was a general endorsement for the 200 mile limit. (ii) A group of countries propounded the thesis known as 'territorialism' which meant that a coastal State had the right to delimit its territorial sea up to a distance of 200 miles in accordance with its geographical, geological, biological and ecological characteristics. That approach was based on the sovereignty of the coastal State on its territorial sea up to 200 miles but it recognised the interests of the international community principally in regard to the traditional freedom of navigation and communication. In his view, that approach, had the merit of being simple and clear. (iii) Another group of countries advocated the establishment of economic zones or patrimonial sea upto a distance of 200 miles, but in view of the divergence of view among its proponents on the content of such a zone, this concept was rendered ambiguous and equivocal. It was for this reason, the Observer pointed out that Ecuador had formulated at the Caracas meeting the following principles *vis-a-vis* the concept of economic zone:

(a) That the economic zone borders with high seas or international seas ;

(b) That the coastal State shall excercise jurisdiction for other economic uses apart from those generally agreed upon concerning the resources of the sea ;

(c) That the residual rights in the economic zone would also be recognised in favour of the coastal State.

The Observer for the *United States of America* mainly addressed himself to the question: How to produce a just and widely acceptable treaty on the Law of the Sea? First, he said, the broad areas of agreement that already existed must be recognised. In his view, the second key to success would be to bear in mind the common objectives of all mankind in the negotiations for the Law of the Sea treaty. Whilst there might be disagreement on how to reflect these objectives in the treaty, in his view, there was a broad agreement on many of these. The rights and duties in ocean must in future be based on the law and legal process and not on power. The major underlying purposes of the proposed treaty would be frustrated unless it

contained an adequate system for peaceful and compulsory resolution of disputes. In the view of the Observer, the third key to success was to face up to the problems and resolve them realistically and justly. It ought to be ensured that stalemates over individual issues did not prejudice the widespread acceptability of a treaty. He felt that what was being aimed at was a binding treaty and not a recommendatory resolution of the U.N. General Assembly. If the object was elaboration of rights and duties in the ocean in a balanced way reflecting new needs and relationships, then that would be possible only by means of a sound and durable treaty. He felt that pressing for innocent passage in straits or fully discretionary operational organisation for the international sea-bed, responsible only to the U.N. General Assembly type of majority, was plain rhetoric. Further, he felt, that it was not realistic or just to disregard the interests of States with broad continental margins.

The Delegate of the *Republic of Korea* stated that his country had accepted in principle the concept of economic zone. He, however, cautioned that any regulatory measures, whether international or domestic, which had retroactive effect, must be avoided. The Delegate observed that the Republic of Korea over the years had made tremendous development in its fishing industry, and therefore any international measure adversely affecting this development would be unfair and unrealistic.

The Delegate of the *Democratic People's Republic of Korea* observed that his country recognised the right of each developing coastal State to establish its territorial waters and economic zone independently having regard to its economic and geographical conditions, defence and security interests and the interests of States adjacent to or opposite its coast.

The Representative of *Food and Agriculture Organisation* made a statement supported by statistical details, concerning world production of marine fish, its outlook for the future, prospects of fishery management consequent upon a general extension of jurisdiction upto 200 miles, the role of international and regional fishery organisations in conserving and managing the fisheries. In this context he stressed three points, viz. (i) an

important characteristic of the living resources of the sea was their uneven distribution; (ii) Fish were a mobile source and could produce a sustained yield if properly managed; and (iii) Extension of national jurisdictions would not remove the requirement for international cooperation in fishery management.

