ASIAN-AFRICAN
LEGAL
CONSULTATIVE COMMITTEE

REPORT OF THE THIRTEENTH SESSION HELD IN LAGOS

From January 18 to 25, 1972

THE SECRETARIAT OF THE COMMITTEE,
New Delhi (India)

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I. INTRODUCTORY

Establishment and functions of the Committee

The Asian Legal Consultative Committee, as it was originally called, was constituted in November 1956 by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria to serve as an advisory body of legal experts and to facilitate and foster exchange of views and information on legal matters of common concern among the Member Governments. In response to a suggestion made by the then Prime Minister of India, the late Jawaharlal Nehru, which was accepted by all the then participating countries, the Committee's name was changed to that of *Asian-African Legal Consultative Committee* as from the year 1958, so as to include participation of countries in the African continent. The present membership of the Committee is as follows :— *The Arab Republic of Egypt*, *Burma*, *Ghana*, *India*, *Indonesia*, *Iran*, *Iraq*, *Japan*, *Jordan*, *Kenya*, *Kuwait*, *Malaysia*, *Nepal*, *Nigeria*, *Pakistan*, *the Philippines*, *Sierra Leone*, *Sri Lanka*, *Syrian Arab Republic* and *Thailand* as *Full Members* and the *Republic of Korea* and *Mauritius* as *Associate Members*.

The Committee is governed in all matters by its Statutes and Statutory Rules. Its functions as set out in Article 3 of its Statutes are :—

"(a) To examine questions that are under consideration by the International Law Commission and to arrange for the views of the Committee to be placed before the said Commission; to examine the reports of the Commission and to make recommendations thereon to the Governments of the participating countries ;

(b) To consider legal problems that may be referred to the Committee by any of the participating countries and to make such recommendations to governments as may be thought fit ;

(c) To exchange views and information on legal matters of common concern and to make recommendations thereon, if deemed necessary ; and

(d) To communicate with the consent of the Governments of the participating countries the points of view of the Committee on international legal problems referred to it, to the United Nations, other institutions and international organisations."

The Committee normally meets once annually by rotation in the countries participating in the Committee. Its first session was held in New Delhi (1957), second in Cairo (1958), third in Colombo (1960), fourth in Tokyo (1961), fifth in Rangoon (1962), sixth in Cairo (1964), seventh in Baghdad (1965), eighth in Bangkok (1966), ninth in New Delhi (1967), tenth in Karachi (1969), eleventh in Accra (1970), twelfth in Colombo (1971) and the thirteenth in Lagos from 18th to 25th January, 1972.

Office-bearers of the Committee and its Secretariat

During the thirteenth session held in Lagos the Committee elected Honourable Dr. T.O. Elias, Attorney-General and Commissioner of Justice of the Federation of Nigeria and H.E. Dr. Mustafa Kamil Yasseen, Director-General, International Organisations, Ministry of Foreign Affairs, Iraq as the President and Vice-President of the Committee respectively for the year 1972-73.

The Committee maintains its permanent secretariat in New Delhi (India) for day-to-day work and for implementation of the decisions taken by the Committee at its sessions. The Committee functions in all matters through its Secretary-General who acts in consultation with the Liaison Officers appointed by each of the participating countries.

Co-operation with other organisations

The Committee maintains close relations with and receives published documentation from the United Nations, some its organs such as the International Law Commission, the International Court of Justice, the U.N. High Commission for Refugees, the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Conference on Trade and Development (UNCTAD) and the Food and Agriculture Organisation (FAO) ; the Organisation of African Unity (OAU) ; the League of Arab States; the International Institute for the Unification of Private Law (UNIDROIT) ; and the Hague Conference on Private International Law. The Committee has been co-operating with the United Nations in its Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and as part of that programme it has sponsored a training scheme which may be availed of by officials of Asian and African Governments.

The Committee is empowered under its Statutory Rules to have at its sessions Observers from international and regional inter-governmental organisations. The International Law Commission is usually represented at the Committee's sessions by its President or one of the members of the Commission. The Secretary-General of the United Nations has also been represented at various sessions of the Committee.

The Committee sends Observers to the sessions of the International Law Commission in response to a standing invitation extended to it by the Commission. The United Nations also invites the Committee to be represented at all

conferences convoked by it for consideration of legal matters. The Committee was represented at the U.N. Conference of Plenipotentiaries on Diplomatic Relations as also on the Law of Treaties. The Committee is also invited to be represented at the meetings of the UNCTAD, UNCITRAL and various inter-governmental organisations concerned in the field of law.

Immunities and Privileges

The Committee, the representatives of the Member States participating in its sessions, the Secretary-General of the Committee and the members of the Secretariat are accorded certain immunities and privileges in accordance with the provisions of the Committee's Articles on Immunities and Privileges.

Membership and Procedure

The membership of this Committee is open to Asian and African Governments who accept the Statutes and Statutory Rules of the Committee. The procedure for membership as indicated in the Statutory Rules is for a Government to address a note to the Secretary-General of the Committee, stating its acceptance of the Statutes and Statutory Rules. There is also provision for Associate Membership under conditions set out in the Statutory Rules.

Financial Obligations

Each Member Government contributes towards the expenses of the Secretariat, whilst a part of the expenses for holding of the sessions are borne by the country in which the session is held. The contributions towards the expenses of the Secretariat of each Member Country at present vary between £900 (sterling) and £1500 (sterling) per annum depending upon the size and national income of the country. Associate Members, however, pay a fixed fee of approximately £450 (sterling).

Resume of work done by the Committee

During the past sixteen years of its existence the Committee had to concern itself with all the three types of activities referred to in clauses (a), (b) and (c) of Article 3 of its Statutes, namely examination of questions that are under consideration by the U.N. International Law Commission; consideration of legal problems referred by Member Governments; and consideration of legal matters of common concern.

The subjects on which the Committee has been able to make its final reports (recommendations) so far include "Diplomatic Immunities and Privileges", "State Immunity in respect of Commercial Transactions", "Extradition", "Status and Treatment of Aliens", "Dual or Multiple Nationality", "Legality of Nuclear Tests", "Arbitral Procedure", "Recognition and Enforcement of Foreign Judgments in Matrimonial Matters", "Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence, both in Civil and Criminal Cases", "Free Legal Aid", "Relief against Double Taxation", "the 1966 Judgment of the International Court of Justice in *South West Africa Cases*" and the Law of Treaties.

The Committee had also finalised its recommendations on the subject of "Rights of Refugees" at its eighth session held in Bangkok (1966), but at the request of one of its Member Governments it had decided to reconsider its recommendations in the light of new developments in the field of international refugee law. The subject was accordingly given further consideration by the Committee at its tenth and eleventh sessions.

The subjects on which the Committee has made considerable progress are "the Law of International Rivers", "International Sale of Goods and related topics" and "the Law of the Sea with particular reference to peaceful uses of the sea-bed and ocean floor lying beyond the limits of national

jurisdiction". At its eleventh session the Committee decided to include the "Law of the Sea and Sea-bed" as a priority item on the agenda of its twelfth and subsequent sessions having regard to the recent developments in the field and the proposal for convening of a United Nations Conference of Plenipotentiaries to consider various aspects of this subject. Having regard to the great importance of the problems concerning the Law of the Sea to the countries of the Asian-African region, it was also decided to invite all such countries to participate in the discussions on the subject at the twelfth as also at the thirteenth session. The main object underlying this Committee's taking up the Law of the Sea is to provide a forum for mutual consultation and discussions among the Governments of Asian and African States and to assist them in making concerted and systematic preparations for the forthcoming U.N. Conference.

Some of the other topics which are pending consideration of the Committee include 'Diplomatic Protection and State Responsibility', 'State Succession', 'Commercial Arbitration' and 'International Shipping Legislation'.

Publications of the Committee

The full reports, including the verbatim record of discussions together with the recommendations of the Committee are made available only to the Governments of the Member States of the Committee. The Committee, however, brings out regularly shorter reports on its sessions for general circulation and sale. So far it has published reports on its first to twelfth session. The Committee has also published five special reports entitled as under :—

(1) The Legality of Nuclear Tests—Report of the Committee and Background Materials.

(2) Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence, both in civil and criminal cases—Report of the Committee and Background Materials.

(3) The Rights of Refugees—Report of the Committee and Background Materials.

(4) Relief against Double Taxation and Fiscal Evasion —Report of the Committee and Background Materials.

(5) *South West Africa Cases*—Report of the Committee and Background Materials.

The Secretariat of the Committee has recently published its compilation of the *Constitutions of African States* with the co-imprint of M/s Oceana Publications, Inc., New York. It had earlier brought out its compilation of the *Constitutions of Asian Countries* in the year 1968. The Secretariat has made considerable progress on the preparation of a *Digest of important decisions of municipal courts of Asian and African countries on international legal questions* as also a *Digest of Treaties and Conventions registered with the United Nations Secretariat to which an Asian or African State is a party.*

This Committee, at its third session held in 1960, had decided on the suggestion of the Government of India that it would proceed to prepare a Study including a compilation of the Laws and Regulations on "Commerce and Industry and connected Labour Problems" in the Asian and African countries. To begin with, the Study was confined to Member Countries of the Committee on the following three topics :—

(1) Foreign Investment Laws and Regulations ;

(2) Laws and Regulations relating to Control of Import and Export trade ; and

(3) Laws and Regulations relating to Control of Industry.

The Secretariat of the Committee has already published in mimeographed form its studies on the first two topics. The Secretariat has now expanded the scope of these studies by including the laws and regulations of all Asian and African countries on these topics.

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II. BUREAU OF THE THIRTEENTH SESSION

President	Hon'ble Dr. T. O. Elias, Attorney-General and Commissioner for Justice, Nigeria.
Vice-President	H.E. Dr. Mustafa Kamil Yasseen, Ambassador, Director-General, International Organisations, Ministry of Foreign Affairs, Iraq.
Secretary-General	Mr. B. Sen. Secretary-General, Asian-African Legal Consultative Committee.
Head of Conference Organisation	Mr. D. Ogundere, Deputy Solicitor-General, Federal Ministry of Justice, Nigeria.

Standing Sub-Committee on the Law of the Sea

Chairman	Hon'ble Dr. T. O. Elias (Nigeria).
Vice-Chairman	H. E. Dr. Mustafa Kamil Yasseen (Iraq).
Acting Rapporteur	Dr. S. P. Jagota (India).

Standing Sub-Committee on the Law of International Rivers

Chairman	Mr. E. Furukawa (Japan).
Rapporteur	Dr. Ibrahim Fahmy Shihata (Arab Republic of Egypt).

Standing Sub-Committee on International Sale of Goods

Acting Chairman	Dr. K. Nishimura (Japan).
Acting Rapporteur	Mr. J. B. Ajala (Nigeria).

DELEGATES AND OBSERVERS ATTENDING THE THIRTEENTH SESSION

A. DELEGATIONS OF MEMBER STATES

ARAB REPUBLIC OF EGYPT

Member (Leader of Delegation)	H. E. Mr. Adel Younes, Chief Justice of the Cour de Cassation.
Alternate Member	Mr. Mohamad Moustafa Hassan, Counsellor of State.
Alternate Member	Mr. Mohamad Shafei Abdel Hamid, Counsellor at Foreign Office.
Adviser	Mr. Fawzy Mohamad El Ibrashi, Counsellor at Foreign Office.
Adviser	Dr. Ibrahim Fahmy Shihata, Professor of International Law, Ain Shams University.

BURMA — *Not Represented*

CEYLON

Member (Leader of Delegation)	Mr. R. S. Wanasundara, Deputy Solicitor-General.

GHANA

Member (Leader of Delegation)	Mr. K. Gyeke-Dako, Director of Public Prosecutions.
Alternate Member	Dr. R. Simmonds, Ministry of Foreign Affairs.

Adviser	Mr. M. A. F. Ribeiro, Senior State Attorney.
Adviser	Dr. S. K. Date-Bah, Lecturer in Law, University of Ghana.

INDIA

Member (Leader of Delegation)	Hon'ble Mr. Niren Dey, Attorney-General of India.
Alternate Member	Dr. S. P. Jagota, Director, Legal & Treaties Division, Ministry of External Affairs.
Adviser	Mr. C. V. Ranganathan, First Secretary, Permanent Mission of India to the United Nations
Adviser	Mr. V. N. Nagaraja, Joint Commissioner, Ministry of Irrigation and Power.
Adviser	Mr. K. L. Sarma, Law Officer, Legal & Treaties Division, Ministry of External Affairs.

INDONESIA

Member (Leader of Delegation)	H. E. Mr. Alibasjah Satari, Ambassador for the Republic of Indonesia to Nigeria.
Alternate Member	Mr. Enny Suprapto, Directorate for Legal Affairs, Department of Foreign Affairs, Djakarta.

Adviser	Mr. Harsojo Sudirman, Directorate for Legal Affairs, Department of Foreign Affairs, Djakarta.

IRAN

Member (Leader of Delegation)	H. E. Mr. Ezedine Kazemi, Ambassador and Director of the Legal Department, Ministry of Foreign Affairs.
Alternate Member	Mr. Farrokh Parsi, Second Secretary, Permanent Mission of Iran to the United Nations.

IRAQ

Member (Leader of Delegation)	H. E. Prof. Mustafa Kamil Yasseen, Ambassador, Director General, International Organisations, Ministry of Foreign Affairs.
Alternate Member	Dr. Bakir Kashif Alghita, Professor, College of Engineering, Baghdad University.
Adviser	Mr. Adnan Kasir, Department of Treaties & Legal Affairs, Ministry of Foreign Affairs.

JAPAN

Member (Leader of Delegation)	Dr. Kumao Nishimura
Alternate Member	Professor Shigeru Oda, Professor of International Law, Tohoku University.
Adviser	Mr. E. Furukawa, Second Secretary, Embassy of Japan, New Delhi.

Adviser	Mr. Ryuichi Tenabe, First Ocean Fisheries Division, Production Department, Fisheries Agency.
Adviser	Mr. Kenzo Oshima, Secretary, Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs.
Adviser	Mr. Zenji Kaminaga, Second Secretary, Embassy of Japan, Lagos.
JORDAN	*Not Represented*
KENYA	
Member (Leader of Delegation)	Mr. Frank X. Njenga. Senior Assistant Secretary, Ministry of Foreign Affairs.
Alternate Member	Mr. W. N. Mbote, Assistant Director of Fisheries, Ministry of Tourism and Wildlife.
KUWAIT	*Not Represented.*
MALAYSIA	
Member (Leader of Delegation)	Hon'ble Tan Sri Haji Abdul Kadir bin Yusof, Attorney-General & Minister for Legal Affairs.
Alternate Member	Mr. L. C. Vohrah, Senior Federal Counsel.
Adviser	Mr. T. H. Yogaratnam, Acting High Commissioner for Malaysia to Nigeria.
NIGERIA	
Member	Hon'ble Dr. T. O. Elias, Attorney-General and Commis- sioner for Justice.

Alternate Member	Mr. D. Ogundere, Deputy Solicitor-General.
Adviser	Mr. B. A. Shitta-Bay, Principal State Attorney, Attorney-General's Chambers.
Adviser	Mr. R. O. Coker, Director of Federal Surveys.
Adviser	Mr. E. O. Bayagbona, Director, Federal Department of Fisheries.
Adviser	Mr. O. Alo, Counsellor, Ministry of External Affairs.
Adviser	Mr. J. B. Ajala, Senior State Counsel.
Adviser	Mrs. T. Oyekunle, Senior State Counsel.
Adviser	Mr. T. I. Adesalu, State Counsel.
Adviser	Mr. K. B. Olukolu, State Counsel.
Adviser	Mr. I. Jimeta, Counsellor, Ministry of External Affairs.
Adviser	Miss M. Eyo, Counsellor, Ministry of External Affairs.
Adviser	Mr. G. C. N. Jituboh, Counsellor, Ministry of External Affairs.
NEPAL	
Member (Leader of Delegation)	Mr. Churamani Raj Singh Malla, Secretary, Ministry of Law and Justice.

PAKISTAN	
Member (Leader of Delegation)	H. E. Dr. S. M. Koreshi, High Commissioner for Pakistan to Nigeria.
Adviser	Mr. E. H. Faroqui.
PHILIPPINES	
Member (Leader of Delegation)	H. E. Dr. Leon Ma. Guerrero, Ambassador of the Philippines to India.
Alternate Member	The Hon. Estelito P. Mendoza, Vice-Minister of Justice, Republic of the Philippines.
Adviser	Mr. Froilan Maglaya, Charge d'Affaires, Embassy of the Philippines, Lagos.
SIERRA LEONE	*Not Represented*
SYRIAN ARAB REPUBLIC	
Member (Leader of Delegation)	Dr. Zakaria Sibahi, Charge d'Affaires, Embassy of the Syrian Arab Republic, Lagos.
THAILAND	
Member (Leader of Delegation)	Mr. Vaikunda Samruatruamphol, First Secretary, Royal Thai Embassy, Lagos.

B. REPRESENTATIVES OF ASSOCIATE MEMBER STATE

REPUBLIC OF KOREA	
Associate Member	H. E. Dr. Woonsang Choi, Ambassador,

	Consul-General, Korean Consulate-General New Delhi.
Alternate	Mr. Tae Zhee Kim, Chief, Treaty Section, Ministry of Foreign Affairs, Seoul.

C. REPRESENTATIVES OF NON-MEMBER STATES ATTENDING AS OBSERVERS

ALGERIA	Mr. Mohamed Medjad, Director of Judicial Affairs, Ministry of Foreign Affairs.
CAMEROON	Mr. Mbaya, Counsellor.
	Mr. Epee-Nojoube, Director of Fisheries.
DAHOMEY	Mr. Patrice Houngavou, First Secretary, Embassy of Dahomey, Lagos.
EQUATORIAL GUINEA	Mr. Agustin Menana, Second Secretary, Embassy of Equatorial Guinea, Lagos.
GAMBIA	Mr. Sam H. A. George, Solicitor-General and Legal Secretary.
IVORY COAST	Mr. Diguiny, Deputy Director of Political Affairs, Ministry of Foreign Affairs.
	Mr. Pegawagnaba Boniface, Administrator of Maritime Affairs, Ministry of Transport.

LIBYA ARAB REPUBLIC	H. E. Mr. Ramadan Ghreibil, Libyan Arab Republic Ambassador to Nigeria.
	Mr. Suleiman Ateiga, Counsellor, Ministry of Unity and Foreign Affairs, Tripoli.
	Mr. Milad M. Maghrawi, First Secretary, Ministry of Unity and Foreign Affairs, Tripoli.
MAURITANIA	Mr. Mine Ould Abdallah, Embassy of Mauritania, Lagos.
MAURITIUS	Mr. Robert Ahnee, Senior Crown Counsel.
SAUDI ARABIA	Mr. Hassan Abbas Alfawanissi, Secretary, Embassy of Saudi Arabia, Lagos.
SINGAPORE	Mr. Glenn Jeyasingam Knight, State Counsel and Deputy Public Prosecutor, Attorney-General's Chambers.
SENEGAL	Mr. Dieye, Substitute-General at the Court of Appeal at Dakar.
TANZANIA	Mr. Joseph S. Warioba, Director, Legal Division, Ministry of Foreign Affairs, Dar-es-Salaam.
TURKEY	Mr. Yasar Yakis, Charge d'Affaires, Embassy of Turkey, Lagos.

