for States bordering enclosed or semi-enclosed seas ; and

(vi) Regime of Islands.

(ii) SHORT NOTES AND TENTATIVE DRAFT PROPOSITIONS ON THE TOPICS RELATING TO LAW OF THE SEA TO SERVE AS AN AID TO DISCUSSIONS

(Prepared by the Secretariat of the Committee)

Exclusive Economic Zone

The discussion on this subject was originally initiated in this Committee at its Colombo Session in 1971 by the Kenyan delegate, Mr. Njenga, and thereafter continued at its Lagos Session in 1972 as also in inter-sessional meetings during 1971 and 1972. The Kenyan proposal received wide support within this Committee and a set of Draft Articles on the subject was introduced as the Kenyan proposal before the U.N. Sea-Bed Committee (A/AC.138/SC.II/L.23) in July 1972.

In the meantime an African Regional Seminar on the Law of the Sea, which met in Yaounde during June, 1972, endorsed the concept and subsequently in May 1973 the O.A.U. Declaration on the issue of the Law of the Sea, adopted by the Council of Ministers, gave official recognition to the right of each coastal State to establish an exclusive economic zone beyond its territorial sea upto a limit of 200 nautical miles. This was followed by the introduction of the Draft Articles on Exclusive Economic Zone by 14 African States before the U.N. Sea-Bed Committee (A/AC.138/SC.II/L.40). On June 7, 1972 the declaration made by the Foreign Ministers of Caribbean States, known as the Santo Domingo Declaration, recognised certain rights of coastal States in an area adjacent to the territorial sea to be called the patrimonial sea which is similar to the concept of exclusive economic zone. The Fourth Summit Conference of Non-aligned Nations, held in Algiers, also gave endorsement to the proposal of establishment of economic zones.

Ten proposals and working papers introduced before the U.N. Sea-Bed Committee contained various provisions on this subject. These are (i) Draft Articles introduced by the delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore (A/AC.138/SC.II/L.39); (ii) Draft Articles on Exclusive Economic Zone introduced by 14 African States (A/AC.138/SC.II/L.40); (iii) Draft Articles presented by Argentina (A/AC.138/SC.II/L.37); (iv) Working Paper submitted by Australia and Norway (A/AC.138/SC.II/L.36); (v) Working Paper submitted by the Chinese Delegation (A/AC.138/SC.II/L.34); (vi) Draft Articles jointly presented by Colombia, Mexico and Venezuela (A/AC.138/SC.II/L.21); (vii) Working Paper submitted by Iceland (A/AC.138/SC.II/L.23); (viii) Proposal by Pakistan (A/AC.138/SC.II/L.52); (ix) Proposal by Uganda and Zambia (A/AC.138/SC.II/L.41) and (x) Draft Articles introduced by the United States (A/AC.138/SC.II/SR.40). Certain proposals were introduced at the Caracas Session of the Third Law of the Sea Conference, namely, the Draft Articles on the Exclusive Economic Zone introduced by 17 African States (A/Conf.62/C.2/L.82); the Draft Articles introduced by Nigeria (A/Conf.62/C.2/L.21/Rev. 1); the Draft Articles for a Chapter on the Economic Zone and the Continental Shelf introduced by the United States of America (A/Conf.62/C.2/L.47); Draft Articles on the Regional Economic Zones introduced by Bolivia and Paraguay (A/Conf.62C.2/L.65); the Draft Articles on the Economic Zone introduced by a group of 6 Socialist States(A/Conf.62/C.2/L.38); the Draft Articles introduced by Jamaica (A/Conf.62/C.2/L.35); by Guyana (A/Conf.62/C.2/L.5); El Salvador (A/Conf.62/C.2/L.6); and the Working document submitted by Nicaragua on National Zone (A/Conf.62/C.2/L.17). The Second Committee at the Caracas Session had drawn up an Informal Working Paper on the basis of some of these proposals.

In the course of discussions at Caracas, in the U.N. Sea-Bed Committee, in the Asian-African Legal Consultative Committee and various other forums, six main questions appear to have been discussed. These are as follows: (1) Whether such rights should be recognised in an area of the sea beyond the

territorial waters of the coastal State ; (2) If such rights are recognised what should be the breadth of the area over which these rights could be exercised ; (3) What should be the nature of the rights to be exercised by the coastal State in such areas ; (4) What rights, if any, would States other than the coastal State have in this area ; (5) What rights should the adjoining landlocked States have or be permitted to enjoy in this area ; and (6) Whether the regime of economic zone/patrimonial sea, if adopted, be universal in character or could it be of differing nature depending on the particular conditions of each region ?