The Representative of *Inter-Governmental Maritime Consultative Organisation* (I.M.C.O.) addressed the Committee on the topic of jurisdiction for setting standards and enacting regulations for pollution from ships. In this context, he emphasised the distinction between *jurisdiction* and *enforcement*. Whilst jurisdiction referred to the right of a State to prevent or control pollution within a given maritime area, 'enforcement' meant the application of regulations and standards or punish contraventions thereof. Dealing with jurisdiction, he said that IMCO had embodied this concept in a number of conventions. With regard to enforcement, the representative pointed out that the alternative approaches adopted by IMCO were as under: (i) The right of a coastal State to take measures, within the area of its jurisdiction, to prevent and control pollution of the sea arising from the operation of ships; (ii) The right (and duty) of a coastal State to take appropriate action to ensure that ships which fly its flag or otherwise operate under its licence or jurisdiction, do not cause pollution to the marine environment, regardless of where such ships operate; (iii) The right of a coastal State to take action—even in areas outside its jurisdiction and in respect of ships of other States—for the purpose of preventing or mitigating pollution in areas within its jurisdiction, provided that such action meets certain well-defined conditions and takes into account reasonable and agreed safeguards; and (iv) The duty (and right) of a coastal State to take the necessary legislative, administrative and judicial action to ensure that ships which contravene national and international anti-pollution regulations and standards will be duly punished if, and when, they happen to come within the jurisdiction of such a State. This right and duty to take sanctions against a ship will be independent of the place where the contravention in question took place. The representative finally spelled out these approaches at length.

The Delegate of *Turkey* observed that his Delegation supported the concept of economic zone, not because it represented a major interest for Turkey, but because it felt it to be important for African and Latin American countries. As regards straits used for international navigation, the Delegate said that the problem was to bring about an acceptable equilibrium between the interests of international community and the legitimate interests of the riparian States of the straits. He, however, drew the attention of the Committee to the situation which would develop for certain countries after the territorial sea was extended. The extension of the territorial sea would create straits where none existed in certain regions. A serious problem would also arise especially when islands belonging to one country were situated near the coast of another country. It was, therefore, the view of his Delegation not to limit the definition of straits used for international navigation to cases where they joined two parts of the high seas. The Delegate supported the cause of the land-locked States and stated that all propositions favourable to them would be supported by his country. The Delegate also supported in principle the special regime for archipelagic States, but felt that the new convention should have a precise definition of archipelagic States on the one hand and definitive provisions, on the other, safeguarding the interests of neighbouring States. As for the definition of archipelagic States, he considered that the proposal presented by the United Kingdom in that regard could be taken as a basis. As regards enclosed and semi-enclosed seas, the Delegate stated that as the position existed, this special geographical situation had been given an inadequate treatment. The Delegate, therefore, desired that the new convention should include particular dispositions about semi-enclosed areas since because of their dimunitive sizes, the regime governing territorial sea, economic zone etc. would not be capable of implementation in their case. The Delegate hoped that the proposal made by Iran in that regard would find a place in the new convention.

As for the regime of islands, he felt that although a few decades ago, islands could be placed on the same footing as a continental mass, in view of the emergence of new nations like

continental shelf, economic zone etc. it would not be proper to continue the old practice. One could not consider it equitable that a small island in the middle of the ocean could amputate the international zone of thousands of square miles of marine space. However, he felt that a classification of islands according to suitable criteria was essential and in that regard the proposal mooted by several African States (A/Conf.C.2/C.62) was a commendable effort.

Touching upon the topic of continental shelf, he felt that it would be unrealistic to abolish such an institution. If this view was shared by all, the logical consequence would be a dual regime of continental shelf and economic zone.

The Delegate of *Iran* (Prof. F. Momtaz Djamchid) speaking in his personal capacity made observations of a general nature on the various issues under discussion. According to him, upto the Second World War, there had existed an equality of rights amongst the States in the ocean space, but after the War, the equality had been disturbed by a two-fold development: (i) unilateral extension of the limits of national maritime jurisdiction; and (ii) the spectacular advance in the science and technology relating to sea-bed exploration and exploitation. As a result, vast areas of the high seas had ceased to be governed by the principle of the freedom of the sea and they had been made subject to national jurisdiction of the riparian States. This had adversely affected the States which do not have a sea facade, the States called the "geographically disadvantaged" States, which comprise not only those States which for geographical, biological, or ecological reasons cannot derive adequate benefits from their maritime jurisdictions, but also States which would be unfavourably affected by the extension of maritime jurisdictions of other States. Further, the varying stages of economic development of the States *vis-a-vis* the high seas fishing and sea-bed exploitation had further accentuated the inequality amongst the States. The Delegate expressed the view that the international community should re-establish the equilibrium amongst the States by evolving what he called 'inter-State solidarity'. This should be attained at two levels: (i) at regional levels, to remove the inequities arising from