ZAIRE	Mr. B. Kalonji-Tshikaya, Director of the Secretariat-General, Ministry of Foreign Affairs.
	Mr. Dievi-Mavambu Jean, First Secretary, Zaire Embassy, Lagos.
AUSTRALIA	Mr. Patrick Brazil, First Assistant Secretary, Attorney-General's Chambers.
	Mr. John Dauth, Second Secretary, Australian High Commission, Lagos.
ARGENTINA	H. E. Mr. Francisco Bengolea, Ambassador of Argentina to Nigeria.
AUSTRIA	Mr. Helmut Bauer, Second Secretary, Austrian Embassy, Lagos.
BRAZIL	H. E. Mr. Nabugo de Gouvea, Ambassador of Brazil to Nigeria.
CANADA	Dr. D. G. Crosby, Director, Resource Management & Conservation Branch, Department of Energy, Mines & Resources.
ICELAND	H. E. Mr. H. G. Andersen, Legal Adviser, Ministry of Foreign Affairs, Reykjavik.
NORWAY	H. E. Mr. P. M. Metzfeldt, Norwegian Ambassador to Nigeria.

PERU	H.E.Mr. Alfonso Arias-Schreiber, Director of Sovereignty & Frontiers, Ministry of External Affairs, Lima.
	H. E. Mr. Felipe Valdivieso, Ambassador of Peru to Egypt.
UNITED KINGDOM	Mr. D. A. Campbell, Assistant Head of Marine and Transport Department, Foreign & Commonwealth Office.
	Miss M. G. Fort, Second Secretary, British High Commission, Lagos.
URUGUAY	Mr. Juan Mocho-Amestoy, Charge d'Affaires, Embassy of Uruguay in Lagos.
U.S.A.	Prof. Richard R. Baxter, Counsellor on International Law, Department of State.
U.S.S.R.	Mr. Boris Netchaev, Counsellor, Treaty & Legal Department, Ministry of Foreign Affairs.
	Mr. Serge Golosov, First Secretary, Embassy of the U.S.S.R., Lagos.

D. REPRESENTATIVES OF UNITED NATIONS AND INTER-GOVERNMENTAL ORGANISATIONS ATTENDING AS OBSERVERS

INTERNATIONAL LAW COMMISSION	H. E. Mr. S. Tsuruoka, Chairman, International Law Commission.

UNITED NATIONS	Mr. Penuel Malafa, Director, UN Information Centre, Lagos.
FOOD AND AGRICULTURE ORGANISATION	Mr. F. E. Popper, Assistant Director-General, Fisheries Department.
	Mr. J. E. Carroz, Senior Legal Officer, (International Fisheries).
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW	Mr. Willem Vis, International Trade Law Branch, Office of Legal Affairs.
COMMONWEALTH SECRETARIAT	Mr. T. O. Kellock, Director, Legal Division.
LEAGUE OF ARAB STATES	Mr. Dia Eddin Rifai, Press Counsellor, Jordan Embassy, Lagos.
ORGANISATION OF AFRICAN UNITY	Mr. A. H. Abdel Razik, Assistant Executive Secretary, OAU Scientific, Technical and Research Commission.
	Mr. Diouf Papa, Assistant Executive Secretary, OAU Scientific, Technical and Research Commission.
INTERNATIONAL INSTITUTE FOR UNIFICATION OF PRIVATE LAW (UNIDROIT)	Dr. Mario Matteucci, Secretary-General, International Institute for Unification of Private Law.

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III. AGENDA OF THE THIRTEENTH SESSION

I. Administrative and Organisational Matters :

1. Adoption of the Agenda.
2. Election of the President, the Vice-President and the Secretary-General.
3. Admission of Observers to the Session.
4. Consideration of the Secretary-General's Report on Policy and Administrative Matters and the Committee's Programme of Work.
5. Dates and place for the Fourteenth Session of the Committee.
6. Any other business that may be brought up.

II. Matters Referred to the Committee by the Governments of the Participating Countries under Article 3 (b) of the Statutes :—

*1. *Law of the Sea including Questions relating to Sea-Bed and Ocean-Floor* (Referred by the Government of Indonesia).

2. *Law of International Rivers* (Referred by the Governments of Iraq and Pakistan).

III. Matters taken up by the Committee under Article 3 (c) of the Statutes :—

International Sale of Goods (Taken up by the Committee at the suggestion of the Governments of Ghana and India).

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*Priority item.

IV. LAW RELATING TO INTERNATIONAL SALE OF GOODS

INTRODUCTORY NOTE

The topic of "Law relating to International Sale of Goods" was originally included in the programme of work of this Committee under Article 3(c) of its Statutes at the suggestion of the Government of India. A study concerning the Rules of Conflict of Laws relating to International Sales and Purchases was prepared by the Secretariat and was placed before the Committee at its Fourth Session held in Tokyo in 1961. The matter was considered by a Sub-Committee at the Tokyo Session which recommended collection of further material. It was not possible to make much progress on this subject for some time in view of the fact that there were a number of references by Member Governments under Article 3(b) of the Committee's Statutes which needed urgent consideration.

The United Nations Commission on International Trade Law at its First Session held in New York in 1968 selected for its consideration "International Sale of Goods" as a priority item. The subject was accordingly taken up at the Second Session of the UNCITRAL held in Geneva during March, 1969. In the course of discussions in the UNCITRAL the representatives of Ghana and India suggested that the Asian-African Legal Consultative Committee should be requested to revive its consideration of the subject of International Sale of Goods and that it should be taken up as a priority item at the Eleventh Session of the Committee which was to be held in Accra in January 1970.

At the Accra Session, the Committee had before it a Brief prepared by the Secretariat dealing with the topics which were generally discussed at the Second Session of the UNCITRAL in March 1969. These topics included :—

(1) The law relating to International Sale of Goods in general ;

(2) The Hague Conventions of 1964, that is, the Conventions relating to a Uniform Law on the International Sale of Goods and the Convention on the Uniform Law on the Formation of Contracts in International Sale of Goods ;

(3) The Hague Convention on the Law applicable to International Sale of Goods, 1955 ;

(4) Standard Contracts and General Conditions of Sale ;

(5) Incoterms and other Trade terms ;

(6) Time-Limits and Limitations (Prescription) in the field of International Sale of Goods.

The Committee considered the subject in the plenary and after noting the views and comments made by various delegations as well as by the Secretary-General of the Hague Conference, the Secretary of the UNCITRAL, and the representatives of the UN Economic Commission for Africa and the Arab League, the Committee decided to constitute a Sub-Committee composed of the representatives of Ceylon, Ghana, India, Japan, Nigeria, Pakistan and U.A.R. for giving further consideration to the subject. The Sub-Committee held three meetings during the Accra Session, in which, apart from the Members of the Sub-Committee, observers from other Governments and international organisations also participated. The Sub-Committee primarily concentrated its attention on two points, namely, (1) how to increase the familiarity of the member Governments with the work done by the UNCITRAL and other organisations and (2) make recommendations regarding the manner in which the subject may be discussed in the Committee on a regular basis.

The Sub-Committee also discussed the question of conclusion and adoption of standard or model contracts, particularly in relation to the commodities of special interest to buyers and sellers in the Asian-African region. The secretary of the UNCITRAL, who attended the Sub-Committee meetings, had enquired whether the Committee would consider the desirability of holding regional conferences to encourage the conclusion and adoption of such model or standard contracts and cited the example of UN Economic Commission for Europe which had brought together sellers and buyers of specific commodities such as plant and machinery, lumber, citrus etc. and had adopted standard or model contracts relating thereto. The Sub-Committee was of the view that each Government would have to consider the desirability of drawing up of model or standard contracts in co-operation with the trading organisations and interests concerned and that the matter should be reviewed by the Committee at its next session.

The Committee took up this subject for further consideration at its Twelfth Session held in Colombo in January 1971 in the light of further work done in the UNCITRAL and the replies received from Governments and trading organisations in the Asian-African States to a circular letter issued by the Committee's Secretariat inviting their views regarding the desirability of drawing up of model or standard contracts and the commodities in respect of which adoption of such model or standard contracts or General Conditions of Sale might be helpful.

The Committee after some discussion on the subject in the plenary decided to refer the same for detailed consideration to a Sub-Committee whose composition was the same as that appointed at the Accra Session with the addition of Iraq. The meetings of the Sub-Committee were attended also by the Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT) and the Secretary of the UNCITRAL. The questions which were mainly

considered by the Sub-Committee were : (1) adoption of standard or model contracts in relation to specific commodities of special interest to buyers and sellers of the Asian-African region; (2) Articles 1 to 17 of the Convention on Uniform Law on International Sales, 1964 with a view to determine as to how far these provisions should be acceptable to the countries of the Asian-African region, and (3) Law of Prescription (Limitations) in the field of International Sale of Goods on the basis of the Questionnaire and Preliminary Draft prepared by the Working Group appointed by the UNCITRAL. The Sub-Committee also briefly discussed other matters pending consideration of the UNCITRAL, namely, Negotiable Instruments, International Shipping Legislation and International Commercial Arbitration.

Subsequent to the Colombo Session a meeting was held in Delhi between the Rapporteur and the Joint Rapporteur of the Sub-Committee along with the Secretary-General of the Committee in order to determine as to what specific matters should be brought up before the Committee at its Lagos Session with regard to the subject of International Sale of Goods. It was felt that since the duration of the Lagos Session had been shortened to a period of eight days and taking into account that most of the time at the disposal of the Committee would have to be devoted to the Law of the Sea, it would be unrealistic to bring up too many questions for consideration of the Committee. In the light of above it was considered that the only matter which the Committee should be asked to consider at the Lagos Session is the question of adoption of standard or model contracts in commodities of special interest to the Asian-African region as this was a field in which the Committee could make its own original and concrete contribution in the interest of developing countries of Asia and Africa.

Accordingly at the Lagos Session, the Standing Sub-Committee on the International Sale of Goods took up for discussion only the draft standard form of contract for sale

of consumer goods prepared by the Joint Rapporteur after taking into account the various terms and conditions in the model contracts and general conditions of sale in use in various regions of the world. The Assistant Secretary of the United Nations Commission on International Trade Law and the Secretary-General of the International Institute for the Unification of Private Law also attended the meetings of the Sub-Committee. After some discussion, the Sub-Committee adopted a report recommending certain amendments to the draft standard form of contract and directed the Secretariat of the Committee to collect from the Member Countries information on the practices that obtain in those countries in relation to the question of arbitration clauses used in the contracts relating to the types of transactions intended to be governed by the proposed standard form of contract in order that the Sub-Committee may make further studies in this regard.

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RAPPORTEUR'S REPORT

At the Session of the Committee held in 1971 in Colombo the topics that came up for consideration were the following :

(a) Model contracts;

(b) Articles 1 to 17 of ULIS;

(c) The law of prescription in relation to international sale of goods;

(d) The law of negotiable instruments;

(e) International shipping legislation; and

(f) International arbitration.

In regard to topics numbered (b) to (f), work has proceeded under the auspices of UNCITRAL, and a short account of this prepared by the Secretariat has been included in the brief of documents.

In the field of model contracts, the following decisions were taken by the Committee :

(1) That work should proceed on the topic of model contracts, meaning by that term not contracts of adhesion, but standard contracts with general terms which could be modified by the parties.

(2) That the following commodities were suitable as a starting point for such model contracts:—

Rubber, timber, rice, textiles, machinery, oil, and coconut products. It was also agreed that the member governments and their Chambers be approached to indicate other commodities.

(3) That work should proceed both in commenting on existing contracts, and drafting new ones where necessary.

It was agreed that preparatory work should be undertaken before convening a conference on the subject. This was to consist in the collection of model contracts in use on the topics under consideration, and copies of the ECE contracts already drafted. The next step would be an analysis and comment on these contracts pointing out their common features and any particular problems they presented. This analysis and comment would be circulated to Governments, commercial agencies and other interested parties for their comment.

Thereafter, if a conference was to be convened, it will be a meeting of legal and commercial experts in the field of study under the chairmanship of an official of an international organisation, and with the co-operation of UNCITRAL, ECA, ECAFE, and such other organisations as might be considered necessary.

This decision of the Committee was referred to in the report of the Secretary-General of the United Nations at the Fourth Session of UNCITRAL held on 29th March, 1971 (Document A/CN. 9/54) in the following terms : "It should, however, be noted that the Asian-African Legal Consultative Committee, an inter-governmental organisation, has shown considerable interest in the subject of general conditions of sale and standard contracts. At its Twelfth Session held in January 1971 in Colombo (Ceylon) the subject was entrusted to a Sub-Committee to determine whether, in the light of ECE and CMEA general conditions, it was desirable to adopt standard or model contracts in respect of commodities of special interest to buyers and sellers of the Asian-African region. On the recommendation of this Sub-Committee, the Committee decided to investigate the need for developing model contracts for the sale of specific commodities such as rubber, timber, rice, textiles, machinery, oil and coconut products; following this investigation, the Committee plans to consider convening, in collaboration with United Nations agencies, of an international conference of legal and commer-

cial experts of the Asian-African region."

Steps have been taken by the Secretariat of the Committee to implement the decisions taken at the Colombo Session. Thus member Governments and their trade Chambers were approached with a view to ascertaining their views on model contracts, and the commodities in respect of which such contracts were desirable. Extracts from the replies received are contained in the brief of documents, but can be summarized as follows :

1. *KUWAIT* was not in favour of the drafting of standard or model contracts.
2. *TANGANYIKA Association of Chambers of Commerce* supported the proposals contained above both as regards the method of work and the commodities in question.
3. *SINGAPORE International Chamber of Commerce* sent detailed comments.
4. *Chamber of Commerce of the REPUBLIC OF MALI* supported the proposals, and suggested the further commodities of hides, groundnuts, groundnut oil and other tropical analogous products.
5. *The Government of CAMBODIA* supported the proposals.
6. *The Government of KENYA* supported the proposals, and suggested the following additional commodities : meat products, wattle extracts, maize, wheat, bananas, sorghum and beans.
7. *The Government of the PHILIPPINES* supported the proposals, and suggested that the list of topics on which such contracts should be prepared should not be restricted.
8. *ECAFE* was interested in the proposals.
9. *The JORDAN Chambers of Commerce* supported the proposals, and suggested as commodities all raw materials and machinery.
10. *The JORDAN Government* supported the proposals.
11. *The Government of MALAGASY* supported the proposals.
12. *The Government of NEPAL* supported the proposals. It suggested as additional commodities jute, jute goods, and timber.
13. *The Government of MONGOLIA* supported the proposals.
14. *The Government of LIBERIA* was studying the matter.
15. *The Addis Ababa Chamber of Commerce* was studying the matter.
16. *The Government of TURKEY* was studying the matter.
17. *The Government of SINGAPORE* indicated that a contract was being finalized for trade in technically specified rubber.
18. *The CEYLON Chamber of Commerce* supported the proposals, and suggested tea, rubber, and coconut products as commodities.

It will be noted that by far the larger number of responses supported the proposals mentioned above.

The Secretariat was also supplied by UNCITRAL with copies of certain general conditions of sale and standard contracts (annexures to document A/CN.9/54). These general conditions of sale and standard contracts have been subjected to an analysis by UNCITRAL. (Document A/CN. 9/54). Both the general conditions of sale and standard contracts are contained in the brief of documents together with the analysis.

In the light of the interest shown by member governments and their trade associations in the subject of model contracts, it was decided that it was desirable to

concentrate on this area, while not neglecting the other topics appertaining to international trade. For this purpose, it was decided that a practical step would be to draft a model contract which would be applicable to many of the commodities indicated as being of interest to the region. This could be circulated in advance, and comment and criticism invited.

Apart from the technical problems arising out of drafting, there are some major issues of policy which require consideration when a model contract is drafted. One of the objectives in the use of model contracts is that they try to provide within their four corners the answers to questions that may arise between the parties, so that businessmen in particular need not go beyond the contract document. How far is this objective possible or desirable? Most model contracts now in use are framed against an assumed background of the rules of a particular system of national law (e.g. as to the type of remedies available on breach of contract) and sometimes this system is expressly selected to govern the contract. Indeed, from the seller's standpoint this has been one of the causes of complaint from the sellers of this region, because always the buyer's system of law, together, possibly, with its system of conflict of laws is chosen. Whether it is possible to exclude reference to a national system of law is a matter which requires consideration. On the one hand, it is not possible in the interest of certainty to include in the contract all the general rules of the law of contract which might be applicable, because this would mean including a short codification of the entire law of contract. This draft excludes the operation of any particular system of law. The draft takes the exclusion of a national system of law very far by stipulating that arbitration is to be the only method of settling claims, laying down that the arbitrators should decide in accordance with commercial practice and justice, and not rules of law. Whether this scheme is acceptable is a matter for

consideration.

Again, while the wider adoption of the same or similar model contracts leads to the unification of the law of international trade, the method of unification by drafting a uniform law of sales is also proceeding, and the two methods must progress without disharmony. It is, therefore, necessary that the basic ideas about contract underlying the ULIS and those underlying the model contract must not clash. Also it would be desirable to adopt the phraseology of ULIS in the model contract wherever possible. However, ULIS is still in the stage of comment and redrafting by UNCITRAL and complete harmonization must await the completion of this work. The report of the working group of UNCITRAL on time-limits and limitation (Document A/CN.9/50) has been considered in drafting the terms of limitation.

A third general problem arises with regard to the basic concepts in regard to contract which have necessarily to be inserted into the model contract. Most of the member countries in the region have inherited a legacy of English law in the sphere of sales law, but it is felt that an increasing number of member countries might have a legal system based on French law. The method of accommodating all systems of law (adopted for instance in the E.C.E. contracts) is not to include a concept having a significance only in one legal system (e.g. frustration) but to extract the idea underlying the concept and state it in non-technical language so that it can be understood by lawyers or businessmen versed in any system. Whether the draft presents difficulties in this respect also requires discussion.

