felt that it should also include in its programme of activities consideration of legal questions in the field of international trade and development in view of the establishment of UNCITRAL and UNCTAD which were expected to take up on a long-term basis the formulation of the international law and practices relating to such matters. Official relationships were established with these two bodies and a section in the Committee's Secretariat was created to deal with international trade law matters.

Since the legal rules governing international trade had been a product primarily of the industrial nations of Western Europe, and consequently oriented to safeguard the interests of their trading communities, it became necessary for the Asian and African states to take an active role in the examination and reformulation of such rules under the auspices of the specialised bodies of the United Nations. This was particularly so in the fields of shipping legislation, international commercial arbitration and formulation of uniform laws in regard to international trade transactions. The Committee's work had, therefore, to be directed towards preparation of studies and papers to assist the countries of this region to play an effective role in the deliberations of organs and bodies like UNCITRAL and UNCTAD as also in conferences of plenipotentiaries that were being convened to draw up conventions or codes of conduct regulating trade law matters. Work of this nature dealt with by the Committee and its Secretariat has been in relation to the Convention on a Code of Conduct for Liner Conferences adopted in 1974 and the Convention on the Carriage of Goods by Sea which has been adopted at the recently concluded Hamburg Conference. Preparatory work in respect of the Liner Conferences had been done by UNCTAD and in respect of Carriage of Goods by UNCITRAL. Trade law subjects currently under consideration of the Committee include the Draft Convention on the Formation of Contracts in the International Sale of Goods.

Following a proposal that the Committee should also take up specific issues relating to questions which were of special interest to the region, the Committee undertook the formulation of model or standard contracts for use in international transactions in regard to commodities and raw materials which are primarily exported from the countries of the region. It was found that most of the transactions in regard to such commodities continued to be made on terms and conditions drawn up by trading associations and institutions in London and some of the leading centres in Western Europe. Such terms and conditions were heavily weighted in favour of the European buyers and needed to be reviewed in order to have more balanced contractual provisions which would effectively take care of the interests of both the buyer and the seller. After five years of consultations with the governments and trading organisations of the region and the U. N. agencies like the UNCITRAL and ECE, the Committee was able to evolve two standard contracts, one based on F. O. B. and the other on F. A. S. terms, applicable in respect of such commodities. Steps are now being taken to promote their use so that they can gradually replace the outmoded standard forms drawn up by private trading associations which are currently in use. A draft of a CIF (Maritime) Contract applicable in respect of light machinery and durable consumer goods has also been prepared, and it is pending finalisation by a Special Meeting of Experts.

As regards formulation of other standard contracts suited to the needs of the region, the Committee has entrusted its Secretariat with the task of the preparation of drafts in respect of the following:—

a) Consultancy agreements, particularly those relating to the preparation of feasibility studies, engineering design and supervision of execution of projects;

b) Construction contracts, particularly those relating to plant and machinery;

c) The transfer of technology and know-how licensing agreements; and

d) Contracts for grant of concessions in regard to exploitation of natural resources and mineral deposits.

Another question of very great importance to this region was to find ways and means by which disputes of a commercial nature arising out of trading and other types of private law transactions could be settled expeditiously and through adoption of fair procedures. It was noted that most of the contracts governing such transactions between Asian-African parties including governments and governmental corporations and the parties in other regions provided for settlement of disputes by arbitration under the auspices of chambers of commerce or arbitral institutions located in Western Europe. It was found that the procedures adopted by some of these institutions at times worked inequitably for the developing countries, but their weaker bargaining positions left them with no option but to accept such arbitration clauses. The Committee has made certain important recommendations in this regard which include the adoption of a protocol to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards to provide for the non-enforcement of awards which are made under procedures which do not work fairly to one of the parties, as well as the establishment of two regional centres for commercial arbitration, one in Asia and the other in Africa. Pursuant to these recommendations a Regional Centre for Commercial Arbitration has been established at Kuala Lumpur with effect from 1st April 1978. It was ceremoniously inaugurated by H.E. Datuk Hussein Onn, Prime Minister of Malaysia on the 17th October 1978.