On the first question there appears to be a broad general agreement in the developing countries in favour of recognition of certain rights in an area of the sea beyond the territorial waters. It may be noted that the Fourth Summit Conference of the Non-aligned countries held in Algiers in September 1973 has supported "the recognition of the rights of coastal States in seas adjacent to their coasts and in the soil and sub-soil thereof within the zones of national jurisdiction not exceeding 200 miles". (See paragraph 2 of the Resolution concerning the Law of the Sea). The O.A.U. Declaration on the issues of the Law of the Sea adopted by the Council of Ministers in May 1973 also contains the folllowing : "The African States recognise the rights of each coastal State to establish an exclusive economic zone beyond their territorial sea whose limits shall not exceed 200 nautical miles". The Santo Domingo Declaration approved by the meeting of Ministers of the Caribbean States dated June 7, 1972 also recognises certain rights of coastal States in an area adjacent to the territorial sea which is to be called the patrimonial sea.

The proposals submitted before the United Nations Sea-Bed Committee all proceed on the basis that the coastal States have certain rights in an area of the sea adjoining their coasts beyond the limits of the territorial sea (See Article I of the Draft Articles on Resource Jurisdiction of the Coastal States beyond the Territorial Sea proposed by the Delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore ; Articles I and II of the Draft Articles on Exclusive Economic Zone proposed by fourteen African States ; Article IV of the

Draft Articles submitted by Argentina ; Article I 'A' of the Working Paper submitted by the Delegations of Australia and Norway ; Article II of the Working Paper submitted by the Chinese Delegation ; Article IV of the Draft Articles of Treaty submitted by Colombia, Mexico and Venezuela ; the Working Paper submitted by Iceland ; Article II of the Proposals submitted by Pakistan ; Article IV of the Proposals submitted by Uganda and Zambia ; Article I of the United States Draft Articles for a Chapter on the Rights and Duties of the States in the coastal sea-bed economic area.

The proposals introduced in Caracas also proceed on the same basis. (See, for example, Article I of the proposal of the 17 African States; Article I of the Nigerian proposal; Article I of the United States Draft ; Article 1 of the Bolivia-Paraguay Draft ; Article 1 of the Draft introduced by six Socialist States ; and Article 1 of the Guyana Draft).

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

Some of the proposals introduced before the U.N. Sea-Bed Committee also adopted the maximum breadth of 200 miles (see Article III of the Draft Articles on Exclusive Economic Zone introduced by fourteen African States ; the Working Paper submitted by the Delegations of Australia and Norway ; Article II of the Working Paper submitted by the Chinese Delegation ; Article 8 of the Draft Articles introduced by Colombia, Mexico and Venezuela : the Working Paper submitted by Iceland and the Proposals submitted by the Delegation of Pakistan). Certain proposals, however, do not indicate any limit for the zone (see Draft Articles submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore ; Draft Articles proposed by Uganda and Zambia ; Draft Articles proposed by the United States). Some of the proposals also provide that the limits of the zone shall be fixed in accordance with certain criteria which take into account the geographical, geological,

biological, ecological, economic and national security factors of the coastal States establishing the zone (see Article 5 of the Argentine Draft ; Article I of the proposal submitted by 14 African States ; and the proposal of Iceland). The Draft Articles presented by Argentina provides for 200 miles or such greater distance coincident with the epicontinental sea.

In the proposals introduced at Caracas the African States' Draft Articles provide that the extent of the zone shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea (Article I). Same is the position in the Socialist States' proposal (Article 3), the United States Draft Articles (Article 2), the Nigerian proposal (Article 1), the Bolivia-Paraguay Joint proposal (Article 1), the Guyana proposal (Article 1) and the Nicaragua proposal (Article 1).

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

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

the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area".

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

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

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

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

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

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

The proposals introduced at Caracas contain specific provisions in this matter. Articles II, III and IV of the African States' proposal contemplate exercise of sovereign rights over the living and non-living resources of the zone. Articles 1, 2, 5, 7 and 9 of the Socialist States proposal, Article 1 of the U.S. proposal and Article 2 of the Nigerian proposal contain the relevant provisions on this topic.

TENTATIVE DRAFT PROPOSITIONS

(To serve as an aid to discussions)

Article 1

Coastal States have the right to establish beyond their territorial sea an exclusive economic zone for the purposes set forth in this Convention.

Commentary

This article embodies the principle which is now generally recognised in all the developing countries about the right of a coastal State to establish an economic zone.

Article 2

The outer limit of the economic zone shall not extend beyond 200 miles to be measured from appropriate baselines for measuring the territorial sea.

Provided that within the maximum limit as aforesaid the limits of the economic zone shall be fixed by each State taking into account the relevant criteria concerning the resources of the region and the rights and interests of developing landlocked and other geographically disadvantaged States.