The draft model contract

It had been expressly decided at the Colombo Session that the work of the Committee should not be on contracts of adhesion. This later type of contract is normally described as a contract with terms fixed by one party which

(except in very minor details) cannot be varied by the other, who has to 'take it or leave it'. Because of his weak bargaining power, the other party may take it and it will often contain terms favourable to the party imposing it. A model contract differs from the above in that, firstly, the terms of the contract suggested by one party are open to negotiation by the other. Also, generally, the terms are fair as between the two parties. However, there may be contracts on the borderline, where certain terms are open to negotiation and other terms are not. Both these types of contracts, however, are contained in a document which has the format of a contract, and which can be dated and signed by the parties. They both deal very comprehensively with most of the rights and liabilities of the parties. General terms and conditions of contract are regarded as distinct from both these types in that they do not have the format of a contract, but certain model terms and conditions which can be adopted by the parties in a contract. But the distinction is one of degree and not of kind, because by adopting most or all of the model terms and conditions the parties can turn it into a contract. Another use of the model terms and conditions is to focus the attention of the parties to important legal issues in regard to which provision has to be made, so that some term is contained in regard to that issue even though the terms of the general conditions are not acceptable to the parties. In the light of these considerations, what has been drafted is a contract somewhat akin to a set of general terms and conditions. This approach enables the draft to be more flexible and apply to a greater range of commodities.

In drafting the model terms, use has been made of the general conditions of sale and standard contracts which were the subject of study by UNCITRAL (Document A/CN.9/R.6), some of the ECE general conditions of sale and certain other model contracts used by the trade in Ceylon and drafted by overseas buyers. It was decided to draft terms suitable for a F.O.B. and F.A.S. contract.

The F.O.B. contract is already very commonly used. It was thought that the F.A.S. contract also had certain advantages to the seller having regard to circumstances which sometimes arose. It was sometimes very difficult to obtain a clean shipping document from the ship's master for presentation against the letter of credit because of minor damage caused to the goods during loading. The responsibility for the loading lies often in the hands of a third party, like a port authority, and sometimes with the ship. The F.A.S. contract obviates this difficulty for the seller.

The commodities suggested in the responses from member countries showed that these countries were interested in the model contract in the capacity of sellers. However, a contract drafted with excessive weightage in favour of the seller would not be acceptable to the buyers. It was, therefore, only sought to remove clauses in current model contracts which conferred an undue advantage on the buyer.

In regard to the choice of topics on which to draft model terms, the analysis made by UNCITRAL (Document A/CN.9/54) was adopted as a guide. This analysis isolated the important issues common to all the model contracts and general terms dealt with. The conclusion of this analysis was that a general term sufficiently phrased so as to cover a wide range of commodities could be drafted for each of these issues. In regard to particular types of contract (e.g. F.O.B., F.A.S., C.I.F.) this analysis suggested that a definition of each of these terms could be prefixed to the same set of general terms. This method, while possible, has not been adopted in the draft because some of the standard obligations of an F.O.B. or F.A.S. contract (e.g. as to delivery) are more conveniently placed, not in isolation, but together with other terms dealing with the same topic.

The suggested draft is not a complete set of terms and conditions, but only covers what are considered the most important terms and conditions which must be inserted in

any contract. Notes are appended to each set of articles to indicate the reasons for the text and facilitate comment.

It is now recognized that there is no single 'true' form of F.O.B. contract. In the course of its history the obligations of the parties have changed in accordance with their expressed intention, which in turn was the result of different trading conditions existing at different times. What follows is an attempt to provide model terms for what are universally recognised to be central obligations of either party to an F.O.B. contract, and to provide expressly for marginal responsibilities the incidence of which would otherwise be a matter of uncertainty. However, no attempt is made to deal with the variant where the seller assumes responsibility for procuring the freight and marine insurance. Further, it need hardly be said that the F.O.B. term is not taken as a price term alone, but as a term of delivery.

S. S. BASNAYAKE
JOINT RAPPORTEUR

DRAFT STANDARD FORM OF CONTRACT FOR SALE OF CONSUMER GOODS ON F.O.B./F.A.S. BASIS

(PREPARED BY
Mr. S. S. Basnayake, Joint Rapporteur)

Contract No.——

THIS CONTRACT made the——day of——197—between——(hereinafter called the Buyer) of the one part, and——(hereinafter called the Seller) of the other part.

The Buyer agrees to purchase from the Seller, and the Seller agrees to sell to the Buyer,——(describe goods generally) more fully hereinafter described, F.O.B./F.A.S.——(name of port of shipment) on the terms and conditions set out hereunder.

PACKING

1. The goods shall be packed as follows :
   (here insert detailed packing instructions)

   OR

   (where no directions are given as required above)
2. The seller shall deliver the goods in packing that is reasonably sufficient to prevent damage to or deterioration of the goods during transit assuming that the packages are properly handled.
3. A detailed packing list of the contents of the package shall be enclosed in each package.
4. The following markings shall clearly be made with indelible ink on each package :

(a) Contract number ;

(b) Package number ;

(c) Consignee ;

(d) Gross weight ;

(e) The dimensions of each package ;

(f) (if necessary) The following specially warning mark :—

(**Note** : While an obligation on the seller to ensure that the packing is sufficient to prevent damage to the goods during transit is fair, it is a moot question whether an obligation to provide packing sufficient to prevent deterioration is not too stringent on the seller. Deterioration might occur in a number of unforeseeable ways, including natural process. This obligation to protect against deterioration is inspired by clause 4.1(b) of the "General Conditions of sale for the import and export of durable consumer goods and of other engineering stock articles" prepared under the auspices of the ECE (U.N. Publication 61.11. E/Mim.12). Clauses 3 and 4 are taken from General Conditions of Delivery CMEA 1968 Chapter VI).

TAXES, CUSTOMS, DUTIES AND CHARGES

1. The seller shall bear the cost of all taxes, fees or charges levied by the seller's country because of the exportation of the goods, as well as the costs of any formalities which he has to fulfil in order to load the goods on board.

2. The buyer shall bear the cost—

(a) of all taxes, fees or charges levied because of the importation of the goods into any country, as well as the costs of any formalities he has to fulfil in order to unload the goods ; and

(b) of all taxes, fees or charges levied while the goods are in transit.

3. The seller shall not be entitled to increase the price, or the buyer to claim a deduction from the price or refund of part of the price by reason of any change in the aforesaid taxes, fees or charges occurring after the conclusion of this contract.

(**Note** : The rules here stated are drafted on a balance of convenience. Rule 1 is taken from Incoterms 1953, and Rule 2 is a corollary thereof. The idea behind these rules is also found in Section 73 of the CMEA General Conditions. There is judicial authority based on the traditional division of obligations in an F.O.B. or F.A.S. contract that, since the duty of the seller as regards the transit of the goods stops short at delivering the goods on board or alongside the vessel, the exporter of the goods is the buyer, and that therefore all duties incidental to the export should fall on him. However, it is the seller who will generally be aware of the existence and extent of such duties, and it is therefore more convenient to place the liability on him. The seller will naturally compensate himself by including the cost of such duties in the price. The last clause is inserted *ex abundanti cautela* because of some doubt on the point. See *British Shipping Laws* Vol. 5 p. 334).

QUALITY, QUANTITY AND INSPECTION

1. The quality of the goods at the time of delivery on board/alongside the vessel shall be as follows :

   (Insert a detailed description of the quality as agreed upon by the parties)

   OR

   (Where the parties omit to insert a description).

2. The goods at the time of delivery on board/alongside the vessel shall be of average quality, and, where the purpose for which the goods are required by the buyer has been notified to the seller by the buyer, shall be suitable for such purpose.

3. The quantity of the goods at the time of delivery on board/alongside the vessel shall be as follows :

   (about) (Insert a description of the quantity as accurately as possible).

4. The seller shall give the buyer at least———— days notice of the availability of the goods for inspection of quality and/or quantity so as to enable the buyer or his agent, if he so chooses, to inspect the same at the port of shipment. The notice shall specify the place and the period during which inspection can be made.

5. Within————days of the receipt of the notice mentioned in 4 above, the buyer shall inform the seller whether or not he intends to inspect the goods.

6. When the buyer chooses to inspect the goods, samples shall be drawn jointly by the buyer and seller for the purposes of such inspection. Failing such agreement they shall be drawn by an independent surveyor appointed for such purpose.

7. When after inspection, the buyer or his agent does not within————days reject the goods as not

conforming to the requirement as to quality and/or quantity, he shall thereafter be precluded from making any claim against the seller on the ground that the goods do not conform to such requirements.

OR

8. The parties shall by agreement submit the goods for inspection as to quality and/or quantity by an independent surveyor chosen by agreement of the parties. When after inspection such independent surveyor accepts that the goods conform to the requirements as to quality and/or quantity, the buyer shall thereafter be precluded from making any claim against the seller on the grounds that the goods do not conform to such requirements.

9. All costs of such inspection shall be borne equally by the seller and buyer.

10. Even when the buyer chooses not to inspect, it shall be open to the seller to have an inspection made for quality and/or quantity by a surveyor of his choice.

(**Note** : The best course would be to make inspection by an independent surveyor compulsory, whose decision as to quantity and/or quality would be binding on the parties. But this course may not always be practicable, because an independent surveyor acceptable to both parties may not be available at the port of shipment.

The next best course would be to make inspection by the buyer compulsory, since a decision by the buyer at the port of shipment as to quantity and/or quality will greatly lessen the chances of future disagreement. Even this

course is not made compulsory, because in some instances the buyer will be unable to find a suitable agent to inspect at the port of shipment.

Although the draft does not make inspection compulsory, the fact that a reasonable opportunity has been given for inspection will under the general law cut down the power of the buyer to later reject the goods.

In almost all cases, the parties will insert a detailed description as to quality. Clause 2 provides for the case where they do not. Various adjectives have been used in this connection to describe quality ('fair average', 'fair and marketable', 'standard and prime'). A single adjective is preferable as it lessens the possible area of disagreement.

When the word 'about' is used to describe a margin of tolerance in regard to quantity, this should be defined.

SHIPMENT

1. The seller shall have the goods ready for delivery not later than the————.
2. The seller shall notify the buyer immediately the goods are ready for delivery.
3. Such notification shall contain the following information :
   (a) The number of packages ;
   (b) The weight of each package, and the total weight of all the packages ;
   (c) The dimensions of each package ;
   (d) The nature of the packaging ; and
   (e) The markings on the packages.

4. Upon receipt of such notification, the buyer shall within————days inform the seller of
   (a) The name of the vessel on board which/alongside which delivery is to be made ;
   (b) The expected date of arrival of the vessel at the port of shipment. This expected date of arrival must not be less than————days from the date this information is received by the seller ;
   (c) The dates during which the goods have to be delivered on board/alongside the vessel.
5. It shall be open to the buyer at any time before the above-mentioned expected date of arrival of the nominated vessel to nominate a different vessel to which/alongside which delivery is to be made, provided that the expected date of arrival of such different vessel is not later than the expected date of arrival of the earlier nominated vessel.

(**Note** : These clauses contain inter-related obligations of buyer and seller. Clause 4 contains the standard obligation under a F.O.B. contract that the buyer must nominate an effective ship. But there is no need for him to do so until the goods are ready for delivery, and clauses 1-3 provide for this information to be given to him. The ideas for these clauses are taken from the "General Conditions of Delivery of Goods between Organisations of the member countries of the Council for Mutual Economic Assitance (1968)".

Clause 5 provides for what is already the law, namely that the buyer can nominate a substitute vessel provided he does not violate his other obligations under the contract.)

DELIVERY

1. It shall be the duty of the seller to deliver the goods across the ship's rail on board the vessel nominated by the buyer at the agreed port of shipment within the period notified by the buyer to the seller. The period for loading the goods on board shall not be more than———days nor less than ———days.

(OR, in an F.A.S. contract)

It shall be the duty of the seller to deliver the goods alongside the vessel nominated by the buyer at the loading berth named by the buyer at the agreed port of shipment within the period notified by the buyer to the seller.

2. The goods may not be partially delivered.

OR

The goods may be partially delivered in instalments as follows :

3. Delivery shall be made during the dates notified by the buyer and shall be complete after the goods cross the rail of the ship and are placed on board.

4. The date of delivery shall be the date of the bill of lading.

(OR, in a F.A.S. contract)

The date of delivery shall be the date of———.

5. All transport and handling charges in connection with such delivery on board shall be payable by the seller.

(OR, in a F.A.S. contract)

All transport and handling charges in connection with such delivery alongside the vessel at the loading berth shall be payable by the seller.

6. When the buyer does not provide the vessel

nominated by him at the port of shipment during the period nominated by him, the seller shall at the expiry of such period store the goods for a period of———days from such expiry. The seller shall then notify the buyer of such storage within——— days of the commencement of such storage. The period of———days of storage may be extended by mutual agreement.

7. The goods shall be thus stored at the risk and expense of the buyer. The buyer shall also bear the cost of delivering the goods to the place of storage, and, if a vessel is later provided by the buyer, from the store on board the vessel/alongside the vessel.

8. If during the period of storage or any extension thereof the buyer nominates a vessel for delivery at the port of shipment, the seller shall within——— days of such nomination deliver the goods on board/alongside the vessel.

9. If after the expiry of the said period of storage or any extention thereof the buyer fails to nominate a vessel for delivery, the seller shall have the right to terminate the contract and sue the buyer for damages.

10. Within———days after completion of delivery on board, the seller shall inform the buyer of :

(a) The number of packages delivered ;

(b) The total weight of all the packages ;

(c) The dimensions of each package ;

(d) The nature of the packaging ;

(e) The date of sailing of the vessel ;

(f) The number of the bill of lading ; and

(g) ——— (any other information specified).

(Note : Although in theory delivery under the general law of contract is complete when the goods have crossed the ship's rail even though they are in the air, it seems more practical to define delivery as complete only when the goods have been placed on board. Clauses 1 and 5 are standard obligations of a seller under a F.O.B. and F.A.S. contract.

The word 'delivery' is only used to indicate physical transfer, and not handing over of goods which conform to the contract, as in Article 17 of ULIS.

Provisions as to storage are usual because of the exigencies of shipping. See CMEA General Conditions, Chapter VI, Section 41.

In Clause 4 (F.A.S.) the name and date of an appropriate instrument (such as a wharf receipt) will have to be inserted.

PAYMENT

1. The buyer shall open through the———Bank a confirmed irrevocable (transferable) letter of credit in favour of the seller not later than——— days before the stipulated date for delivery for the full purchase price.
2. Payment shall be made upon presentation of the following documents :
   (a) A clean bill of lading issued by the master of the ship nominated by the buyer, showing that the goods are loaded on board. A bill of lading shall be deemed to be clean when it bears no super-imposed clause or notation which expressly declares a defective condition of the goods and/or packaging.
   (b) ———
   (c) ———

(Note : Payment through letter of credit is the invariable method adopted today, and the most convenient, and therefore no provision is made for other methods. It is impossible to list the documents which have to be presented, because this will depend on the nature of the goods sold. Thus certificates of origin, analysis etc. are common. In all cases the documents should be clearly described.

Although payment and delivery are concurrent conditions, and it would be open under the general law for the buyer to open the letter of credit at (but not later than) the date of delivery, it is preferable to have it opened some time before the date of delivery.

The bank referred to should be the correspondent bank and not the originating bank.

Clause 2(a) (which of course only applies to a F.O.B. contract) contains a definition of a clean bill of lading based on Article 16 of the I.C.C. *Uniform Customs and Practice for Documentary Credits*. A "received for shipment" bill is expressly excluded.)

EXPORT LICENCE

1. It shall be the duty of the seller/buyer to use his best endeavours to obtain a licence for the export of the goods from the port of shipment.
2. The seller/buyer shall obtain such licence and communicate that fact to the buyer/seller before the goods are placed on board.
3. The party on whom such duty does not lie shall give all information and assistance to the other

party as is necessary for such other party to obtain the licence in time.

(**Note** : Since under the present law where the contract is silent on the point the circumstances of the case determine the incidence of the duty, it is generally thought prudent to expressly determine the person on whom the duty lies. Clause 3 imposes a duty to co-operate, which probably exists under the existing law).

PASSING OF RISK

The risk in regard to the goods shall pass from the seller to the buyer when the goods have passed the ship's rail and been placed on board at the agreed port of shipment.

(OR, in a F.A.S. contract)

The risk in regard to the goods shall pass from the seller to the buyer when the goods have been delivered alongside the vessel at the loading berth named by the buyer.

(**Note** : These are the invariable rules for these respective contracts. It is thus set out both in the CMEA 1968 General Conditions for Delivery (F.O.B. Chapter 11, Section 6, paragraph 2 (6) and also Incoterms 1953 (F.O.B., Buyer, Section 2, F.A.S., Buyer, Section 2). The CMEA General Conditions only pass the risk of 'accidental' loss or 'accidental' damage. The draft does not thus restrict the passing of property, and is probably more in accord with accepted law. Vide Volume 5, *British Shipping Laws*, Section 390).

Under S. 32 (3) of the English Sale of Goods Act "*unless otherwise agreed*, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller

must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit". The equivalent of this section is probably in force in many countries of the Asian African region, and it has been held that the section applies to a F.O.B. contract, with the result that if the notice is not given, contrary to normal understanding the risk will be with the seller. The specific insertion of the above draft clause would amount to an express agreement taking the contract out of the section. In any event the clauses as to shipment would ensure that the requisite notice has been given.

It will be noticed that there is no model term relating to the passing of property. It is undoubtedly the general understanding that under a F.O.B. delivery term property (together with risk) passes to the buyer when the goods are placed on board. However, under the English law relating to sales of goods, (which appears to be substantially in force over a greater part of the Asian-African region—vide section 8 of the General Note on the law relating to international sales of goods prepared by the Secretariat for 12th Session in Colombo) the time of transfer of property depends on the intention of the parties, and rules are given for discovering such intention (vide sections 17 to 19, Sale of Goods Act, 1893). On this basis it has sometimes been argued that property has passed to the buyer before delivery, or that, notwithstanding delivery on board, the seller has reserved the property to himself. The latter contention has

often succeeded on the facts of the case, notwithstanding its inconsistency with the general understanding as to the F.O.B. delivery term. A specific provision that property passes on delivery would therefore obviate uncertainty and prevent litigation. On the other hand, the reservation of the property by the seller (often done by drawing or dealing with the Bills of Lading in a particular way) is directed to the sometimes desirable object of having a security in case of default by the buyer. The courts appear to have reconciled this object with the nature of the F.O.B. contract by construing such reservations as passing the property to the buyer subject to the condition that it is to revest in the seller on the buyer's default, or as giving the seller a lien in case he is not paid. Alternatively, they have construed such a reservation as showing a deliberate non-performance of the contract by the seller of his duty to deliver, with the result that the property does not pass. Since even the model terms drafted by European trade institutions leave the passing of property untouched, and since these model terms are being drafted from the point of view of the seller, it has been thought unnecessary to restrict the right of the seller to make such a reservation. It has, however, been observed that where payment is by presentation of documents against a letter of credit, the seller is amply secured by obtaining the necessary documents, and the passing of the property becomes of little importance (Vide Vol. 5 *British Shipping Laws*, Chapters 9 & 10).