The Regional Centre will function as an international institution acting for the time being under the auspices and supervision of the Committee but at the expiry of the initial period of three years it would be for the member governments of the region to decide upon the appropriate mechanism which will enable the Centre to continue to function at an international level. The establishment of the Centre at Kuala Lumpur, which represents an unprecedented landmark in the system of settlement of disputes in the

Asian-African region, is unique in many ways and is the first one of its kind ever to be established in any part of the world. It is unique because it represents an effort on the part of a group of countries at an inter-governmental level, to provide for the first time a machinery for settlement of disputes on an integrated pattern in regard to international transactions of a commercial nature. It is also unique because the Regional Centre will not merely be an institution providing for arbitration under its own auspices but its principal functions will include several broadbased objectives such as co-ordination of activities of national institutions within the region served by the Centre; providing facilities for *ad hoc* arbitrations as also in arbitrations held under the auspices of other institutions; and rendering of assistance in the enforcement of awards.

Current and future programme of work

The current programme of work of the Committee includes the Law of the Sea, Environmental Law, Reciprocal Assistance in regard to Prevention and Investigation of Economic Offences, State Succession in respect of matters other than Treaties, examination of the Draft Convention on the International Sale of Goods, the Draft Convention on the Formation of Contracts in the International Sale of Goods and the Draft Convention on the International Bills of Exchange, and International Transfer of Technology. The other subjects which are pending consideration of the Committee on which research work will be undertaken in the future include:

1. Status and Treatment of Aliens;
2. Law relating to International Rivers;
3. Rights of Refugees;
4. Law of Outer Space;
5. Revision of U.N. Charter;

6. Codification of the Principles of Peaceful Co-existence;

7. Questions concerning the Service of Process, issue of letters rogatory and the recording of evidence (Preparation of a draft convention);

8. Questions concerning Transportation of Goods by Air;

9. State Responsibility; and

10. Transnational Corporations.

Publications

The Committee's Secretariat publishes a report on the proceedings of each of its annual sessions, and in addition the Secretariat has brought out five special reports on the following subjects:

1. The Legality of Nuclear Tests;

2. Reciprocal Enforcement of Foreign Judgments, the Service of Process and the Recording of Evidence, both in Civil and Criminal Cases;

3. The Rights of Refugees;

4. Relief against Double Taxation and Fiscal Evasion; and

5. The South West Africa Cases, 1966.

The Committee had also published two voluminous studies on the Constitutions of Asian and African States, respectively in 1968 and 1972. Since many of the Constitutions have either been abrogated or amended, publication of supplements to these compilations is contemplated.

Quarterly Bulletin: The Committee's Secretariat had undertaken publication of a quarterly bulletin from January 1976. The bulletin initially contained current information in respect of the following matters: (i) work of the Committee during the preceding quarter; (ii) important conferences and meetings in the field of international and trade law; (iii) agreements, treaties and conventions of interest to member governments; and (iv) national legislations and proclamations of interest to member governments. The coverage of the bulletin has since been expanded to include countries in the field of international law and trade law including treaties and conventions entered into by them, index of legislation and summaries of judicial decisions which have a bearing on current international law and practice.

The Committee also intends to bring out two special issues of the bulletin which will be devoted exclusively to the following matters:

a) Brief account of the working of various international, regional and sub-regional organisations in the field of international law and trade law;

b) Index of treaties and conventions entered into by Asian-African countries during the past five years with summaries;

c) Brief notes on judicial decisions on international legal questions rendered by superior courts and tribunals during the past ten years; and

d) Summaries of economic laws of member countries and other Asian-African countries.