Commentary

This article is concerned with fixation of the limits of the economic zone. It is generally recognised in most of the proposals on this issue that the extent of the economic zone/ patrimonial sea shall not extend beyond 200 miles. However, some views were held that the limit could extend upto the end of the epicontinental sea even if the same extended beyond 200 miles. Another view was that the economic zone should be measured from the outer limit of the territorial sea. At the Caracas Session the majority, however, appeared to be in favour of fixation of the zone at the maximum limit of 200 miles to be measured from appropriate baseline for the territorial sea. Some views were also expressed that within this maximum limit the limits of the zone should be fixed on certain applicable regional criteria.

Article 3

The coastal State has sovereign and exclusive rights over the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters within the exclusive economic zone.

Commentary

This article sets out the nature and characteristics of the regime of the exclusive economic zone/patrimonial sea on the basis of the generally accepted position in the various proposals

before the U.N. Sea-Bed Committee and the Caracas Session of the Third United Nations Conference on the Law of the Sea.

Article 4

For the purpose of enjoyment of its sovereign rights over the natural resources of the economic zone the coastal State shall have the following rights and competences :

(a) exclusive right to explore and exploit renewable and non-renewable living and other natural resources of the sea, sea-bed and subsoil thereof ;

(b) exclusive right for the management, protection and conservation of the living resources of the sea taking into account the recommendations of the appropriate international or regional fisheries organisations ;

(c) exclusive right to enact laws and regulations to prevent damage by pollution to the natural resources taking into account the recommendations of the appropriate international or regional organisations ;

(d) exclusive jurisdiction to take measures to ensure compliance with its laws and regulations in respect to activities which are the subject matter of its sovereign or exclusive rights ;

(e) right to promote and regulate conduct of scientific research within the zone taking into account the recommendations of appropriate international and regional organisations.

A coastal State shall have the exclusive right to authorize and regulate in the exclusive economic zone, the continental shelf, ocean bed and subsoil thereof, the construction, emplacement, operation and use of off-shore artificial islands and other installations for purposes of the exploration and exploitation of the non-renewable resources thereof.

A coastal State may establish a reasonable area of safety zones around its off-shore artificial islands and other installations

in which it may take appropriate measures to ensure the safety both of its installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and functions of the installations.

The coastal State shall have the exclusive right to authorize and regulate drilling for all purposes in the economic zone.

Commentary

The provisions of this Article has been taken from several proposals before the Sea-Bed Committee and at the Caracas Session to spell out the scope and context of the sovereign rights of the coastal State.

Article 5

No State other than the coastal State shall explore or exploit the resources therein without obtaining permission from the coastal State on such terms as may be laid down in conformity with the laws and regulations of the coastal State.

Commentary

This Article emphasises what follows from the recognition of sovereign rights of the coastal State over the economic zone.

Article 6

Each State shall ensure that any exploration or exploitation activity within its economic zone is carried out exclusively for peaceful purposes and in such a manner as not to interfere unduly with the legitimate interests of other States in the region or those of the international community.

Commentary

This Article embodies the generally accepted positions and is the same as the text of Provision IV in Informal Working Paper No. 4/Rev. 1.

Article 7

In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign power administering or occupying that territory.

Commentary

This Article is the same as Formula B of Provision II in the Informal Working Paper No. 4/Rev. 1 which is taken from the proposal of 17 African States before the Caracas meeting.

Article 8

In the economic zone, ships and aircraft of all States, whether coastal or not, shall enjoy the right of freedom of navigation and overflight and the right to lay submarine cables and pipelines with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area.

Commentary

This article recognises the principles of freedom of navigation and overflight. The provisions of this Article is the same as in Formula A of Provision XI of the Informal Working Paper No. 4/Rev. 1.

Article 9

Nationals of a developing land-locked State and other geographically disadvantaged States shall enjoy the privilege to fish in the exclusive economic zones of the adjoining neighbouring coastal States. The modalities of the enjoyment of this

privilege and the area to which they relate shall be settled by agreement between the coastal State and the land-locked State concerned. The right to prescribe and enforce management measures in the area shall be with the coastal State.

Commentary

This Article is the same as Formula A of Provision VII in Informal Working Paper No. 4/Rev. 1.

Article 10

Commentary

An appropriate provision concerning the share of non-living resources by the nationals of land-locked and other geographically disadvantaged States would need to be discussed.

Article 11

Coastal States and land-locked and other geographically disadvantaged States within a region or subregion may enter into any arrangement for the establishment of regional or subregional ... zones with a view to giving effect to the provisions of Articles ... and ... on a collective basis.

Note: These draft propositions do not in any way reflect the viewpoint of the AALCC Secretariat but have been put forward to serve as an aid to discussion.

STRAITS USED FOR INTERNATIONAL NAVIGATION

One of the crucial issues left unresolved by the two Geneva Conferences on the Law of the Sea is the question of passage through straits used for international navigation and other related issues. This topic is closely linked with the question of the breadth of the territorial sea and in fact some of the major powers consider a satisfactory solution of the issue of straits as fundamental to any settlement on the question of the breadth of the territorial sea.