RELIEF

1. Any circumstance beyond the control of the parties, which a diligent party could not have avoided and the consequences of which he could not have prevented, shall relieve the parties from the fulfilment of their obligations where it occurs after the formation of the contract and prevents its fulfilment whether wholly or partially.

2. The party affected by a circumstance described in 1 above shall as soon as possible notify the other party of the occurrence thereof. Such notification shall contain details of the nature of the circumstance and its possible consequences. If the circumstance ceases before the contract is treated as discharged by the other party, he shall also notify the cessation.

3. As soon as possible after receipt of such notification, the other party shall inform the party notifying that

   (a) He treats the parties as relieved from the fulfilment of their obligations from the time of occurrence, or

   (b) He desires the contract to continue on different terms.

4. Where the other party informs the party notifying that he desires the contract to continue on different terms, he shall specify such terms. As soon as possible after the receipt of this information, the party notifying shall accept or reject such terms.

5. Where the party notifying rejects such terms, the contract shall be treated as if the parties were relieved from the fulfilment of their obligations from the time of the occurrence.

6. Where parties are relieved of the fulfilment of their obligations as set out above, the expenses incurred

by the parties in the performance of the contract up to the time of the occurrence he shall be divided between the parties by agreement.

7. In default of agreement it shall be determined by arbitration under the provisions as to arbitration herein contained.

OR

8. Where parties are relieved of the fulfilment of their obligations as set out above, each party shall bear the expenses incurred in the performance of the contract up to the time of the occurrence, and shall have no claim against the other party in respect thereof.

(Notes : In defining the clause providing for discharge by supervening change of circumstances (commonly called the 'force majeure clause') three approaches are possible. One is to give an exhaustive list of the circumstances constituting grounds for relief (e.g. riot, civil commotion etc.) [vide London Copra Association Contract C.I.F. (1938) clause 11]. While this leads to certainty on the question as to when relief can be claimed, it can lead to injustice when some unforeseen contingency is omitted which should in all fairness be a ground for relief. The second approach is to give a list, and add general words to catch up anything omitted, e.g. "or any other causes beyond the control of the shippers"; "or force majeure". This seems to be the most popular approach. (vide Rotterdam Fibre Contract, clause 7; London Coir Association C.I.F. contract No. 3, clause 5; Rubber Trade Association of Japan, import contract C.I.F. (1956) clause 17; Rubber Trade Association of New York, import contract C.I.F. (1958) clause 9; Seed, Oil, Cake and General Produce Association C.I.F.

contract (form No. 12) clause 10; General Produce Brokers Association C.I.F. contract for dessicated coconut, clause "prevention of shipment"; London Oil and Tallow Trades Association contract for coconut oil, clause 14; Cocoa Association of London (1938) C.I.F. contract, condition 8; Rubber Trade Association of London C. I. F. contract (1940) clause 7, F. O. B. contract (1941) clause 7; E. C. E. General Conditions for the supply of plant and machinery (1953) (No. 188) clause 10.1. The third approach is to give a general description of the type of circumstances which would have a ground for relief, without a list of particular such occurrences. This is the more modern approach. Vide CMEA General Conditions, Chapter 13, clause 1; General Conditions for the supply of plant and machinery E. C. E. (1958) clause 10.1; General Conditions for the import and export of durable consumer goods E. C. E. (1961). While this approach can leave it somewhat uncertain as to what circumstances constitute grounds for relief, it is probably fairer. Also, the 'listing' approach introduces terms, such as 'rebellion', 'civil commotion', "Acts of God" which may have technical meanings in certain legal systems, and one of the aims in drafting model contracts is to use language understandable by those versed in different legal systems. The formulation in article 74 of ULIS has not been adopted because that proceeds on the basis of the intention of the parties, which is not altogether satisfactory.

(b) Many model contracts provide that upon the occurrence of a ground for relief, the party who is disabled from performing his obligation gets an automatic extension of time for performance. This course is not adopted because in many aspects

of a F.O.B. or F.A.S. contract time is of the essence. However, provision is made for the parties to keep the contract alive if they choose.

(c) In regard to acts or performance done prior to the time of discharge, two alternatives are presented. The first is the fairer provision, and is taken from sections 10.4 and 10.5 of the E. C. E. General Conditions for the supply of plant and machinery (1955). Under the second alternative, the loss lies where it falls.

ARBITRATION

1. All matters in difference between the parties relating to the contract which the parties have not been able to settle amicably shall be settled by arbitration by one member of the _____ (here state the name of the arbitration tribunal) in accordance with the rules of such body. Any award so made shall be binding on the parties, and no claim shall be brought by either party in a court of law prior to the making of such an award, nor shall such claim be for any greater relief than that granted in the award.
2. The expenses of the arbitration shall be apportioned between the parties by the arbitrator in such proportions as he considers fair.
3. The arbitrator shall decide in accordance with the terms of the contract, commercial practice, and the interests of justice.

OR

The arbitrator shall decide in accordance with the law of the seller's state.

4. Judgment upon the award rendered may be entered in any court having jurisdiction.

OR

1. All matters in difference between the parties relating to the contract which the parties have not been able to settle amicably shall be settled by arbitration by two arbitrators, one to be nominated by each party.
2. The arbitrators shall decide on the rules and procedure to be followed in the arbitration.

OR

The arbitration shall be held in accordance with the rules of arbitration annexed hereto/the rules of arbitration of _____ (state name of arbitral institution).

3. The arbitration shall be held in that country which the arbitrators consider most convenient regard being had to the nature of the difference in question.
4. Should the arbitrators fail to reach agreement, then the dispute shall be referred to an umpire nominated by the arbitrators. If the arbitrators fail to agree on an umpire, the umpire shall be nominated by _____.
5. Any award made by the arbitrators or umpire as the case may be shall be binding on the parties, and no claim shall be brought by either party in a court of law prior to the making of such an award, nor shall such claim be for any greater relief than that granted in the award.
6. The expenses of the arbitration shall be apportioned between the parties by the arbitrators or the umpire, as the case may be, in such proportions as they or he considers fair.
7. The arbitrators, or umpire as the case may be, shall decide in accordance with the terms of the

contract, commercial practice, and the interests of justice.

OR

The arbitrators or the umpire, as the case may be, shall decide in accordance with the law of the seller's state.

8. Judgment upon the award rendered may be entered in any court having jurisdiction.

(**Notes** : International Commercial Arbitration is a field of study in itself. Since, however, almost all model contracts contain an arbitration clause, some observations may be made from the point of view of countries of the Asian African region. The often deceptively simple arbitration clause conceals many legal problems, chief of which are

(a) The validity of the clause according to the national laws of the parties.

(b) The extent to which terms as to arbitration are supplemented or over-ridden by national law.

(c) The manner and extent of the enforceability of the award.

These legal problems which face all parties to an arbitration agreement are aggravated where an Asian African country deals with a country of the Socialist Bloc, or a European country other than the United Kingdom, by the comparative unfamiliarity of the Asian African countries with the legal systems of these countries.

Historical development has also posed certain problems to the Asian African countries. In some cases, there has initially been a tie up between the seller from the region and the overseas buyer, which has led the seller to accept terms as to arbitration unfavourable to him. Even after this phase

came to an end, the weaker bargaining position of these countries as sellers conduced to the same end. Lastly, between the two world wars institutionalized arbitration developed in Europe and the U.S.A., with the result that the great institutional centres of arbitration are to be found in these regions. (vide para 20 of Mr. Ion Nestor's report—A/CN. 9/42).

The characteristic model contract for the sale of primary produce from our region contains terms as to arbitration which stipulate

(a) That the arbitral tribunal is to be a body situate in the buyer's country, to which the buyer is sometimes connected ;

(b) That the arbitration is to be conducted in the buyer's country ;

(c) That the law applicable is to be the law of the buyer's country.

The rules formulated above attempt to overcome some of these disadvantages. There are already a number of sets of rules of arbitration in existence e.g. the Arbitration Rules of the E.C.E. (1966), the Arbitration Rules of ECAFE (1966), and the Arbitration Rules of the International Chamber of Commerce. Sellers can decide which of these best suits them, and seek to have them incorporated into the contract.

Many modern model contracts (e.g. many of the modern E.C.E. General Terms and Conditions) contain no reference to any legal system to be applied in the course of arbitration. It is suggested that this creates uncertainty. The suggested rules set out above give a first alternative which does not give an advantage to either party. It also gives effect to the idea that a model contract should be to a great extent self-regulatory. The second alternative is suggested because it may be felt that disputes cannot be settled without reference to a legal system. It may also be that the first

alternative is illegal as contrary to public policy by ousting the jurisdiction of the courts (see for English law *Orion Compania Espanola de Seguros* v *Belfort Maatschaappij voor algemene verzekgringeen* (1962) 2 Lloyd's Reports 257 at 264).

REPORT OF THE STANDING SUB-COMMITTEE ADOPTED AT THE THIRTEENTH SESSION

The Standing Sub-Committee on International Sale of Goods composed of Ceylon, Egypt, Ghana, India, Japan, Nigeria and Pakistan examined the Draft Standard Form of Contract for Sale of Consumer Goods prepared by Mr. S.S. Basnayake, Joint Rapporteur, which is set out at pages 39 to 60 of this publication.

At the request of the representative of Pakistan, the representative of Japan, Mr. Kumao Nishimura acted as interim Chairman of the Sub-Committee and the representative of Nigeria, Mr. J. B. Ajala stood in as interim Rapporteur.

The Sub-Committee having considered the Standard Form of Contract on 24th January, 1972 submits to the Committee the amendments set out below :

(I) The various parts of the Standard Form of Contract should be so called and should be numbered with Roman figures as follows :

PART	I	—	Introductory Part
PART	II	—	Packing
PART	III	—	Taxes, Customs Duties and Charges
PART	IV	—	Quality, Quantity and Inspection
PART	V	—	Shipment
PART	VI	—	Delivery
PART	VII	—	Payment

PART VIII — Export Licence
PART IX — Passing of Risk
PART X — Relief
PART XI — Arbitration

(2) *Introductory Part* : Place where contract was made should be mentioned in this part and a blank space should be provided in the form accordingly.

(3) *Packing* :

(a) Recast paragraph 2 to read as follows :

"The seller shall deliver the goods in packing that is reasonably sufficient and shall take into consideration the nature of the goods in order to prevent damage to or deterioration of the goods during transit assuming that the packages are properly handled."

(b) Paragraph 4(c)—in place of 'Consignee' write "name or names of the Consignee".

(4) *Taxes, Customs Duties and Charges :*

(a) *Paragraph 1* : What exactly is meant by the word "formalities" in this context should be clearly spelt out, e.g. documents.

(b) *Paragraph 3* : Add the following proviso to this paragraph :

"Provided that, if the increase exceeds... ..... per cent and the seller notifies the buyer within a period of.....from the date of the increase, the buyer may avoid the contract."

(5) *Quality, Quantity and Inspection :*

(a) Change the full-stop after the second paranthesis to a colon.

(b) Insert the word *usual* between "of" and "average" in the second line of paragraph 2.

(c) Delete the words "or his agent" in the fourth line of paragraph 4 and in the first line of paragraph 7.

(d) Paragraphs 4 and 5 should be combined.

(e) Change "when" of the first line of paragraph 6 to "if" and recast the second sentence of the paragraph to read "failing such agreement they shall be drawn by an independent surveyor chosen by agreement for such purpose by the two parties."

(f) A clause relating to hidden or latent defects should be inserted in an appropriate place in paragraph 7 or 8.

(g) Paragraph 10 should precede paragraph 9.

(h) Delete the words "of his choice" in paragraph 10, and in between "a" and "Surveyor" insert "independent".

(6) *Shipment* : No comments.

(7) *Delivery* :

(a) In the parenthesis in paragraphs 4 and 5 change the indefinite article "a" to "an".

(b) Recast the whole of the second sentence of paragraph 7 to read as follows :

"The buyer shall also bear the cost of transporting the goods to the place of storage and if a vessel is later provided by the buyer, he shall also bear the cost of transporting the goods from the place of storage on board the vessel/alongside the vessel."

(c) Recast the whole of paragraph 9 to read as follows :

"If after the expiry of the said period of

storage or any extension thereof the buyer fails to nominate a vessel for delivery, the seller shall have the right either to maintain or to terminate the contract and shall in either case be entitled to claim damages."

(8) *Payment* :

Paragraph 2 appears to be too rigid and other modes of payment such as by bills of exchange drawn under a documentary credit or promissory notes should be provided for.

(9) *Export Licence* : No comments.

(10) *Passing of Risk* : No comments.

(11) *Relief* :

(a) In paragraph 2 in place of "as soon as possible" write "immediately".

(b) Recast first part of paragraph 3 to read "Immediately upon receipt of such notification, the other party shall inform the party notifying that....."

(c) Change the words "as soon as possible" in paragraph 4 to "immediately."

Paragraph 7—insert "about expenses" in between "agreement" and "it".

(12) *Arbitration :*

(a) The Sub-Committee recommends that this part of the Model Contract form should include two more alternative paragraphs on the lines of paragraphs 18.3 and 18.4 of pages 236 and 237 of the Brief of Documents on International Sale of Goods which read as follows :

"18.3 The intervention of a circumstance falling under the definition of paragraph 18.1 shall extend the time-limit for the execution of the contract by a period of time corresponding to the duration of the circumstance in question without the party being liable for damages.

18.4 Where the circumstances defined in paragraph 18.1 extend beyond a time-limit to be fixed by the parties in their contract, either party shall be entitled to terminate the contract without damages. Such time-limit may be the same for both parties or may differ for the seller and the buyer. In the event of the two time-limits not being the same, the party entitled to terminate the contract on expiry of the shorter time-limit shall immediately notify the other party by telegram of the decision he intends to take."

(b) The Sub-Committee recommends that the Secretary-General should collect information from the various members of the Committee on the practices that obtain in their countries in relation to the question of arbitration clauses used in their contracts relating to the types of transactions intended to be governed by the proposed standard form of contract in order that the Sub-Committee may make further studies in this regard.

January 24, 1972

V. LAW RELATING TO INTERNATIONAL RIVERS

INTRODUCTORY NOTE

The subject "Law of International Rivers" had been referred to this Committee for consideration under Article 3(b) of its Statutes by the Governments of Iraq and Pakistan. Although the subject is fairly vast it became clear from the preliminary statements made by the delegations of the referring Governments at the ninth session of the Committee, held in New Delhi in December 1967, that the topics which they wished the Committee to consider related to some particular aspects of the problem. Iraq appeared to be primarily interested in two questions, namely, (a) definition of the term "international rivers" and (b) rules relating to utilisation of waters of international rivers by the States concerned for agricultural, industrial and other purposes apart from navigation. Pakistan's primary concern also appeared to be with regard to the uses of waters of international rivers, and more particularly, the rights of lower riparians.

It has been well-recognised that protection of the legitimate rights of the States concerned in the waters of international rivers is a matter to be regulated by rules which would be acceptable to the international community as a whole. As has been pointed out by several jurists and writers, there are certain rules on the subject which are already in existence derived from international custom, practice among nations, opinions of jurists, decisions of courts and provisions of treaties and conventions. In recent years, a great deal of work in the field has been done by various learned institutions and bodies such as the Institute of International Law, the International Law Association, the Inter-American Bar Association, New York University School of Law and the Economic Commission for Europe. The most notable and comprehensive study

prepared so far in this field may be found in the formulations adopted by the International Law Association at its 1966 Conference which are known as the Helsinki Rules. The General Assembly of the United Nations by a decision taken at its twenty-fourth session had requested the International Law Commission to formulate the draft rules on this subject after taking into account the work done by other bodies, and the same is now pending consideration of the Commission.

This Committee at its ninth session after a preliminary exchange of views on the subject directed the Secretariat to collect the relevant background material on the issues indicated in the statements made by the delegations and to prepare a Brief for consideration of the Committee. One of the main issues that arose in the course of discussions at that session was how far the rules developed and practised by European nations would be applicable to the problems which arise in the Asian-African region having regard to the different geophysical characteristics of the rivers and the needs of the people for varying uses of the waters. Some of the delegates stressed on the urgent need for the development of the law in a manner that would reflect the Asian-African viewpoint. Opinions were also expressed that the draft principles adopted by the International Law Association and the Institute of International Law did not meet the situation faced in certain Asian and African countries.

The Committee at its tenth session held in Karachi in January 1969 took up the subject for further consideration on the basis of the material placed before it by the Secretariat with a view to formulate its recommendations on the subject in the form of draft principles. The Committee took note of the views and opinions expressed from time to time by jurists and experts on various questions, the decisions of the Permanent Court of International Justice, Federal Courts and Arbitral Tribunals as well as the work already done by learned institutions and bodies. The Committee

also had before it the relevant provisions of treaties and conventions with regard to international rivers in Asia, Africa, Europe and the Americas. The Committee at that session by Resolution No. X(6) appointed a Sub-Committee to give detailed consideration to the subject and to prepare a draft of articles on the Law of International Rivers, particularly in the light of the experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilisations and legal systems for consideration at the Committee's next session. The Committee also directed its Secretariat to assist the Sub-Committee and to collect relevant background data in the light of the discussions at the Committee's tenth session. It also requested the Member Governments to indicate points on which they desired further data to be collected by the Secretariat.

The Sub-Committee appointed at the Karachi Session met in New Delhi in December 1969 to consider the matter in the light of the suggestions made by the Member States of the Committee and further material collected by the Secretariat in pursuance of the aforesaid Resolution No. X (6). The matters taken note of by the Sub-Committee included the question of formulation of the definition of an international river; the general principles of municipal water rights existing between owners of adjacent land under different municipal systems; the decisions of courts and arbitral tribunals on disputes relating to water rights between independent States and constituent states of a Federation, general principles governing the responsibility of States and the doctrine of abuse of rights; river pollution ; rights of riparians regarding the uses of waters of international river basins ; and State practice regarding settlement of river water disputes. At this meeting the representative of Pakistan placed a set of ten draft articles for consideration of the Sub-Committee and the delegate of Iraq also placed before the Sub-Committee a set of draft principles consisting of 21 articles. The delegates of Iraq and Pakistan desired that the

Sub-Committee should proceed to discuss the subject on the basis of the draft formulations presented by them, whilst the delegate of India desired that the Sub-Committee should take the Helsinki Rules as the basis for discussion. As the discussions in the Sub-Committee were not conclusive it was agreed that the matter should be further discussed at the next session of the Committee.