II. LAW OF THE SEA

LAW OF THE SEA

Introductory

The item "Law of the Sea, including questions relating to the sea-bed and ocean floor" was inscribed on the agenda of the Committee's work by the Government of Indonesia and has been under its active consideration since the twelfth session of the Committee held in Colombo in 1971. The Committee's work on this subject was in the initial stages organised and carried out with a view to assisting member governments and other Asian-African governments in their preparations for the Third United Nations Conference on the Law of the Sea. However, as the Conference advanced from one session to the other, the Committee's work was oriented to encourage and facilitate the search for compromise solutions to the yet unresolved questions before the Conference. Since 1974, the Committee has undertaken, with this objective in mind, a series of initiatives at its annual sessions, meetings of the Sub-Committee and special meetings of experts.

The Committee's deliberations at the Colombo, Lagos New Delhi and Tokyo sessions held from 1971 to 1974 focussed largely on the issues before the Second Committee of the Conference on which, at that time, the Conference was sharply divided, especially those relating to the breadth of the territorial sea, the exclusive economic zone, straits used for international navigation, archipelagos and the questions relating to the rights of access of land-locked states to the high seas and the resources of the exclusive economic zones of neighbouring coastal states, marine pollution and scientific research. Even at this early stage considerable work was done on the issues relating to the exploitation of the mineral resources of the international

sea-bed area, although the more significant contributions of the Committee in regard to these issues were made during more recent years.

At the meeting of the Working Group of the Committee on the Law of the Sea held in Geneva in 1971, the Committee requested its members to prepare working papers on the then existing problem areas relating to the new Law of the Sea which included subjects such as the international regime for sea-bed area beyond national jurisdiction, fisheries, archipelagos, economic zones, straits used for international navigation, and the problems of land-locked states. In response to this request a number of important papers were presented for the consideration of the Committee. Some of these papers contained submissions and proposals which later formed the basis of certain important concepts which were developed within the framework of the United Nations Conference. Special mention should be made in this connection of the paper "The exclusive economic zone concept" submitted by Mr. Frank Njenga of Kenya; the working paper submitted by the Delegation of Indonesia on the "Concept of Archipelago"; the Malaysian paper entitled "International Straits"; a preliminary draft and outline of the Convention on the sea-bed and ocean floor and subsoil thereof beyond national jurisdiction, prepared by the then Rapporteur of the Sub-Committee on the Law of the Sea, Mr. C. W. Pinto of Sri Lanka; a position paper on the land-locked states submitted by Ambassador Tabibi of Afghanistan, and a paper on the "proposed regime concerning fisheries on the high seas" submitted by the Government of Japan.

One of the principal objectives of the Committee is to provide a forum for the Governments of Asian and African states to discuss important international legal and related socio-economic issues with a view to developing common approaches and stands which could safeguard the interest of the countries in the region. Such common approaches are then

adopted at international conferences, especially those convened by the United Nations. It is indeed gratifying that the Committee has been able, through this process of consultation, discussion and negotiation, to make a modest contribution towards the successful resolution of some of the most difficult issues that have arisen at international legal conferences. In this connection mention might be made of the numerous efforts that the Committee made towards finding acceptable solutions to some of the principal issues before the Second Committee of the Law of the Sea Conference.

Inspired by the outcome of these initiatives the Committee resolved to focus greater attention on a priority basis to yet unresolved issues before the Law of the Sea Conference, including especially those relating to the establishment of a legal regime for the international sea-bed area.

Following the third session of the Law of the Sea Conference held in Geneva in 1975 which produced the Informal Single Negotiating Texts (SNT) the Committee prepared a detailed study of these texts for consideration at the meeting of the Sub-Committee of the Whole held in New Delhi in February 1976.

This meeting was held to examine the provisions contained in the SNT and to discuss common strategies for safeguarding the interests of the Asian-African states and to examine possible amendments to the provisions of the SNT which might be made to achieve this objective at the following sessions of the Conference. The documentation of the Secretariat prepared for this meeting focussed on the provisions of the SNT which fell short of the recommendations of the Committee made at its previous sessions and suggested recommendations for improvements of these parts of the text.

The New Delhi meeting of the Sub-Committee of the Whole was followed by the fourth session of the U. N.