geographical factors; and (ii) at the global level, to remove the inequities arising from economic factors. Thus, the Delegate felt, the modalities and content of the exercise of each right given to the disadvantaged States would be determined within the framework of regional or bilateral agreements concluded between the riparian and the disadvantaged States. This would, however, necessitate a precise definition of a disadvantaged State, and in that regard, the Delegate said, the proposal of the Netherlands deserved serious attention. For ensuring equality in the international sea-bed area, the Delegate said, the international community had already accepted the concept of the common heritage of mankind, although there was a divergence of view in its application. The Delegate stressed the point that the concept of common heritage must allow participation of member States of the international community in the administration of the sea-beds.

The Delegate of *Iraq* made observations of a general nature concerning the negotiations for a new convention on the law of the sea. In his view, for the formulation of a new legal order of the sea what was needed was an objective evaluation of inherited legal norms. Such an order should have as its components elements of durability, certainty of application and satisfaction of expectations. In this regard, like in any other legislative endeavours, law should respond to the wider aggregate of possible heartfelt interests. It should strive to be an accommodation rather than a dictate of the logic of power.

The Observer for *Zambia* stated that his country's position on the law of the sea issues was dictated by two factors: firstly, Zambia was a geographically disadvantaged State, and secondly it was a mining country whose economy was linked with two minerals, copper and cobalt, which would be sought in schemes for exploitation of the ocean deeps. On the question of the free access to and from the sea of the land-locked States, the Observer considered the same unquestionably a right. In regard to the concept of the economic zone, the Observer expressed the opinion that prior to the appropriation of the economic zone and the continental shelf by the coastal States, the land-locked States had a vested legal right to exploit all the resources in the

sea-bed beyond the territorial sea. He, however, expressed himself to be in favour of establishment of economic zone on regional basis.

On the question of exploitation of resources of the international sea-bed, the Observer said that a casual licensing system which enabled private entrepreneurs to mine the ocean beds by merely paying a nominal proportion of the profits to the international authority would be an arrangement that could be easily manipulated in a way that it would become just a source of uneconomically produced cheap raw materials for the industrial countries and thereby keep a stranglehold on the world metal markets and ensure a continuation of low prices for raw materials. Therefore, Zambia supported the principle that an international authority be established to control the exploitation of the deep sea areas and invested with strong and comprehensive powers and that it should have the right to explore and exploit the area and have the power to minimise any adverse economic effects resulting from these activities.

The Observer for *Lesotho* stated that his country considered the resources of the sea, both living and non-living, as the common heritage of mankind, and that no one country or group of countries could make any legitimate exclusive claims over them.

As regards the concept of economic zone, the Observer felt that at the Caracas Conference several coastal States had advocated the establishment of an exclusive jurisdictional zone and that they had even sought to place the administration of such a zone under their full jurisdiction. His Delegation registered strong reservations on the aforesaid two claims. However, the Observer added, Lesotho in a spirit of compromise could give a conditional support to the idea of exclusive economic zone, the condition being that such a zone would be established and administered on regional basis The same approach could be followed in combating pollution.

On the question of scientific research, the Observer recommended a regional authority to conduct research projects agreed upon by all the countries of the region. As for the

exploitation of the resources of the sea beyond national jurisdiction, the Observer agreed with the Delegates who advocated the establishment of an international authority with full powers for exploiting and distributing on a fair basis the resources extracted therefrom, paying special attention to the least developed countries.

On behalf of *Peru*, two statements were made by its two Observers. The first Observer made observations of a general nature on selected topics of the law of the sea.

The second Observer mainly concerned himself to expressing comments on the "Notes on the Law of the Sea", prepared by the Committee's Secretariat. Referring to Article I he said that in defining the right to establish an exclusive economic zone, it would be convenient to clarify from the beginning that the zone lay between the territorial sea and the high seas.

Referring to Article 3, the Observer thought that instead of speaking of sovereign and exclusive rights over the natural resources it should be said that the coastal State had sovereign exclusive rights in the economic zone including the subsoil and superjacent waters.

In regard to Article 4, his suggestion was that in the economic zone the coastal State shall exercise the following rights: (a) sovereign rights (not exclusive right) to explore and exploit renewable and non-renewable living and other natural resources of the sea, sea-bed and subsoil thereof.