At the Accra Session of the Committee held in January 1970, the Delegates of Iraq and Pakistan submitted a joint draft consisting of 10 articles which they wished the Committee to take up as the basis for discussion. The delegate of India also submitted a proposal that the Helsinki Rules adopted by the International Law Association in 1966 should be the basis of the Committee's study and, to begin with, the first 8 articles of the Helsinki Rules should be taken up. No progress could be made at the Accra Session on this subject as the discussions centred around procedural matters and there was not sufficient time to discuss the substantive issues.

At the Colombo Session of the Committee held in January 1971, following the discussions in the plenary, it was decided to appoint a Sub-Committee comprising of the representatives of Ceylon (now Sri Lanka), Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Nigeria, Pakistan and the U.A.R. (now Arab Republic of Egypt) to give detailed consideration to the subject. The representative of Ceylon (Sri Lanka) and the representative of Japan ware elected as the Chairman and the Rapporteur of the Sub-Committee. The Sub-Committee requested its Rapporteur to prepare a working paper consisting of a set of draft articles amalgamating, as far as possible, the propositions contained in the joint proposal of Pakistan and Iraq and in the Helsinki Rules. The Rapporteur submitted his working paper containing ten (I to X) draft propositions, which were accepted by the Sub-Committee as the basis of discussion. However, due to lack of time, the Sub-Committee was able to consider

only the draft propositions I to V and it recommended consideration of the rest of the propositions at an inter-sessional meeting to be convoked prior to the Thirteenth Session of the Committee. The Sub-Committee accordingly met again in Colombo from 6 to 10 September 1971 when it considered the draft propositions I to X.

At the Thirteenth Session of the Committee held in Lagos, the subject was taken up for consideration by the Standing Sub-Committee as reconstituted at that session. During the meetings of the Sub-Committee it was observed that the draft proposals prepared by the Rapporteur did not cover all aspects of the Law of International Rivers and that they were silent in particular on the rules relating to navigational uses of such rivers. The Sub-Committee accordingly agreed to take up other aspects of this subject including navigation, pollution, timber floating etc. in its future sessions. The Sub-Committee also agreed that the Committee should direct the Secretariat to prepare a study on the subject of the right of land-locked countries to access to the sea through international rivers. It was further agreed that the new draft proposals with appropriate commentaries thereon should be prepared by the Rapporteur of the Sub-Committee and should be distributed through the Secretariat to members of the Sub-Committee before the next Session.

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REPORT OF THE INTER-SESSIONAL SUB-COMMITTEE MEETING HELD IN COLOMBO FROM 6TH TO 10TH SEPTEMBER, 1971

In pursuance of paragraph 7 of the Report of the Sub-Committee on the Law of International Rivers which was accepted by the meeting of the Asian-African Legal Consultative Committee held in Colombo from 18th to 28th January, 1971, the said Sub-Committee met in Colombo from 6th to 10th September, 1971 and reports as follows :—

The following participated :

1. Dr. A.R.B. Amersinghe (Ceylon)—Chairman.
2. Mr. R. Rangachari (India).
3. Mr. S.C. Jain (India).
4. Mr. Husein Walangadi (Indonesia).
5. Mr. A. Makki (Iran).
6. Mr. E. Furukawa (Japan)—Rapporteur.
7. Mr. M.A. Samad (Pakistan).
8. Mr. Harunur Rashid (Pakistan).

Mr. K. Ichihashi, Deputy Secretary-General of the Committee was also present.

Proposition I :

Although there was general agreement with Proposition I as proposed by the Rapporteur, some delegates maintained that the phrase "international drainage basin" be replaced by the phrase "international drainage basin of an international river" and this replacement should be made not only in Proposition I but also wherever else it occurred.

The proposer of the amendment maintained that the fact that the amendment was proposed was not to be taken to imply that he did not subscribe to the basin approach. The other members of the Sub-Committee were also of the view that the drainage basin approach was the appropriate one.

Proposition II

With regard to sub-paragraph (1) there was general agreement except with regard to the phrase "flowing into a common terminus" which according to one delegate ought to be read as "flowing into an international river". Some other delegates, however, did not consider the amendment necessary.

With regard to sub-paragraph (2) the Sub-Committee was in agreement.

With regard to sub-paragraph (3) some delegates maintained that it was not necessary. Others felt that if it was retained, the definition should be improved. One delegate maintained that he did not want to comment at all on this sub-paragraph until he had further clarifications from the delegation which had proposed it.

Proposition III

There was general agreement with regard to sub-paragraphs (1) and (2) of Proposition III. However, one delegate proposed the amendment of sub-paragraph (1) by adding after "an international drainage basin" the words "of an international river, so as to provide the maximum benefit to that state from the uses of water with the minimum detriment to the co-basin states." With regard to this proposal amendment would necessitate the inclusion of such other factors as are enumerated in Article V(2) of the Helsinki Rules of 1966 and also the inclusion of the principles embodied in Article V(3) of the same Rules. There was some further discussion which, however, remained inconclusive.

Proposition IV

With regard to sub-paragraph (1) there was agreement.

With regard to sub-paragraph (2), contrary views were expressed whether its subject-matter was recognized in international law. One delegate proposed that it be replaced by the following :

> "Consistent with the principles of sovereign equality of all States, each basin State shall have due regard to the rights of co-basin States in the exercise of its right to use the waters of an international drainage basin."

One delegate, however, supported the Rapporteur's draft Proposition IV in its present formulation.

One delegate pointed out a contradiction in two paragraphs, viz., III (1) and IV (2) : while Proposition III (1) indicated more than one method of beneficial uses, Proposition IV (2) suggested only one such method. There was some further discussion in regard to this proposition but the matter remained inconclusive.

Proposition V

With regard to the first sentence there was agreement.

With regard to the second sentence some delegates expressed the view that it should be omitted.

Proposition VI

One delegate was in favour of the original draft proposition. It was suggested by one delegate that Proposition VI should commence with the words "Subject to Proposition III". Another delegate proposed that the words "and equitable" should be inserted after the words "reasonable" as an alternate to the above amendment. Both amendments were discussed but no final decision was arrived at.

Proposition VII

It was proposed by one delegate that sub-paragraph

(1) should commence with the words, "Subject to Proposition III." The proposer said that if this amendment was accepted, then there was no objection to sub-paragraphs (2) and (3) but not otherwise. Whilst one delegate suggested that Proposition VII as formulated by the Rapporteur should be retained in its present form, the other delegates reserved their views on the subject.

It was agreed that the phrase "or compatible" in sub-paragraph (2) (a) should read "of comparable".

Proposition VIII

One delegate was in favour of retaining the Rapporteur's formulation of Proposition VIII as a whole, whereas another delegate expressed the view that the Proposition as a whole was unacceptable. Other delegates proposed that the entire Proposition be replaced as follows :

> "Consistent with the principle of sovereign equality of all States, each basin State shall have due regard to the rights of co-basin States in the exercise of its right to use the water of an international drainage basin."

Proposition IX

There was general agreement that this Proposition did not seem to have been properly phrased or typed. Was it possible that the phrase "Article II and VIII" should read "III to VIII" ? Or, ought it to read "Articles III and VIII" ? The Sub-Committee expressed the view that this matter should be clarified with reference to the papers in the Secretariat which has the original.

It was proposed by one delegate that the Rapporteur's Proposition IX should be amended to read as follows :

> "For any act or injury to a co-basin State the aggrieved basin State shall be entitled to indemnification."

Another delegate thought that this was too wide and that the word "unlawful" should be inserted between "any" and "act".

Yet another delegate proposed that the Rapporteur's Proposition IX should be replaced by the following :

> "When new method of the uses or change of the existing uses of one co-basin State is predicted to substantially affect the rights and interests of the other co-basin States and when the latter so requested, the former co-basin State would enter into consultations with the other co-basin States regarding the matter as set forth in Propositions III to VIII including the matter stated in Article V (2) (j) of Helsinki Rules."

Another delegate said that Proposition IX as in the Rapporteur's draft was unacceptable.

Proposition X

One delegate supported the Rapporteur's draft proposition in its present formulation.

Another delegate while affirming support for the procedure prescribed in Article 33 of the United Nations Charter for the peaceful settlement of dispute wondered how a dispute concerning the "interpretations and applications of the foregoing propositions" could arise at all in the absence of a treaty.

ANNEX

Colombo
11th September, 1971

The Deputy Secretary-General,
Asian-African Legal Consultative Committee,
Hotel Taprobane,
Colombo.

Subject : Report of the Sub-Committee on the Law of International Rivers.

Dear Sir,

The Delegation of Pakistan suggest that the word "also" occurring in 12th line under Proposition 1 of the Report of the Sub-Committee be deleted.

Yours faithfully,
Sgd. M.A. Samad
Pakistan Representative

REPORT OF THE SUB-COMMITTEE APPOINTED AT THE THIRTEENTH SESSION

PART I. GENERAL

1. The Committee appointed on January 24, 1972, a Standing Sub-Committee on the Law of International Rivers with a view to giving further consideration to the draft Propositions formulated on this subject by the Rapporteur at the Colombo Session. The Sub-Committee was composed of the following ten member States :

Egypt	represented by		Mr. Fawzi El Ibrashi Dr. Ibrahim F. Shihata
Ghana	,,	,,	Mr. M.A.F. Ribeiro
India	,,	,,	Mr. V.N. Nagaraja
Iran	,,	,,	Mr. F. Parsi
Iraq	,,	,,	Dr. Bakir Kashif Al-Khatta
Japan	,,	,,	Mr. E. Furukawa
Kenya	,,	,,	Mr. W.N. Mbote
Nigeria	,,	,,	Mr. T.I. Adesalu
Nepal	,,	,,	Mr. Churamani Raj Singh Malla
Pakistan	,,	,,	H.E. Dr. S.M. Koreshi Mr. E.H. Farouqui

The Standing Sub-Committee held three meetings, with Mr. E. Furukawa of Japan, as Chairman and Dr. Ibrahim F. Shihata of Egypt as the Rapporteur. The representative of Pakistan submitted a document entitled "Pakistan's

Comments on Draft Propositions on the Law of International Rivers" a copy of which is attached.

2. At the beginning of its work the Sub-Committee was reminded by one member that the draft Propositions referred to it did not cover all aspects of the Law of International Rivers and that they were silent in particular on the rules relating to navigational uses of such rivers. The Sub-Committee considered that the subject was vast and only a start had been made on a limited area of study. The Sub-Committee was of the opinion that since the Committee is interested in the study of the Law of International Rivers as a whole, other aspects of this subject including navigation, pollution, timber floating etc. should be taken up in future sessions. On this occasion, some members suggested, and the Sub-Committee agreed to recommend, that the Committee direct the Secretariat to prepare a study on the subject of the right of access of land-locked countries to the sea through international rivers. Such a study may review the present practice in this respect and include relevant material and background information with a view to helping the formulation of general rules on this matter.

3. In the course of the exchange of views that followed, it was agreed by the members of the Sub-Committee that their task was not to negotiate an agreement on a definite set of rules with a view to drafting a convention reflecting a compromise between the interests of the members present. Rather, they were to discuss, as much as the time may allow, the draft Propositions in order to help the Rapporteur of this Sub-Committee to redraft the Propositions in the light of the discussion, so that they may reflect more accurately and more objectively the principles of international law which members of the Sub-Committee consider to be applicable in this respect. Such principles may not, however, be necessarily confined to restating the existing law, but should also involve a progressive development of this law whenever necessary, as previously suggested in Resolution X(6) adopted

by the Committee at its Tenth Session in Karachi. It was further agreed that the new draft to be prepared by the Rapporteur should include appropriate commentaries on each Proposition and should be distributed through the Secretariat to members of the Standing Sub-Committee well before the date of the next session to enable various Governments to give their views at the next Session.

In the light of these considerations, the Sub-Committee proceeded to discuss the ten draft Propositions referred to it, but was able only to consider the first three Propositions as a result of the little time allotted to it in this Session. The summary of discussions along with proposals made in the Sub-Committee on Propositions I—III appear in Part II of this Report. With regard to the Propositions discussed, the Sub-Committee is happy to report that the exchange of views that took place marked a significant progress in its work. It was felt and hoped that further discussions of this issue in future sessions in the same constructive spirit will enable the Sub-Committee to complete its task.

PART II—SUMMARY OF DISCUSSIONS

Title

The title "Draft Propositions on the Law of International Rivers" was the subject of a lengthy discussion. First it was said that the title was broader than the actual content of the Propositions which did not deal with navigational uses. It was agreed, however, that the work of the Sub-Committee should eventually cover all aspects of the Law of International Rivers and that the Propositions under discussion form only one part of this work. Some delegates suggested that the term "international rivers" should be replaced in the title by the term "international drainage basins" as the latter term which has a wider scope is the one actually used in the text of the Propositions. Other delegates preferred the use of the term "international watercourses". Although no agreement was reached on introducing such a

change, it was generally understood that the use of the term "international rivers" in the title does not and should not have any restrictive effect on the scope of the rules expressed in the Propositions.

Proposition I

It was agreed that the words "of international law as" which appear in the first line, be crossed out, as they might give the erroneous impression that the Propositions merely restate existing law on the subject. It was also agreed, as a point of drafting, to replace the word "articles" in the second line by the word "Propositions".

Proposition II

One member raised the question that the definition embodied in paragraph I might not cover the situation where the underground waters of a certain drainage basin flows into a terminus different from that of the surface waters. This, it was agreed, was not intended. The commentary should explain that this exceptional situation is covered by the definition given in the text. Another member suggested that the phrase "flowing into a common terminus" be replaced by the phrase "flowing into the principal river, stream or lake or other common terminus". Some members, however, found this addition to be redundant.

Proposition III

There was a suggestion by a member that the following words should be added at the end of paragraph I: "so as to provide maximum benefit to that State from the use of waters with the minimum detriment to the other co-basin States". It was felt, however, that the content of this addition is related to the rule embodied in Proposition IV, paragraph 2, and should be discussed in that context.

It was agreed, on the other hand, that paragraph 2 should be subject to two changes: First it should include reference, by way of example and without implying any given

order of priorities, to the relevant factors in determining what is "a reasonable and equitable share". The following factors were considered to be worthy of mention in this respect :

(a) the geography of the basin ;

(b) the hydrology of the basin ;

(c) the climate affecting the basin ;

(d) the past and existing utilization of the waters ;

(e) the economic and social needs of each basin State ;

(f) the population dependent on the waters of the basin in each basin State ;

(g) the comparative costs of alternative means of satisfying the economic and social needs of each basin State ;

(h) the availability of other water resources ;

(i) the avoidance of unnecessary waste in the utilization of waters of the basin ; and

(j) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses.

The Sub-Committee finally agreed that the text of paragraph 2 should indicate who will determine the equitable and reasonable share in each case. The consensus was that such determination is to be made initially by the interested basin States.

VI. LAW OF THE SEA

INTRODUCTORY

The subject "the Law of the Sea including questions relating to Sea-Bed and Ocean Floor" was referred to this Committee for consideration by the Government of Indonesia under Article 3(b) of the Committee's Statutes. Having regard to the recent developments in the field and the proposal for convening of a UN Conference of Plenipotentiaries to consider various aspects of the Law of the Sea, the Committee at its eleventh session decided to include the subject as a priority item on the agenda of its twelfth session.

In order to appreciate the background of the Committee's study, it may be recalled that the International Law Commission of the United Nations, soon after its establishment, took up the Law of the Sea as a priority topic for codification. The Commission after considering the subject at a number of its sessions drew up its conclusions in a set of draft articles which formed the basis for discussion at the Conference of Plenipotentiaries convoked by the United Nations in 1958. That conference succeeded in adopting four conventions on the subject, namely, (i) the Convention on the Territorial Sea and the Contiguous Zone, (ii) the Convention on the High Seas, (iii) the Convention on Fishing and Conservation of Living Resources of the High Seas, and (iv) the Convention on the Continental Shelf. The question of the breadth of the territorial sea, however, remained unresolved due to wide divergence of views and another Conference of Plenipotentiaries convened in 1960 to consider the problem also failed to resolve the question as no proposal received the requisite two-thirds majority. Some of the other questions which appear to have been left unresolved by these two

conferences were those relating to the regime of international straits and the special rights of coastal States, if any, on fishing resources of the sea.

Within a few years of the two UN Conferences on the Law of the Sea it became apparent that the international community would have to seriously tackle the problem of the breadth of the territorial sea as a number of States began taking unilateral action in this matter following upon the failure of the 1958 and 1960 UN Conferences to resolve this question. The technological advances made in the field of exploitation of the sea-bed also made it necessary to define with sufficient precision the extent of the national jurisdiction of coastal States in the sea-bed and to think in terms of exploration and exploitation of the natural resources of the sea and the sea-bed beyond the limits of national jurisdiction for the common good of mankind. Moreover, the emergence of new nations in Africa during the 1960s brought home the necessity for re-examination of some of the issues and it became obvious that any new order of the Law of the Sea must adequately reflect their views.

Recognising the need for orderly development of the sea-bed and the ocean floor, the General Assembly by its Resolution 2467A (XXIII), adopted on the 21st December, 1968, established a Special Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. During 1968-69 the Soviet Union and the United States of America consulted with a number of States regarding the possibility of holding of another international conference on the Law of the Sea to settle the outstanding issues on the subject, and the General Assembly of the United Nations by its Resolution 2574A(XXIV), adopted at its 1833rd plenary meeting, requested the UN Secretary-General to ascertain the views of member States regarding the desirability of convening a conference on the Law of the Sea at an early date to review the regimes of the

high sea, the continental shelf, the territorial sea and the contiguous zones, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the sea-bed and the ocean floor which lay beyond the limits of national jurisdiction. The overwhelming support that this Resolution received made it evident that the holding of a conference to settle the outstanding issues on the Law of the Sea was almost a matter of certainty and that the Asian and African States would have an important role to play in the formation of the law on the subject and in the establishment of a new order of the sea.

It was at this stage that the Government of Indonesia proposed to the Committee that it should take up this subject at a very early date in order to assist the member States of the Committee to prepare for the proposed UN Conference and also to enable them to have an exchange of views on important issues prior to the holding of the conference. Indonesia's proposal was placed before the Committee at its Accra session held in January 1970 and the Committee resolved that, having regard to the paramount importance of the subject to the Asian-African States, the Committee should take up the matter at its next regular session and that preparatory work should be proceeded forthwith. The Committee also decided that its activities with regard to the assistance to be given in preparation for the proposed UN Conference on the Law of the Sea as also affording of facilities for exchange of views should not be confined to member States of the Committee alone but should be offered to all Asian and African States following upon the previous practice which it had adopted in connection with the preparation for the Law of Treaties Conference with such signal success.