Conference on the Law of the Sea held in New York in the spring of 1976. At this session the SNT was revised and a Revised Single Negotiating Text (RSNT) which also included the new text of provisions relating to settlement of disputes was released. Following these developments the Secretariat of the Committee prepared a detailed study of the RSNT which formed the basis of discussion at the seventeenth session of the Committee held in Kuala Lumpur in June-July 1976.

At this session the Committee considered in detail several questions that arose out of the revision of the SNT. These matters were discussed in the Plenary and in the Sub-Committee of the Whole and special attention was focussed on the provisions relating to the exploitation of the international sea-bed area which many delegations felt were inadequate to give effect to the principle of the common heritage of mankind.

The Kuala Lumpur session of the Committee was followed by the fifth session of the U. N. Conference on the Law of the Sea held in New York during August-September 1976. In an effort to speed up the process of negotiations, the First Committee established at this session a Workshop chaired by two co-Chairmen in order to conduct negotiations informally and freely on the important matters before them. The Workshop, however, was able to examine only some of the provisions relating to the system of exploitation of the international sea-bed area. They had before them three papers submitted by the Group of 77, U.S.A. and U.S.S.R. reflecting the different stands taken by them on the First Committee issues. The Second and the Third Committees too had informal and formal negotiations on some key issues including the question of interests of land-locked and other geographically disadvantaged states, regime of passage through straits used for international navigation, the status of the exclusive economic zone, scientific research and transfer of technology while the Plenary continued with its discussions on settlement of disputes.

For the eighteenth session of the Committee held in Baghdad in February 1977, the Committee's Secretariat prepared a further study which outlined the progress of the negotiations at the fifth session of the U.N. Conference. In that study certain tentative suggestions concerning a suitable interim regime for sea-bed exploitation were made for consideration of the Committee.

At the sixth session of the U. N. Conference on the Law of the Sea held in New York in June-July 1977, much of the discussions in the First Committee centred around a compromise interim regime on the system of exploitation of sea-bed mineral resources. The Second and Third Committees and the Plenary continued with negotiations, *inter alia*, on the issues relating to the rights and interests of land-locked and geographically disadvantaged states, the status of the exclusive economic zone, pollution prevention, and settlement of disputes. At the conclusion of that session it was decided that the President should undertake, jointly with the Chairmen of the three Main Committees, the preparation of an Informal Composite Negotiating Text (ICNT) which would bring together in one document the draft articles relating to the entire range of subjects and issues covered by parts I, II, III and IV of the RSNT. The Conference also agreed that the ICNT so produced would be informal in character and would have the same status as the SNT and RSNT and would, therefore, serve purely as a procedural device and only provide a basis for further negotiations without affecting the right of any delegation to suggest revisions in the search for a consensus.

For the nineteenth session of the Committee held in Doha (Qatar) from 16 to 23 January 1978, the Secretariat prepared a study which focussed on some of the crucial issues that were considered likely to form the subject-matter of negotiations at the seventh session of the U. N. Conference on the Law of the Sea, which was to commence shortly thereafter.

ISSUES BEFORE FIRST COMMITTEE OF UNCLOS III

Kuala Lumpur Session

At the Kuala Lumpur Session, discussions focussed mainly on the First Committee issues, both in the Plenary and in the meetings of the Sub-Committee of the Whole. They had before them the Secretariat's study which analysed some of the key provisions of Part I of RSNT and compared with the corresponding provisions of the SNT. The study dealt with the following topics:

1. Activities in the Area in regard to the resources and the principle of common heritage of mankind.
2. Economic effects of exploitation of minerals and world economy.
3. Structure and the nature of functions of the Authority and its various organs.
4. Finance.
5. Settlement of disputes.
6. Interpretation.

Although the RSNT, like its predecessor, had no other status than that of serving as a basis for continued negotiations without prejudice to the rights of any delegation to move amendments or to suggest new proposals, several delegations felt that the provisions of the RSNT, especially those relating to the system of exploitation of the resources of the international sea-bed area had not adequately taken into account the expressed views of a large number of participants at the Conference, particularly members of the Group of 77. The general trend of the discussions seemed to indicate that a large number of delegations favoured the procedure which would take into

consideration the provisions of both the SNT and the RSNT in the future negotiations.