Turning to Article 6, he said that the intention was to ensure that all activities of third States in the economic zone should be carried out exclusively for peaceful purposes. This should be stated very clearly.

Referring to Article 8, he commented that it would be proper to establish that ships in transit would refrain from doing exercises or practices with weapons and explosives, and from any act of propaganda, espionage or interference with communication of the coastal State.

Referring to Article 22, which provided that the land-locked States should have the right to construct, modify or improve the means of transport and communication or the port installations of the transit State, the Observer commented that it would be incompatible with the sovereignty of the transit State to recognise the right of a foreign State to undertake this kind of activities.

In regard to Article 16, he made two suggestions. First, the privilege of fishing should apply not only to an area of the exclusive economic zone of the neighbouring coastal State, but to areas in the exclusive economic zone of all the coastal States of the region. Secondly, not all coastal States were in the position of according this privilege on the basis of equality with their nationals.

The Delegate of *Malaysia* took the floor to place on record his reservations with regard to some of the formulations on the topic of straits used for international navigation in the Secretariat documentation placed before the Committee as, in his view, they did not represent adequately the views of strait countries. The question, he added, was discussed exhaustively at the Tokyo Session of the Committee and he stood by the conclusions of the Rapporteur on the areas of agreement reached at that session.

The Delegate of *Indonesia* stated that it was of paramount interest to his country that the principles of an archipelagic State be accepted as part of international law. At the same time, however, his Delegation considered that it was of equal importance that questions such as exclusive economic zone, continental shelf, straits used for international navigation, the interests of land-locked and shelf-locked States and States having narrow shelves or coastlines were also properly resolved in the proposed Convention on the Law of the Sea. The Delegate further stated that in extending sovereignty over the archipelagic waters, the archipelagic States had no intention to hamper or obstruct shipping through such waters unless the shipping endangered their security, territorial integrity or political unity and independence. Referring to the conditions put forward by some countries in defining the archipelagic State, the Delegate said that a

distinction must be made between an archipelagic State and an archipelago belonging to a coastal State. The Delegate felt that the question of straits used for international navigation should not be linked or related to the question of archipelagic States since they formed two different aspects of the law of the sea. Finally, the Delegate said that the draft formulations prepared by the Committee's Secretariat on the topic of straits used for international navigation did not reflect the position of Indonesia as officially submitted to the Third Law of the Sea Conference.

The Observer for *Greece* elucidated briefly the position of his country on three issues, namely, the territorial sea, the delimitation of the territorial sea and the continental shelf and the regime of archipelagos. The Observer said that Greece supported the global acceptance of the 12-mile territorial sea and that as for navigation through territorial waters, it accepted the concept of innocent passage. On the question of delimitation of the territorial sea and/or the continental shelf, the Observer stated that Greece followed the established international law, practice and jurisprudence which provided that such delimitation should be made on the basis of median line and equidistance. Referring to the question of archipelagos, the Observer said that Greece considered that an archipelago was a group of islands so closely inter-related that the component islands formed an intrinsic geographical entity and that Greece recognised the need to apply a special regime to such a situation irrespective of the fact whether the archipelago constituted a State by itself or formed part of a State having also a continental territory.

The Observer for the *United Kingdom* concerned himself with three aspects of the law of the sea, namely the concept of economic zone, archipelagos and straits used for international navigation. He emphasised that the economic zone should be a zone clearly distinguishable from the territorial sea. On the question of archipelagos he referred to the United Kingdom's proposal made before the UN Sea-Bed Committee which, in his view, was based on the twin pillars of the establishment of objective criteria for the definition of an archipelagic State and a satisfactory regime of passage through archipelagic waters. The Observer regretted that the definition of an archipelagic

State as formulated in the U K. proposal did not receive support from the Asian-African countries. but he stated that his Government was willing to negotiate in that matter. The Observer felt that the Third Law of the Sea Conference was an historic opportunity for the establishment in international law of the concept of archipelagos which had not hitherto been recognised. On the question of straits used for international navigation, the Observer referred to the draft formulations on the topic prepared by the Committee's Secretariat and offered comments. particularly on Article 1, Article 2 *vis-a-vis* Article 4, Article 5, Article 6, Article 7 and Article 11.