The Secretariat of the Committee, in pursuance of the aforesaid decision, sent a communication to practically all the

Asian and African Governments inviting them to participate in the discussions on the Law of the Sea which were to be held at the Colombo session of the Committee in January 1971. Along with the invitation a list of topics for discussion and a questionnaire was sent out to these Governments inviting their views with regard to the topics which the proposed UN Conference should consider as also their comments on substantive issues raised in the questionnaire. In response to this invitation, 25 States including 18 of the Members of the Committee participated in the Colombo session. Twelve other Governments requested to furnish them with the preparatory material and the proceedings of the Colombo session on the Law of the Sea. In addition, delegations from the United States of America and five of the Latin American Governments attended the session in order to explain their viewpoints on various issues before the Colombo meeting of this Committee.

At the Colombo session the subject was discussed in detail in the plenary meetings held on the 19th, 20th, 21st, 22nd and 27th January, 1971 and the principal topics which were taken up for consideration were as follows : (1) breadth of the territorial sea ; (2) rights of coastal States in respect of fisheries in areas beyond the territorial sea, (3) exploration and exploitation of the sea-bed including the question of national jurisdiction over the sea-bed, the concept of "trusteeship" over the continental margin ; (4) the type of regime to govern the sea-bed and ocean floor beyond the limits of national jurisdiction and the archipelago concept ; (5) international straits and (6) preservation of marine environment. Following the discussions in the plenary the Committee appointed a Sub-Committee consisting of all the participating member States of the Committee and a Working Group was established composed of the representatives of Ceylon, India, Indonesia, Japan, Kenya and Malaysia for detailed study and preparation on the subject. It also appointed as its Rapporteur Mr. Christopher W. Pinto of Ceylon.

The Sub-Committee presented its Report on the work done during the Colombo session which was approved by the Committee at its plenary meeting held on the 27th January, 1971. The decisions taken by the Committee at its twelfth session on the recommendations of the Law of the Sea Sub-Committee in respect of further work to be done were as follows :

(i) The Rapporteur of the Sub-Committee should prepare a paper containing a list of various issues on the Law of the Sea, summary of the views expressed in the Committee on those issues and a questionnaire inviting the views of the Governments.

(ii) The Secretariat shall send the Report of the Sub-Committee and the documents mentioned in (i) above to the Governments of participating States and also to the Governments of other Asian-African States by the 15th February, 1971 requesting them to give their comments within two months. The Secretariat shall send directly to each member of the Working Group the replies of Governments as soon as received.

(iii) The Sub-Committee should request the members of the Working Group to prepare one or more working papers on special issues. These working papers should be sent to the Committee's Secretariat by 1st June, 1971.

(iv) The Secretariat shall circulate the working papers referred to in (iii) above among the members of the Sub-Committee on the Law of the Sea as soon as they are received, and invite their comments.

(v) The members of the Sub-Committee who are also members of the United Nations Sea-Bed Committee will maintain close liaison during meetings of that Committee.

(vi) The Sub-Committee on the Law of the Sea shall convene in Geneva on the 15th July, 1971 just before the summer session of the UN Sea-Bed Committee, and consider the working papers referred to in (iii) above, and discuss matters relating to the agenda of the UN Sea-Bed Committee.

(vii) The Secretary-General shall in consultation with the members of the Sub-Committee prepare a further programme of work to be done on this subject prior to the Lagos Session of the Committee in 1972.

(viii) The delegation of Ceylon in consultation with the Committee's Secretariat shall act as the Convenor for all inter-sessional meetings.

The proceedings of the Colombo session on the Law of the Sea and the working paper prepared by the rapporteur containing a list of various issues, a summary of the views expressed in the Committee on those issues and a questionnaire were made available to practically all the Governments in the Asian-African region.

In the meantime replies were received by the United Nations from its member States to the U.N. Secretary-General's communication pursuant to Resolution 2574 A(XXIV) giving their views regarding the proposed Conference on the Law of the Sea and the subjects to be taken up at that conference and a decision was taken to convoke the conference in 1973. The UN Sea-Bed Committee, established in December 1968, completed its formulation of the principles on the sea-bed and its resources which was adopted by the General Assembly in December 1970. The terms of reference of that Committee as well as its membership were enlarged to make it virtually a preparatory body for the Third Conference on the Law of the Sea. The enlarged Sea-Bed Committee met during March 1971 and divided itself into three sub-committees. At that session it succeeded in

resolving various procedural issues and a beginning was made for consideration of substantive questions.

In accordance with the decision taken at the Colombo session of the Committee, the Working Group met in New Delhi towards the end of June 1971 to consider the working paper prepared by the Rapporteur and the special working papers prepared by the other members of the Working Group on questions of fisheries, archipelagos, international straits and international machinery for the proposed sea-bed area. The report of the Working Group was then considered by the Sub-Committee on the Law of the Sea which met in Geneva from the 15th to 17th July, 1971 just before the commencement of the summer session of the UN Sea-Bed Committee.

Apart from considering the report of the Working Group and the working papers considered by the Group, the Sub-Committee also discussed the following matters :—

A. Matters relating to the summer 1971 session of the UN Sea-Bed Committee :—

(i) List of subjects to be dealt with by the Conference on the Law of the Sea ;

(ii) Question of priority in dealing with the proposed international machinery as against the question of limits of national jurisdiction ;

(iii) Any other matter related to the work of the Sea-Bed Committee.

B. Preparation for the Committee's Thirteenth Session to be held in Lagos, Nigeria ; and

C. Assistance to be given to non-member Asian and African States in preparation for the Conference on the Law of the Sea and informing them of the work of this Committee.

The Sub-Committee recommended collection of further material by the Secretariat in preparation for the Lagos

session, and with regard to the assistance to be given to non-member Asian and African States it decided to make the following recommendations :—

1. Documentation prepared for the Committee on the subject of the Law of the Sea should be circulated to Asian and African States that were not yet members of the Committee in order to assist them in preparing for the Conference on the Law of the Sea to be held in 1973, and that basic materials should be made available in French as well as in English ;
2. Non-member countries in Asia and Africa be invited to attend the Lagos session as Observers following precedents established in regard to the Karachi session (which had considered questions coming before the Conference on the Law of Treaties) and the Colombo session.

The Sub-Committee also requested the Secretary-General of the Committee to address the U.N. Sea-Bed Committee and the Afro-Asian Group of the Sea-Bed Committee on suitable dates to be arranged in consultation with their respective Chairmen with a view to acquainting non-member States of the aims and purposes of the Committee and the work that was being done by it on the Law of the Sea. In accordance with the said request the Secretary-General addressed the UN Sea-Bed Committee at its plenary meeting on the 19th July, 1971. A special meeting of the Afro-Asian Group was convened under the chairmanship of Mr. Justice Seaton of Tanzania on the 21st July, 1971 which was addressed by the Secretary-General of the Committee.

The UN Sea-Bed Committee and its three sub-committees met in Geneva from the 19th July to 26th August, 1971. The first sub-committee dealt with the question of international sea-bed area and the establish-

ment of appropriate machinery. Several drafts were placed before the sub-committee for its consideration by various delegations. The second sub-committee gave consideration to a number of suggestions about the topics that should be taken up at the forthcoming Conference on the Law of the Sea. The third sub-committee dealt with questions relating to pollution and scientific research. It is significant to note that the joint proposal made by a vast majority of Asian-African States regarding the list of subjects was substantially the same as was suggested by some of the member States of this Committee and noted by our Sub-Committee on the Law of the Sea at its Geneva meeting held in July 1971.

Immediately after the conclusion of the summer session of the UN Sea-Bed Committee, the Working Group established by this Committee held a meeting on the 26th August, 1971. It was decided at that meeting that the members of the Working Group would prepare working papers on international regime for the sea-bed area beyond national jurisdictions, fisheries, archipelagos, economic zones and international straits for consideration at the Lagos Session.

At the Lagos Session held in January 1972, which was attended by the delegations of 17 of the Member States, Observers from 38 non-member countries and representatives of several inter-governmental and international organisations, the topics discussed included almost all the important questions and issues that are likely to be dealt with by the forthcoming Conference on the Law of the Sea, namely (i) international regime for the sea-bed area ; (ii) exclusive economic zone ; (iii) territorial sea and international straits ; (iv) archipelagos ; (v) regional arrangements ; and (vi) position of landlocked States. The Committee commenced deliberations on the subject in its plenary meeting held in the afternoon of 20th January, 1971, by hearing brief statements of the

members of the Working Group on the Law of the Sea on the topics on which they had prepared special studies. The working papers presented at the session were the following :— (i) "Preliminary Draft and Outline of a Convention on the Sea-bed and the Ocean Floor and the Subsoil thereof beyond National Jurisdiction" prepared by the Rapporteur of the Sub-Committee on the Law of the Sea, Mr. C. W. Pinto of Ceylon ; (ii) "Proposed Regime concerning Fisheries on the High Seas" prepared by Japan ; and (iii) "The Exclusive Economic Zone Concept" prepared by Kenya. The Committee had also before it the working papers on "the Concept of Archipelago" and on "International Straits" which had been submitted earlier respectively by Indonesia and Malaysia, both as members of the Working Group and a Working Paper prepared by Ambassador Tabibi of Afghanistan on the position of land-locked States. In the following plenary meetings held on the 21st and 22nd January, the Committee heard general statements of the Member States of the Committee, Observers, and representatives of the international organisations including the Food and Agricultural Organisation and the Organisation of African Unity. Observers from major maritime nations such as the United States, the U.S.S.R., and the United Kingdom also took part in the general debate to express the viewpoint of their governments. After the general debate, the Committee referred the subject to the Sub-Committee on the Law of the Sea for giving detailed consideration to the various topics on the basis of the working papers referred to above. The Sub-Committee drew up a report which was adopted by the Committee in its plenary meeting held on the 25th January, 1972.

REPORT OF THE RAPPORTEUR ON THE WORK OF THE SUB-COMMITTEE ON THE LAW OF THE SEA ADOPTED AT THE THIRTEENTH SESSION

INTRODUCED BY

Mr. C. V. Ranganathan (India)

CHAIRMAN :	Hon'ble Dr. T. O. Elias (Nigeria)
VICE-CHAIRMAN :	His Excellency Dr. Mustafa Kamil Yasseen (Iraq)
ACTING RAPPORTEUR :	Dr. S. P. Jagota (India) (In the absence of Mr. C. W. Pinto of Ceylon)

1. Organisation of work :

The Chairman put before the plenary the suggestions made by the Working Group* on the Law of the Sea regarding the method of work on this subject at this session. The suggestion was that, in view of the wide ranging nature of the subject-matter and the inter-relationship of various issues, it would be most effective to concentrate discussion in the short time available on the following topics :

(1) International regime for the seabed ;

(2) Fisheries ;

(3) Economic Zone ;

(4) Territorial Sea and Straits ;

(5) Regional arrangements ;

*Members of the Working Group on the Law of the Sea and related questions are : Ceylon, India, Indonesia, Malaysia, Japan, Kenya and Egypt.

(6) Archipelagos ; and

(7) Position of land-locked countries.

There was no objection to accepting the suggestion. Consequently, after hearing statements of a general nature made at plenary sessions by twelve member delegations, nine observers, and two representatives of international organisations, the Sub-Committee of the Whole met on the 22nd and 24th January 1972. The Sub-Committee also had the benefit of hearing brief statements by individual members of the Working Group on some of the above subjects during one of the plenary sessions and on which working papers had been prepared earlier. Full texts of these statements as well as the statements made by members, observers, etc. which have been mentioned above, will be included in the verbatim proceedings of this session and will be made available by the Secretariat.

2. Mr. C. W. Pinto (Ceylon) who was appointed Rapporteur at the Colombo session in 1971 for the Law of the Sea and related subjects, was not present. Dr. S. P. Jagota (India) was appointed acting Rapporteur for the Lagos session.

3. At the invitation of the Chairman, the Acting Rapporteur initiated the discussion in the Sub-Committee by observing that a good starting point for the Sub-Committee would be to attempt to clarify and crystallise thinking on the various terms currently in use, relating to aspects of the present or proposed national jurisdiction over ocean space. For instance, the area of national jurisdiction was referred to variously as national sea-bed area, economic zone, continental shelf, exclusive zone for fisheries, territorial waters, etc. The usage of such multiple terms made it difficult to distinguish the difference, if any, between the concepts of economic zones and exclusive zones. It further tended to blur the clear-cut distinction which should be made between areas of national jurisdiction and areas outside national jurisdiction which

would be brought under the proposed international regime. If, therefore, the various concepts currently being used in discussions relating to ocean space were to be given a precise legal meaning, it would first be necessary to clarify in greater depth the extent and attributes of national jurisdiction.

Two delegations felt that the establishment of coastal State claims under various concepts such as the economic zone and the exclusive or preferential fishery zone, should not amount to extension of national jurisdiction. While admitting that in certain cases a coastal State may be entitled to a preferential catch of fisheries, these delegations felt that the question was more one of international fisheries management than one of extending national jurisdiction. Other delegations, however, felt that the concept of economic zone should be accepted by the international community and agreed with the suggestion that detailed discussions should take place on the different terminology currently in use. It was pointed out by one delegation that accommodation of interests would be easier, if there was a clearer understanding on questions such as the following :

> Should there be one limit for all purposes or should there be multiple limits for diverse functions ?
>
> What were the functions for which correspondingly varying limits should be set ?

Fisheries

One delegate pointed out that the exclusive enjoyment of the resources of the high seas by the coastal State alone, at the expense of the interests of distant-water fishing States, is not the proper way of reconciling the equally legitimate interests of both coastal and distant-water fishing States in rational and effective utilization of these living marine resources. As regards conservation, coastal States will have general responsibility to take necessary conservation measures in co-operation with the distant-water fishing States, and also

certain corresponding rights necessary to carry out such responsibilities. Without admitting the extension of exclusive zones of jurisdiction for fisheries purposes beyond the 12-mile limit, coastal States' preferential fishing rights will be recognised in order to remedy certain disruptive elements of free competition and to give adequate protection to uncompetitive coastal fisheries in relation to the fishing activities of distant-water fishing States. Distinction is to be made in the recognition of such preferential rights of coastal States as follows :

> In the case of a coastal State which is a developing country, the rights will consist in the allocation of a preferential share of catch determined on the basis of the maximum fishing capacity of that State, having due regard for a reasonable allowance for its future growth.

In the case of coastal fisheries of coastal States which are developed countries, the preferential share of catch will be recognised with respect to "small scale coastal fisheries" in terms of the minimum annual catch required for the continued operation on the existing scale of those small-scale coastal fisheries.

On the basis of such criteria, the actual regulatory measures, including the manner of enforcement, will have to be negotiated and agreed upon among the parties concerned and in the absence of agreement within a specified period, the matter may be referred to a special arbitral commission for settlement.

In order to ensure strict enforcement of regulatory measures, the coastal State may exercise competence to inspect vessels of distant-water fishing States and arrest vessels in the case of violation of its regulatory measures, but it must deliver them promptly to the flag State, which alone will have jurisdiction to punish the offenders. Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to the regime suggested.

The following comments were made on the views expressed above :

(a) Conservation on the high seas should not be confused with the question of national jurisdiction.

(b) The proposal that only a coastal State with a definite interest in a particular stock of fish can claim preferential treatment, outside its territorial waters, did not seem very fair as it was not always possible for developing countries to establish their rights.

(c) If it was the view that the living resources of the high seas were common, would distant-water fishing States consent to sharing the catch with coastal States ?

(d) As for regulatory measures, including enforcement and punishment of violations suggested in the proposals, an arrangement whereunder the coastal State could merely arrest and not punish violators was not satisfactory, since it would impose an unnecessary burden on the complainant State to carry its evidence to the courts of the flag State to establish their case against the offenders.

(e) The proposal itself drew a distinction between territorial sea and exclusive zone, where the territorial sea was less than 12 miles. While no adequate legal basis was provided in the proposals for acceptance of this exclusive zone, where it is different from the territorial sea, this showed that the entire problem was really jurisdictional, i.e. the outer limit of exclusive fishing zone within which the coastal State will exercise complete jurisdiction.

(f) One of the criteria mentioned for according a coastal State a preferential catch under the proposal was possible rate of growth of future catch.

This was difficult to determine and imprecise as a basis.

(g) Did the proposal envisage any arrangements whereunder developing coastal States with little national fishing equipment and gear could lease the equipment, material and men of distant-water States ? Similarly could they license their vessels ?

(h) One of the advantages of an exclusive fishing zone was that developing coastal States could license distant-water fishing craft as a source of additional revenue.

Summing up the discussions on fisheries, the Chairman pointed out that while there appeared to be a growing consensus on according the coastal States an increasing share of fisheries adjacent to their territorial waters under concepts of economic, exclusive or preferential zones, the crucial question was one of jurisdiction.

Economic Zone :

The elaboration of this concept took place at one of the plenary sessions. The Sub-Committee, however, discussed various aspects :

(a) The economic zone was not the same as the territorial sea, to the extent that there were certain limitations on the coastal States' jurisdiction in the area of its economic zone. Instances of these limitations are freedom of navigation, freedom of cable laying etc.

(b) It was asked whether it was necessary to give the area a different name if it was fully under national jurisdiction.

(c) Would the declaration of an economic zone *per se* impede threats to the national security of coastal States ? What was the position of the economic zone *vis a vis* the freedom of scientific research ?

(d) While the proposals on economic zone drew a distinction between such zones and zones of complete national jurisdiction, the concept by itself did not cover all activities. There was also the danger that under the concept, the resources of the sea-bed may not be fully covered Hence it was necessary to think of other terminology to describe the area adjoining the territorial sea and clearly define its attributes so that jurisdictional criteria could be satisfied.

(e) The concept of economic zone should be defended on very precise grounds. What, for instance, was the jurisdictional difference between economic and contiguous zones ?

Summing up the Chairman pointed out that while the concept of economic zone was acceptable to the majority of developing countries, there was need for greater clarity in defining the jurisdictional aspects.

Archipelago :

The following comments were made and queries raised :

(a) There have been no legal decisions which may be cited as authority for accepting the archipelagic concept.

(b) Refuting this, the answer was given that the legal source of the archipelagic concept was general international law and even treaty.

(c) What was the situation of navigation, where the internal waters of an archipelago joined two stretches of open sea ?

(d) How do bathymetric conditions affect the character of the inland waters ?

(e) How is the territorial sea measured ? If the right of innocent passage is recognised through the internal

waters, what is the difference between internal waters and the territorial sea ?

(f) If the idea of exclusive fisheries zone or economic zone is accepted, then where will these commence in the case of an archipelago ?

(g) Have the authors of the archipelagic concept related the proportionality of the size of the islands to the bodies of water surrounding these, for purposes of viewing these as internal waters ?

(h) Suggestion was made, that to obtain more legal support, the archipelagic States fix the maximum length of their baselines for the measurement of the territorial waters.*

In reply to some of the queries, the following points were made :

(a) The archipelagic position does not contravene any rule of international law and, in fact, finds support in the principles enunciated by the International Court of Justice in the *Anglo-Norwegian case* with respect to coastal archipelagos. The case also did not lay down uniform distance between baselines for all geographical areas.