The following aspects of the system of exploitation of the resources of the international sea-bed area were examined with reference to the specific articles of the SNT and the RSNT dealing with these matters:

I. Activities in the Area in regard to the resources and the principle of common heritage.	
Principles already crystallised - Principle of common heritage- Prospecting (paragraph 3 of Annex I read with paragraph 12 of Annex 1) Exploration and Exploitation.	(Article 22, paragraph 8 (d) and 12 of Annex I)
II. Economic aspects of exploitation	(Article 9, Article 28 (ix), Article 30 paragraphs 3-5 and paragraph 21 of Annex I)
III. Finance	(Articles 46—49 Annex II Paragraph 6)
IV. Structure of the Authority Assembly, Council and Enterprise.	(Articles 20, 24—33, 41-42 and Annex II)
V. Settlement of Disputes Relationship with Part IV.	(Articles 33-40)

The Secretariat's study drew attention to some of the basic premises which seemed to underlie the negotiations with regard to the international sea-bed area. They were as follows:-

(a) The resources of the Area are the common heritage of mankind and are vested in mankind as a whole and consequently no individual State can claim or exercise sovereignty or sovereign rights over any part of the Area or its resources. Articles 3 and 4 (1) of paragraph I of Annex I of RSNT-I incorporated these principles.

(b) An international authority which is to be established under the Convention is the organisation which shall act on behalf of mankind as a whole in regard to the resources of the Area and that it is through this organisation that State parties shall organise and control activities in the Area. This principle could be spelt out from the provisions of Article 21 (1) and paragraph 1 of Annex I of RSNT-I.

(c) Activities in the Area shall be carried out for the benefit of mankind as a whole and taking into particular consideration the interests and the needs of the developing countries. Articles 7 and 18 of the Revised Text- I contained provisions to that effect.

(d) Although the resources as such of the Area, being vested in mankind as a whole, are not subject to alienation, the minerals extracted can be alienated in the manner provided for in the Convention. This followed from the provisions of Article 4 (2), paragraph 1 of Annex I and Article 1 clause (iii).

(e) The activities of the Area in regard to extraction of the mineral resources have to be so conducted as to prevent adverse effects on the general economy of countries who are producers of landbased minerals of similar type, the object being to foster the healthy development of the world economy and a balanced growth in international trade. This was clear from the provisions of Article 9 of the Revised Text.

It also drew attention to certain serious consequences that followed if the amendments to Article 22 read with the provisions of paragraphs 3 and 8 (d) of Annex I were implemented. What was contemplated in the RSNT was that there should be an activity described as "prospecting" which could be undertaken by any state under certain conditions and that an applicant for a licence for exploration and exploitation would have to offer certain viable areas for the purpose, in respect of one half of which, the licence would be granted. This meant that in practice the applicant would have to be a party who already had technical data in his possession regarding the resources of the Area. It was only a very small number of highly developed states who were in possession of such data and adequate resources in the shape of technological know-how and trained personnel who would be in a position to undertake the work of prospecting and also apply for licence.

The study went on to point out that in the absence of provisions, which would ensure that the other half of the exploitable area is also exploited simultaneously, the concept of common heritage of mankind could become meaningless.

The study went on to examine the provisions of Article 22 of the RSNT in detail. This Article, it was pointed out, was somewhat different from what was provided for in Article 22 of the SNT. In relation to Article 22 it was suggested that the primary responsibility for the activities in the area should be that of the Authority acting through the Enterprise in view of the accepted principle that the resources of the Area vest in mankind as a whole and have to be exploited for their benefit as also the principle that the Authority is the agent of the international community for the purpose of administration of the Area (See Articles 3,4,6 and paragraph 1 of Annex I). If, however, the Authority was unable to undertake all the activities in the initial stages then the other alternative methods, namely, the Authority acting in association with a State party or State