The Delegate of *Iraq* stated that freedom of transit should be maintained in the straits connecting two parts of the high seas and customarily used for international navigation.

The Delegate of the *Arab Republic of Egypt* stated that in the view of his Government the regime of innocent passage should apply to international navigation through straits which connected high seas with the territorial waters of one or more States. Such a regime. the Delegate added, should assimilate the following essential elements:

(i) the legitimate concerns of the coastal State in safeguarding its security, safety of navigation in its waters and prevention of pollution;

(ii) the vital interest of the international community in an uninterrupted flow of transportation. communication and trade through such straits; and

(iii) balancing of the interests of the international community and the legitimate concerns of the coastal State.

The Delegate believed that on this question the regime of innocent passage should be the basis for further negotiations.

The Observer for *Algeria* spoke generally about the regime of islands. He recognised the inadequacies in the existing law governing the case of islands which were formulated in particular circumstances. He hoped that this problem would receive

adequate attention in the forthcoming Geneva meeting of the Third Law of the Sea Conference.

The Delegate of *Turkey*, dealing with the question of special regime for islands, laid emphasis on the equitable and economic aspects of the rights which would be recognised and given to islands. Referring to the equitable aspect, he pointed out that if the principle of economic zone were to be uniformly applied, a continental country having only a ten-mile coastline would have a lesser economic zone as compared to an island, square in shape, its each side measuring ten miles. He felt that this was surely unjust and inequitable. Dealing with the economic aspect. he said that although his country was inclined to recognise the economic needs of islands because of their dependence on the resources of the sea, injustice and inequity would result if such needs in relation to territorial sea or economic zone of a small island were equated to those of a large island. For ensuring international justice in this regard, the Delegate suggested that islands ought to be classified on the basis of the following criteria : population, size, geographical situation and special circumstances, and the form of their administration. The Delegate said that an island situated on the continental shelf of a neighbouring country could not have the right to the continental shelf. Further, he felt, that colonial powers should not be permitted to draw any benefit from the new prescriptions of the law of the sea through their outlying islands.

The Observer for *Peru* said that although his country sympathised with the adoption of the concept of economic zone by some countries. he believed that that institution did not reflect the realities and needs of various countries. He stressed that the best way to reconcile the rights and interests of different States was to revive the old institution of the territorial sea which would consist in maintaining the concept of sovereignty of the coastal State upto the limit of 200 miles but at the same time defining the duties of the coastal State with regard to the interests of the international community.

The Delegate of *Nepal* made it clear that his country like any other land-locked State was not trying to grab the rights of

others, rather they were endeavouring to preserve their own rights and to have them recognised by the international community. Further, he did not agree with the interpretation given by one Delegate whilst referring to the Charter of Economic Rights and Duties of States to the effect that transit right of a land-locked State was not a right as such. The Delegate also did not accept the formulations prepared by the Committee's Secretariat in Draft Articles 2 and 9 as contained in "Notes on the Law of the Sea relating to Land-locked States".

V. LAW RELATING TO HUMAN ENVIRONMENT

(1) INTRODUCTORY NOTE

The subject "Law relating to Human Environment" has been referred to the Asian-African Legal Consultative Committee for its consideration by the Government of India. The subject was taken up by the Committee at its Tehran Session and preliminary discussions were held in the plenary meetings held on the 29th January and 1st and 2nd February, 1975. At the end of the discussions, the Committee decided to establish a special Study Group composed of the representatives of Arab Republic of Egypt, Bangladesh, Ghana, India, Iran, Pakistan and Sri Lanka to study the various issues connected with the subject. Further, the Committee's Secretariat was directed to prepare a draft of a general convention on human environment on the basis of the principles adopted in the Stockholm Declaration and on other evidence of State practice. The Secretariat was also directed to prepare draft provisions, either as part of the general convention or in the form of separate articles, on the following aspects: (a) provision and preservation of clean water; (b) preservation of the quality of clean air; (c) organisation and maintenance of human settlements; and (d) preservation and protection of wild life, particularly the endangered species of wild fauna and flora.