A contrary rule which would instead provide for territorial seas around each island, say of 12 miles, would only create pockets of high seas within the archipelago of such small size as to be of no substantial value to the international community but would be destructive of the integrity and unity of the archipelagic State.

(b) The baseline from which the territorial sea of an archipelago is to be projected consists of connecting lines joining appropriate points of the outermost islands of the archipelago. All waters within

* Added at the request of the delegation of Indonesia.

the baseline are internal waters and all waters seaward up to certain limits constitute the territorial sea. This is the archipelagic position.

(c) The archipelagic question is entirely different from the question of the territorial sea. The status of waters within the baselines is that of internal waters and not territorial sea. There is a further difference between the two in that navigation through inland waters was not unrestricted.

(d) Shipping is subject to all the rules and regulations governing innocent passage. Besides where it is vital to allow a communication lane between two points, this will be permitted.

(e) The Convention on Territorial Sea does not draw any distinction between the size of an island and the width of the territorial sea surrounding it. Hence the proportional relationship between the size of island and waters surrounding it does not arise.

(f) The question of the maximum length of the baseline, so that group of islands could be considered as a unit and thus an archipelago is one of the questions which failed to be settled since long time ago.*

(g) The suggestion with regard to the question of the maximum length of baseline is noted.*

Land-locked countries

The question was asked whether land-locked countries had ever considered making Articles 3 of the Convention on the High Seas automatically binding on all States, as hitherto, only State parties signatory to the Convention were bound by its provisions. In reply it was stated that the rights of transit of land-locked countries were completely dependent

*Added at the request of the delegation of Indonesia.

upon bilateral arrangements. This position was unsatisfactory and should be changed. The right of transit of land-locked countries should be based on international conventions.

A further question was asked as to what obligations were acceptable to land-locked countries in return for free and unfettered transit. In reply it was stated that the legitimate interests of the transit State should be respected with respect to security, fiscal conditions etc. It was pointed out that the right of transit for land-locked countries was a limited right and the obligations were important.

Some further comments on this question were :

While the principal right of land-locked countries for transit has been recognised in conventions, the precise modalities embodying the practical arrangements between the land-locked country and the transit country needed to be worked out bilaterally. Thus while the right has been granted under the Convention and while the principle of transit is recognised, practical aspects such as choice of routes, question of reciprocity etc. are left to bilateral arrangements. Land-locked countries should also consider not just question of transit and access to the sea but also questions of their interests *vis a vis* the resources of the seas. Emphasising these aspects, one delegate felt that land-locked countries had hitherto paid excessive attention to the question of transit and too little attention to the question of reciprocity. There are several instances where coastal States may want the right of transit through land-locked countries *vis a vis* the resources of the sea; this is as important as the question of transit and the share and participation of land-locked countries in the exploitation of the resources should be the subject of regional discussions and arrangements.

International Machinery

The following comments were made on this subject :

1. One delegate mentioned that if the limits of national jurisdiction were too wide, such as 200 miles, the international area left for exploitation will have not many resources of value. Accordingly, the question of considering the adequacy of an international regime will be of academic interest only because all the valuable resources will be distributed among coastal States.

2. Another delegate mentioned that the continental shelf of his country by the depth criterion would run to 500 miles and, therefore, even 200 miles may not be enough. Accordingly, the question of establishing an adequate international machinery was not an academic question.

3. Some delegates questioned the validity of the remark that with the 200-mile national sea-bed area, no resources will be left for the international sea-bed area. It was pointed out that so long as the depth criterion was recognised for continental shelf, countries with larger continental shelf would continue to exploit petroleum and other resources of the shelf up to or beyond 200 miles. On the other hand, mineral and metal resources of commercial value have been discovered on the deep ocean floor and sea-bed technology has developed to the extent of retrieving them and separately the metals concerned. The commercial exploitation of these minerals was thus a reality and if an appropriate international machinery was not established, the resulting situation would lead to the advanced States' complete freedom to acquire them without any limitation. This would create more conflict. Hence it would be desirable to exploit the sea-bed resources in an orderly manner.

Regional Arrangements

The Chairman emphasised the need for ensuring that regional arrangements were in conformity with the general

principles of the international legal order on the sea-bed. One delegate emphasised the utility of regional arrangements in solving problems which arise from the geographical variations of the coast of neighbouring countries as well as from the situation of the land-locked countries. Another delegate mentioned that regional arrangements should in the beginning be limited to the question of conservation *simpliciter*. As to arrangements for sharing the resources of the sea, which was a more difficult question, it would be useful to collect adequate facts before propositions are built up.

Another delegate raised a number of questions regarding the concept of regional agreements including the following :

(1) What is a region ? Is a region to be determined on grounds of geography or on political considerations ? It may be that a country is so situated that, for political reasons, no regional arrangements are possible.

(2) What should be the content of regional co-operation ?

(3) What will be the rights of coastal countries even within the framework of a regional arrangement ?

(4) When should a regional agreement commence ? Should it enter into force only after the Law of the Sea Conference in 1973 or it could be concluded even prior to that Conference, as it has been done in the case of some Latin American countries and also in the case of some regions of Africa ?

(5) What should be the limit of national jurisdiction in relation to the regional arrangement ? Could members of a regional arrangement have different national limits ? Should historical rights be

recognised, whatever be the limit of national jurisdiction otherwise agreed upon ?

The Chairman suggested that these points should be given detailed consideration by the Committee in its further work.

SUMMARY RECORD OF DISCUSSIONS HELD AT THE THIRTEENTH SESSION

The subject "Law of the Sea including questions relating to peaceful uses of the sea-bed and the ocean floor, and the sub-soil thereof lying beyond the limits of national jurisdiction" was a priority item on the agenda of the thirteenth session of the Committee held in Lagos. Deliberations on the subject took place in the plenary meetings held on the 20th (two), 21st (two), 22nd, 24th and 25th of January, 1972, and in the Sub-Committee composed of all the Members.

In the first plenary meeting the Committee, accepting the recommendations of the Working Group on the Law of the Sea, constituted at the twelfth session, decided to devote itself at the present session to seven topics on the subject, namely : (1) international machinery for the sea-bed (2) fisheries (3) economic zones (4) territorial sea and straits (5) regional arrangements (6) archipelagos and (7) the position of land-locked States, and as regards the method of discussion at the current session, that the Secretary-General should first make a statement indicating the progress made on the subject in the Committee as also in the United Nations which then should be followed by introductory statements by the members of the Working Group on the topics mentioned above. Thereafter, the Member Delegations and Observers were to have the opportunity of stating their views to be followed by detailed discussions in the Sub-Committee. Accordingly, the Secretary-General made a statement regarding the work which had already been done on the subject in the Committee as also in the U.N. Sea-bed Committee.

In the second plenary meeting the President invited the members of the Working Group to introduce the topics on

which they had made special study. The delegate of India introduced the working paper on international machinery for the sea-bed lying beyond the national jurisdiction prepared by the Committee's Rapporteur, Mr. C.W. Pinto of Ceylon, as the Rapporteur was unable to be present. The delegate emphasised three important questions dealt with in that paper, namely the definition of national jurisdiction, the regime governing exploitation of sea-bed resources in the areas outside the national jurisdiction, and the establishment of suitable machinery. He explained in some detail the provisions contained in the Rapporteur's paper regarding the proposed machinery.

The delegate of JAPAN, in his capacity as a member of the Working Group, introduced the working paper on the regime concerning fisheries on the high seas which his Government had prepared to serve as the basis for discussion at the thirteenth session of the Committee. He said that in the present practice of nations, it would be reasonable to conclude that the freedom of fishing, namely the unrestricted right to fish on the high seas, had been modified as the need to regulate fishing activities when and where a risk of over-exploitation existed had come to be recognised by all nations. He stated that the general obligation of States to take and to cooperate in the taking of necessary measures for the conservation of fishery resources must be considered as already established in the legal order of the high seas. He pointed out that in the working paper prepared by Japan an attempt had been made to find out an equitable balance between the interests of coastal fisheries and those of distant-water fishing on the high seas. He felt that the overriding consideration should not be to secure the monopolistic enjoyment of the resources of the high seas only by the coastal States at the expense of the interests of the distant-water fishing States, or *vice versa*, but to reconcile them in such a manner that those resources could be utilised, as they should be, for the benefit of all mankind, rationally and durably.

He felt that some international agreement on the nature and extent of the right of the coastal States with respect to fishing on the high seas adjacent to the territorial sea was clearly in need, and this had to be done having due regard, both to the special interests of coastal States and the legitimate interests of distant-water fishing States. The delegate then explained the contents of the working paper and pointed out the essential features thereof.

The delegate of KENYA next introduced the topic regarding the exclusive economic zone concept. He said that if the States went to the 1973 Conference on the Law of the Sea, steeped in the old concepts, they were bound to fail. There was thus a need to find new ideas to resolve the conflict of interests between developed and developing countries and to ensure a fair balance between the coastal States and the other users of neighbouring waters. He said that basically the purpose of exclusive economic zone concept was to safeguard the interests of the coastal States in the waters of the sea-bed adjacent to their coasts without unduly interfering with the other legitimate uses of the sea by other States. He pointed out that one of the basic economic interest of the coastal States was the prevention and control of pollution and the other being regulation and control of fisheries and living and other resources of the sea and the sea-bed. His proposal was that each coastal State would have a territorial sea of 12 miles and beyond that belt there would be an additional economic zone. The economic zone, in his view, should neither be regarded as territorial waters as freedom of the high seas and freedom of laying submarine cables had to be recognised, nor was it high seas in the proper sense, since the coastal State would have the exclusive right to exploit, regulate and control fisheries, take and enforce pollution measures and exploit the resources of the sea-bed within the zone. He clarified that other States would be able to engage in the exploitation of the resources of the sea, if they were licensed to do so by the coastal State. On the question of the limits

of such exclusive economic zone, he mentioned the various views which had been expressed in the summer session of the Sea-Bed Committee in Geneva. He dealt with the various criticisms which had been advanced against the exclusive economic zone concept including the argument that it would be detrimental to the interests of the land-locked States which may have to go beyond the exclusive economic zone area for the purpose of fishing. He felt that the best solution, so far as the land-locked countries were concerned, would lie on the basis of regional arrangements which would enable the land-locked States to engage in the fishing industry within the economic zones of the neighbouring countries.

The delegate of INDONESIA, also, as a member of the Working Group, stated that the position regarding archipelagos had already been explained by the Indonesia delegation at the twelfth session of the Committee as also in the working paper presented by Mr. Djalal. Indonesia, he said, was a nation composed of many islands unified by sea, and the sea between these islands was a part of the economic life of the people of Indonesia which was of vital importance from the political, national defence and security point of view.

The delegate of the ARAB REPUBLIC OF EGYPT, speaking as a member of the Working Group, explained that regional arrangements were essential for the exploitation of the sea-bed and stated the reasons as to why he considered them to be desirable. He also indicated the bases for such arrangements. He also dealt briefly with the concept of economic zone.

Resuming the discussion in the third plenary meeting, the delegate of ARAB REPUBLIC OF EGYPT stated that recent discussions, both in this Committee and the U.N. Sea-Bed Committee, had revealed wide support for the concept of an intermediate zone located between the territorial waters of a coastal State and the area which was definitely

beyond national jurisdiction. There had, however, been wide divergence in the matter of details and it was, therefore, important for clear understanding to crystallise the nature and purpose of the intermediate zone and in particular the rights of coastal States and other States in such areas. He said that another point of special interest to his country and to the whole of the international community was related to the measures and techniques which should be devised to prevent and control pollution of the seas. He suggested that the Committee should consider the possibility of declaring pollution as an international crime in the same manner as piracy on the high seas was regarded in international law. He also dealt with the question of international machinery for the sea-bed area and said that a way should be found for sharing of benefits of the wealth of the sea which would meet the needs of developing countries without prejudicing the interests of the coastal States.

The Observer for AUSTRALIA mentioned that various proposals were before the Sea-Bed Committee on the question of national sea-bed limits and he expressed the view that the Committee should continue to explore the various possibilities. He said that an effective international machinery was clearly essential to ensure orderly development of the resources of the international sea-bed area. He was of the view that the international sea-bed authority should have the power to conduct exploration and exploitation on its own behalf but that power should not be exercised until that authority was in a position to finance its operations from its own resources. He stated that the question relating to claims over the resources such as the sea-bed and fisheries should be carefully separated from the question of the width of the territorial sea which should be narrow, and jurisdiction beyond the territorial sea could be said to derive not from territorial sovereignty but from some functional rights recognised by international law. As regards transit through straits used for international navigation, his view

was that it would be necessary to provide for duties as well as rights of the user and that the rights should be limited to transit through and over the straits in question and should not cover other activities. He was in favour of establishment of a fisheries management zone in which the coastal State would have jurisdiction over all coastal species of fish in an adequately wide area.

The Observer for the UNITED STATES OF AMERICA stated that his Government had tabled in the Sea-Bed Committee a working paper in the form of a Draft U.N. Convention on the International Sea-bed Area and Draft Articles on the Territorial Sea including straits and fisheries, but these proposals did not represent the final position of his Government but merely provided a basis for moving ahead towards solution of common problems. He indicated a set of specific questions and stated that each State's answers to those questions might be the basis for negotiations on the various problems relating to the Law of the Sea. He suggested that a distinction should be made between territorial and resource claims as it was the disappearance of the distinction between the two that had resulted in a number of difficulties. He also dealt with the problem of free transit through straits used for international navigation and the question of benefit sharing out of the resources of the sea-bed. He stated that the Government of the United States would approach the further deliberations of the Sea-Bed Committee and the 1973 Conference in a spirit of accommodation. On the question of sea-bed resources, he underlined the merits of a functional approach to the problems involved, taking account of the need to protect the marine environment from pollution and also the interests of non-coastal States in the resources of coastal areas.

The delegate of the PHILIPPINES explained in great detail his country's position on the question of archipelagos. With the aid of a map he demonstrated how it was essential

in order to maintain the political and economic unity of the Philippines that a baseline should be drawn around the outermost islands of the Philippine archipelago to define the points from which the territorial sea would commence, the waters within that line would then become internal waters. He stated that the interests of the international community would not be injured by this arrangement and it was vital for Philippines' interest not to have pockets of high seas in between the various islands constituting the Republic of the Philippines.

The Observer for CANADA said that he saw many encouraging trends in the Sea-Bed Committee, among them the widespread recognition of the concept of the sea-bed area as a heritage of mankind which required international arrangements for the equitable distribution of benefits and for equitable participation in a system of management. In his view, there appeared to be relatively general agreement that the task to be performed required a new institution and a consensus about its general structure. He suggested that (a) States should undertake the definition of the minimum non-contentious area of the sea-bed beyond national jurisdiction ; (b) that the U.N. should set up a transitional regime to manage that non-contentious area and by voluntary agreement coastal States should contribute one per cent of their revenue from off-shore areas to an international fund as operating capital for the transitional machinery.

The Observer for the UNITED KINGDOM emphasised the vital interest of his country in the Law of the Sea. He said that his Government would feel that an institution dealing with saleable resources should pay its own way. Regarding fisheries, the United Kingdom firmly held the view that conservation should be the guiding light to make the best use of fisheries to feed mankind, and that they should be regulated by multilateral co-operation rather than unilateral extensions. Regarding the continental shelf, it seemed clear

to him that coastal States would have to make some compromise on the extent to which they would control the resources of the continental shelf. He saw archipelagos as a problem requiring sympathetic discussion, but the United Kingdom would have reservations about the adoption of any system under which international straits would be closed as defence implications were most serious. The United Kingdom Observer concluded that the problems that were being raised could best be resolved at an international level in the U.N. Sea-Bed Committee.

Resuming the discussion in the fourth plenary meeting, the Observer for CAMEROON posed the question as to whether the concept of exclusive economic zone, as advocated by the Delegate of Kenya, was in the interest of the coastal States. He felt that the territorial sea concept would be more apt to ensure protection of the economic interests of the developing countries in view of the fact that a coastal State exercised its sovereignty only in the territorial sea whereas in the exclusive economic zone, which would admittedly form part of the high seas, the coastal State would exercise its right only to a limited extent on the basis of its economic need. His view was that instead of declaring the stretch of the territorial sea and the economic zone together at 200 nautical miles, it would be simpler to state that the extent of the territorial sea would be 200 miles as had been done by some of the Latin American States. He was also of the view that in order to explain the idea of an exclusive economic zone on a juridical basis, it would be necessary to define the same in relation to the various economic concepts which the delegate of Kenya had specified. He was also not quite clear about the distinction between the contiguous zone and the exclusive economic zone as both these were physically and juridically part of the high seas since they extended beyond the outer limits of the territorial sea and the coastal State would exercise a fragmentary, limited sovereignty in respect of both of them. With regard to the

question of settlement of disputes in the matter of exploration and exploitation of the wealth of the sea beyond national jurisdiction, he wondered whether there should be any objection to entrusting the matter to the International Court of Justice directly as this might be cheaper than having a special international tribunal for deciding those questions. He supported the proposal of the Arab Republic of Egypt for entering into regional arrangements, although he saw some difficulty in having such arrangements even between the developing countries as their situations and interests were not perfectly identical and always the same. Dealing with the problem of fisheries, he raised certain questions arising out of the Japanese working paper and said that in the light of his experience application of regulatory measures on the part of the developing countries was often difficult.

The observer for PERU presented a paper which he had prepared and stated that the concepts expressed therein did not reflect the final thinking of his Government but offered a tentative and provisional compendium of points of view which were being shared by several developing countries. He was in complete agreement with the delegate of Kenya that the new regime of the sea must be based on principles differing from those which had hitherto prevailed. He also supported the idea of regional arrangements within the framework of a Universal Law of the Sea. On the question of the concept of economic zone, he mentioned that in Latin America, some countries were in favour of that concept, whereas others believed that the rights of coastal States would be better protected by maintaining the concept of full sovereignty in a territorial or national sea the limits of which would vary according to geography and related factors. With regard to fisheries, he said that the living resources closely related to the marine economic system of a particular country must be recognised as part of its natural resources. He also mentioned about the proposals which Latin American States had submitted with regard to the establishment of international

authority in the sea-bed area. Finally, he gave his full support to the archipelago concept as presented by the delegates of Indonesia and the Philippines.

The delegate of IRAN commended the draft Convention prepared by the Rapporteur, Mr. Christopher W. Pinto and said that he was in full agreement with a substantial number of points such as the need for a comprehensive sea-bed regime, but on certain other points contained in the draft he needed further clarification. The working paper on fisheries as presented by the delegate of Japan, in his view, was principally oriented to the protection of the interests of the distant-water fishing States. He said that the jurisdiction of the coastal States for fisheries needed not necessarily be tied with the question of sovereignty over the territorial seas as there was a growing tendency to link the question of fishery zone, in many cases, with the question of continental shelf. With regard to passage through straits, he emphasised that the right of the coastal States to protect their legitimate interests including protection from pollution should be preserved.