A strait, in the traditional sense for the purposes of international law, had been understood as forming a passage between two parts of the high seas. International Conventions such as the Lausanne Convention of 1923 and Montreux Convention of 1936 were generally concluded for the purpose of regulating the passage of ships through certain straits of special importance to international navigation. Today, the problem has become far more important because if a maximum breadth of twelve miles is recognised for the territorial sea, many of the straits used for international navigation which were hitherto considered as part of the high seas would fall within the territorial sea of one or more States and according to normal rules only innocent passage could be claimed through these straits.

Six proposals had been introduced on this topic before the Sea-Bed Committee, namely, the joint eight power proposal (A/AC.138/SC.II/L.48) and the proposals of Malta (A/AC. 138/SC.II/L.28), Italy (A/AC.138/SC.II/L.30), Poland (A/AC. 138/SC.II/L.49), U.S.A. (A/AC.138/SC.II/L.4) and the U.S.S.R. Draft Articles.

In addition to these certain other proposals were introduced before the Caracas Conference. These are the United Kingdom Draft Articles on the Territorial Sea and Straits (A/Conf.62/C.2/L.3), the amendment introduced by Denmark

and Finland to the said Draft Articles (A/Conf.62/C.2/L.15); the Draft Articles introduced by Spain (A/Conf.62/C.2/L.6); the Draft Articles of Oman (A/Conf.62/C.2/L.16); the joint proposals of Bulgaria, Czechoslovakia, G.D.R., Poland, Ukraine and U.S.S.R. (A/Conf.62/C.2/L.11); the proposal of Algeria (A/Conf.62/C.2/L.20); the joint proposal of Algeria and 8 other Arab States (A/Conf.62/C.2/L.44); the proposal of the Dominican Republic (A/Conf.62/C.2/L.59); and the Canadian Proposal (A/Conf.62/C.2/L.83).

The main questions which had been discussed in the various sessions of the Asian-African Committee are the following :—

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

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

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

At the Tokyo Session of the Committee held in January 1974 certain broad areas of agreement had appeared to have emerged which could be stated as under :—

(a) The matter of overflights should not form the subject-matter of any Convention on the Law of the Sea

which is to be regulated within the framework of the Chicago Convention or such other separate agreements or conventions as may be necessary.

(b) The convention on the Law of the Sea should only deal with the question of passage through straits in time of peace.

(c) The legitimate interests of coastal States in regulating transit through straits must be recognised and protected.

(d) Passage through straits should conform to the peace, good order and security interests of the coastal States.

Several other questions were discussed and views expressed thereon, but discussions could not be said to be conclusive on some of those issues. These are as follows :

(a) If the regime of innocent passage is accepted, should the regulations formulated by the coastal State be in accord with international standards so as not to impede or interfere with the passage at the discretion of the coastal State ?

(b) Whether straits should be classified with reference to their width or on the basis of straits which lie between the coasts of the same States or two or more States ?

(c) Should innocent passage be defined on the basis of categories of ship ? It may be stated that the general trend of thinking among the delegates who took part in the discussions was in favour of the regime of innocent passage, but in the absence of further detailed discussions on the concept of innocent passage, it has not been possible to make out any broad areas of agreement in this regard.

TENTATIVF DRAFT PROPOSITIONS

(To serve as an aid to discussions)

Article 1

These Articles apply to a strait which connects two parts of the high seas or the high seas with the territorial waters of one or more foreign States and is ordinarily used for international navigation.

Commentary

This Article is intended to provide the definition of the term "strait" for the purposes of the regime provided for in these articles. A strait, as understood in the geographical sense, is a natural passage between land formations which connects two parts of the sea.

The suggested definition given above is based on the proposals made by Canada, Oman, the joint proposal of Algeria and eight other Arab States and the joint proposal of Bulgaria and other Socialist States before the Caracas Session of the Third United Nations Conference on the Law of the Sea. The definition given in the Canadian proposal (A/Conf 62/C.2/L. 83) provides that an international strait is *a natural passage between land formations which lies within the territorial sea of one or more States in any point in its length* and has *traditionally been used for international navigation.* The proposal made by Oman (A/Conf.62/C.2/L.16) makes the articles applicable to "any strait used for international navigation and *forms part of the territorial sea of one or more States*". The Draft Articles proposed by Algeria and the other eight Arab States (A/Conf.62/C.2/L.44) define a "strait used for international navigation" as any strait connecting two parts of the high seas and customarily used for international navigation. The Bulgarian proposal (A/Conf.62/C.2/L.11) applies the provisions relating to regime on straits to those straits lying within the territorial sea of one or more States.

Article 1.3 of Chapter III of the United Kingdom draft on territorial sea and straits (A/Conf.62/C.2/L.3) contemplates