The delegate of INDIA said that the foundation of the emergence of an international legal order on the sea-bed and its resources had already been laid by the adoption of the Declaration of the Basic Principles by the U.N. General Assembly in December 1970. He recalled that a number of drafts and proposals had already been made before the U.N. Sea-Bed Committee in this matter and the Committee had also before it the suggestion of its Rapporteur. These, he said, were being studied by his Government but they had not come to any conclusion on the concrete proposals. Giving his views on the points under discussion, he said that the distance criterion for determining the limits of national jurisdiction over the sea-bed would establish an equitable regime and meet all interests. He said that his Government would be in favour of 200-mile limit and gave reasons in support thereof. On the question of international

machinery for the exploitation of sea-bed resources, his views were in many respects, although not in all, similar to those which had been embodied in the draft Convention prepared by the Rapporteur. On the question of fisheries, he said that the views of his Government were that the concept of the exclusive fishing zone was separate from the concept of territorial waters jurisdiction and outer limits for the two should, therefore, be separately defined. He said that if the limits of the fishery zone were wide enough, there would be no need for having a further protection or preferential zone, but on the other hand, if the exclusive zone was small, another adjacent zone should be established wherein the coastal States would enjoy preferential rights. On the question of territorial waters, his view was that the limits should be set at 12 nautical miles and another limit of uniform contiguous zone should be established for fiscal, health and other matters. Freedom of transit through straits, he felt, should be ensured to all in the interest of freedom of navigation, but the legitimate interests of the coastal States would have to be adequately safeguarded. He supported an intensive study on the question of land-locked States by the Committee.

The delegate of GHANA stated that the principle embodied in the United Nations resolution that there was an area of the sea-bed and the ocean floor beyond the limits of national jurisdiction was based on the legal principle which had been in the process of crystallisation ever since 1967. The problem of delimiting the sea-bed and the ocean floor between national jurisdictions and the sea that lay beyond was, according to him, a matter of importance. A realistic discussion of the question must, he said, reflect the close inter-relationship between the various jurisdictional claims which had been asserted for a variety of functional needs, namely continental shelf resources, fisheries, security, pollution control and the contiguous zone control over customs, health, immigration and sanitary matters. He said that if

there was no settlement in the near future on these functional claims, they could crystallise into jurisdictional claims. He next dealt with the question of straits and said that the matter was partly covered by the Geneva Convention on the Territorial Sea and the Contiguous Zone, though it was not found to be satisfactory by some States. He concluded his remarks by stating that the next Conference on the Law of the Sea should be held as expeditiously as possible.

The Observer for TANZANIA stated that the concept of economic zone included the question of exploitation of the living and other resources of the high seas as well as control of pollution. He said that as far as exploration and exploitation of the mineral resources were concerned, the views of Tanzania were sufficiently known. On the question of fisheries, he said that he was struck by the amount of effort the Japanese Government had made in its working paper in trying to reconcile the interests of the coastal States and the distant-water fishing States. He did not, however, believe that the problem could be solved in that way. He felt that the conservation measures could be taken only by the coastal States as the distant-water fishing States, thousands of miles away, could not be very effective in that matter. He was of the view that the coastal States should be entitled to a greater control over a wide area whether it be an exclusive zone or a combination of exclusive, preferential or regulatory zones. He refuted the argument that the concept of an economic zone would lead to under-utilisation of resources by developing countries. He thought that if the oil resources which were mostly in under-developed countries could be exploited, there was no reason why the same thing could not apply to the exploitation of fisheries. He said that the distant-water fishing States would not be prevented from coming into the area and they would be free to fish either under licence or some other regulation which should be made by the coastal State. As regards pollution, he considered that the coastal State should be given effective control over a

wide area so that it could prevent or, at least, control the danger of pollution. He argued that the economic zone concept was not only justified but it was the only approach which could probably help to settle many of the problems. He then dealt with the position of land-locked States with regard to the exploitation of mineral resources as well as the living resources of the sea. He felt that the best way for these States to get the optimum benefit from the resources of the sea would be to enter into regional arrangements with neighbouring coastal States.

The delegate of the REPUBLIC OF KOREA said that whilst the interests of the coastal States, particularly those of the developing countries, deserved special consideration, his view was that the high seas should be, in principle, open to all nations for fishing subject only to the requirement of conservation measures. He said that if there was any conflict between the interests of the coastal State and the distant-water fishing State, that conflict ought to be resolved by agreement. He said that what was needed most with regard to the problem of fisheries was intensification of the co-operation between the developed and developing States and between coastal States and distant-water fishing States. With regard to the question of international regime for the sea-bed, he said that Korea was in favour of a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor and would put forward the depth criterion of 200 metres as the limit of coastal State's national jurisdiction. On the question of territorial sea, he was in favour of 12-nautical mile limit. On the question of straits used for international navigation, the delegate considered that a coastal State might reserve to itself certain regulatory powers in regard to the types of ships and the time allowed for their transit through these straits which fell within the territorial sea of a State. Finally, he stated that the archipelago concept merited careful consideration of the Committee.

The delegate of IRAQ stated that the concept of free-

dom of the sea as a basic principle, as traditionally understood, concerned only the freedom of navigation. He was of the view that the U.N. Declaration which called the sea-bed beyond national jurisdiction as a heritage of mankind had really initiated a legal principle accepted by a significant consensus in the General Assembly of the United Nations. He agreed with the view of some of the other delegates regarding the establishment of an international regime for exploration and exploitation of the sea-bed. He felt that the sea-bed should be explored and exploited in the interest of the international community as a whole and particularly having regard to the interests of the developing countries. As regards the concept of economic zone, he said that the same could be justified but the zone should not be regulated in a manner which might be detrimental to the interests of land-locked countries. He felt that a country with a small coastline was in a very similar position as land-locked countries.

The Observer for the UNION OF SOVIET SOCIALIST REPUBLICS said that the Soviet Government generally endorsed the recognised principle of international law regulating the regime of the sea and particularly the rules embodied in the 1958 Geneva Convention on the Law of the Sea. At the same time his Government favoured solution of such questions as the establishment of a 12-mile limit for the breadth of the territorial sea, ensuring freedom of passage through straits used for international navigation as well as questions of fishing on the high seas. He added that the Soviet Government favoured the conclusion of an international treaty on the question of the user of the sea-bed. He then dealt with these topics at some length. He pointed out that the 12-mile limit for the territorial sea was recognised by nearly 100 States. Referring to the unilateral extension of the territorial sea beyond the 12-mile limit, he said that such extensions amounted to bringing under their control areas of the high seas which ran counter to the

generally recognised principles of international law. He pointed out the consequences that would follow from extension of the territorial waters beyond the 12-mile limit. On the question of passage of ships through straits used for international navigation, the Observer stated that many straits were major world sea routes used annually by thousands of ships of different nations, and limitations on the freedom of passage through straits could render ship movement extremely difficult which would be harmful to international navigation and trade. On the question of fishing he advocated reasonable accommodation of interests among the coastal States and those States engaged in distant-water fisheries in those areas. He recognised the fact that some countries were interested in preserving their fishery resources near their coasts and he felt that the coastal States should be granted some preferential fishing rights in the high seas adjacent to their territorial sea. He then explained the Soviet draft on the sea-bed which had been tabled before the U.N. Sea-Bed Committee and went on to discuss the various provisions of the draft.

Continuing the discussion in the fifth plenary meeting, the Observer for the FOOD AND AGRICULTURE ORGANISATION stated that the objectives of F.A.O. were conservation of the living resources of the ocean, the rational exploitation of those resources for optimum production at minimum cost, utilisation of resources to close the protein gap and to aid development of developing countries. He urged the members of the Committee to give due regard to the achievement of those three objectives even where they might not coincide with a narrower national interest. He said that the living resources of the sea were unevenly distributed over the seas and were migratory in character, but if properly managed, they could provide sustained yields in perpetuity. He felt that the conservation measures for such mobile resources had to be internationally harmonised and said that the network of fishery organisations

of an international character working towards rational utilisation of fish stocks had laboured under difficulties, contributing scientific advice but hesitant to adopt measures to conserve stocks. It was the view of F.A.O. that to become fully effective, those international commissions had to be strengthened and contact and co-ordination established among them towards regulation on a world-wide basis.

The Observer for the ORGANISATION OF AFRICAN UNITY stated that his organisation's policy on natural resources was that they should be used to improve the standard of living. He felt that there was need for a convention to fix the limits of territorial waters and to evolve a plan for the conservation and exploitation of the resources of the sea. He said that the Panel of Scientists which met in Lagos in October 1971 had proposed that fishing in areas upto 600 metres depth should be reserved as an exclusive zone and that the Scientific Council of Africa which met in Ibadan also in October had recommended that the littoral States of Africa should, where possible, extend their territorial waters upto a maximum of 200 nautical miles with a 212-mile non-pollution limit. He added that the Council of Ministers of the O.A.U. which was to meet in February of this year would be discussing the subject.

The Observer for SENEGAL said that his country supported Kenya, Tanzania, India and other countries who had expressed the view that the ideas in the old Geneva Conventions on the Law of the Sea no longer applied. It was the view of Senegal that as far as fisheries were concerned, it would be dangerous to confuse the concept of territorial waters with the concept of economic zone for exclusive exploitation of fisheries and other resources.

The delegate of NEPAL stressed the importance to land-locked States of the question of access to the sea and the concept of freedoms of the high seas. Sea-bed areas were, in his view, the heritage of mankind as a whole with preferen-

tial treatment for the less developed countries. He said that the rights of under-developed land-locked countries to participate in fishing which have been set out in the U.N. Resolutions 2749(XXV) and 2750(XXV) should not merely rest as a moral claim but that the same should be assured by international or regional arrangements.

The delegate of the ARAB REPUBLIC OF EGYPT then made a statement dealing with various points raised in the course of general debate. He categorically rejected what he said was implied in Professor Baxter's (U.S.A.) statement the previous day, of unlawful restriction by coastal States on freedom of navigation.

At the end of the aforesaid general discussions the matter was referred to a Sub-Committee composed of the entire membership, for study and submission of a report.

In the sixth plenary meeting, the delegates of PAKISTAN and INDONESIA made their statements. The delegate of PAKISTAN dealing with the various topics under discussion by the Committee, said that he took note of the Kenyan delegate's proposal which, according to him, made a forceful case for extending in some form the national jurisdiction of the coastal State. As regards delimitation of national jurisdiction on the continental shelf, he stated that Pakistan was of the view that a 200-mile distance formula from the coast, uniformly applied, would be largely adequate to reserve to national jurisdiction a substantial area for exploitation. He added that if a uniformly applied distance criterion was adopted, the necessity for an intermediate zone would be unnecessary and the regulation of activities beyond national jurisdiction could be left to an international authority. He said that Pakistan was in favour of an effective and responsible international sea-bed authority and in regard to the details of the machinery it would be willing to support the consensus on the subject among the Asian-African countries. He said that his country was in favour of

recognising the special interests of coastal States in the fisheries of high seas adjacent to the coasts and would be agreeable to an exclusive fisheries zone which would extend 200 miles out in the sea. He added that Pakistan favoured the compulsory procedure for settlement of disputes and said that he had taken note of the statements of the delegates of the Philippines and Indonesia regarding the archipelago concept.

The delegate of INDONESIA explained in detail the archipelago concept, which he said, was not a new matter and had existed for more than 40 years. After referring to the discussions already held on this subject in the two previous U.N. Conferences on the Law of the Sea he stressed that the archipelago concept was not and had never been meant to endanger the freedom of the seas, especially the freedom of navigation. He pointed out that the freedom of navigation through Indonesian waters was guaranteed by Indonesian laws and regulations and therefore there was no reason to fear that navigation will be jeopardised by the existence of the concept of archipelago. He said that Indonesia had already applied this concept for more than 14 years and referred to the various proclamations and enactments promulgated by his Government on this subject. On the question of exclusive economic zone, he said that that concept had to be clearly distinguished from the regime of territorial waters. He felt that the concept of exclusive economic zone merited serious consideration and suggested three criteria for delimitation of such a zone and the rights to be enjoyed therein. Finally, he made certain observations on the Japanese working paper concerning fisheries in the high seas.

During the seventh plenary meeting, the delegate of INDIA introduced the Rapporteur's Report on the work of the Sub-Committee on the Law of the Sea and made a statement explaining the contents of the report. The delegate

of INDONESIA suggested some alterations in the draft which were agreed to be incorporated. The delegate of JAPAN made a general statement regarding the work of the Committee on the subject. The Committee took note of the Rapporteur's Report and it was agreed that any comments thereon should be sent to the Secretariat at an early date. It was decided that the programme of further work on the subject during the inter-sessional period should be determined by the Secretary-General in consultation with the President.

BACKGROUND MATERIALS

(I) WORKING PAPER ON "PROPOSED REGIME CONCERNING FISHERIES ON THE HIGH SEAS"

PREPARED BY THE GOVERNMENT OF JAPAN
AS MEMBER OF THE WORKING GROUP ON THE LAW OF THE SEA

PART I : GENERAL PROVISIONS

1.1 The present regime shall apply to fisheries on the high seas beyond the limits of 12 miles, measured in accordance with international law as embodied in the relevant provisions of the Convention on the Territorial Sea and the Contiguous Zone.

1.2 All States have the right for their nationals to engage in fishing on the high seas, subject to the present regime and to their existing treaty obligations.

1.3 The present regime shall not affect the rights and obligations of States under the existing international agreements relating to specific fisheries on the high seas.

Commentary

1. It is assumed that the waters within the 12-mile limits will be either the territorial sea or the fishery zone of a coastal State.

2. Paragraph 1.2 states that the freedom of fishing, guaranteed to all States under Article 2 of the Convention on the High Seas, shall be subject to the conservation rules and the preferential rights of coastal States as provided for in the present regime and also to the international obligations already assumed by States under existing treaties relating to fisheries.

3. Paragraph 1.3 relates to the relationship between

the present regime and the existing treaties concerning particular fisheries on the high seas. Some of the rules introduced into the new regime are novel and not necessarily consistent with the functions of existing regional bodies established under bilateral or multilateral treaties. It is, therefore, considered necessary for the new regime to make it clear that the rights and obligations of States parties to such treaties shall in no way be affected by the establishment of the new regime. This, of course, does not preclude modifications by agreement of such treaties in order to incorporate into them some or all of the new rules. Nor are States prevented from adopting such rules under the new regime as are consistent with or permitted under such treaties.

PART II : PREFERENTIAL FISHING RIGHTS OF COASTAL STATES

2.1 Objective of preferential rights

To the extent consistent with the objective of conservation, a coastal State may exercise the preferential fishing rights as set forth below for the purpose of according adequate protection on an equitable basis to its coastal fisheries engaged in fishing in the waters adjacent to its territorial sea or fishery zone (hereinafter referred to as "the adjacent waters").

Commentary

This part of the new regime attempts to prescribe what can be termed as the "rules of protection," as distinct from the rules of conservation contained in Part III. The rules of protection are designed to give coastal States certain specific advantages in the form of preferential fishing rights for the purpose of preventing or mitigating the disruptive socio-economic effects of free competition on infant or small scale coastal fisheries which are unable to fish on the high seas on equal terms with distant water fisheries of other States. The

preferential fishing rights are subject to two basic qualifications : first, they must be consistent with the objective of conservation ; and secondly, they must be equitable. The first qualification arises from the consideration that the preferential fishing rights should not be misused to bring about either overfishing or under-utilization of the resources concerned. The second qualification is considered necessary to prevent the preferential rights from becoming a means of according excessive protection to coastal fisheries and resulting in undue discrimination against non-coastal States.

2.2 Preferential catch

(1) In the case of a developing coastal State :

(a) The coastal State is entitled to the maximum annual catch attainable on the basis of the fishing capacity of its coastal fisheries. Subject to the provision of sub-paragraph (b) below, such factors as the size and number of fishing vessels in operation, fishing gears used, recent catch performance, and possible rates of growth of future catch shall be taken into account in determining the said maximum catch (hereinafter referred to as "preferential catch").

(b) In cases where the maximum annual catch estimated solely on the basis of the existing fishing capacity of the coastal fisheries of a coastal State accounts for a major portion of the allowable catch of the stock of fish concerned, the preferential catch shall be determined without regard to the possible expansion of the fishing capacity of such coastal fisheries.

(2) In the case of a non-developing coastal State :

(a) The coastal State is entitled to the minimum annual catch required for the maintenance of its

small scale coastal fisheries. Such factors as the size and number of fishing vessels in operation, fishing gears used, and recent catch performance and fishing efforts of the coastal State shall be taken into account in determining the said minimum catch (hereinafter referred to also as "the preferential catch"). The interests of traditionally established fisheries of non-coastal States shall also be duly taken into account in determining the preferential catch. In cases where the stock of fish concerned is in a state of full utilization, the preferential catch shall not exceed the average annual catch attained by the said small scale coastal fisheries during the preceding (five) year period.

(b) The term "small-scale coastal fisheries" referred to in the preceding sub-paragraph means.....[1]

(3) The provisions of sub-paragraphs (1) and (2) above shall not apply to the fishing of highly migratory stocks which may be exploited in extensive areas of the high seas.

Commentary

1. Not all coastal fisheries are eligible for protection since coastal fisheries of some countries are fully developed and are capable of competing on equal terms with distant water fisheries of non-coastal States. Moreover, it must be taken into account that coastal fisheries enjoy natural advantage over distant water fisheries with respect to supply and unloading because of the proximity of fishing grounds.

2. Under the present regime, two groups of coastal fisheries are covered by the rules of protection. The first

1. An appropriate definition of "small-scale coastal fisheries" is to be inserted. (See also Commentary to the present paragraph).

group is the coastal fisheries of developing coastal States. It may be generally stated that such factors as shortage of capital, lack of technology, immobility of labour and inadequate marketing systems make the coastal fisheries of developing countries inherently uncompetitive, requiring special consideration as infant industries. It is, therefore, proposed that the coastal fisheries of a developing coastal State be entitled to the "preferential catch" defined in terms of the maximum annual catch attainable on the basis of the fishing capacity of its coastal fisheries. In other words, a developing coastal State is assured of a preferential share in the allocation of the fishery resources concerned, according to its maximum capacity, including some reasonable allowance for its future growth. If, however, the existing capacity is already large enough to enable the coastal fisheries to fish a major portion (e.g. more than 50%) of the allowable catch of the stock of fish concerned, the preferential catch will be determined on the basis of the existing capacity, without taking into account its future expansion. Although this limitation on the preferential catch is considered necessary to avoid the eventual total exclusion of the fisheries of non-coastal States, it is not intended as an authorization to allocate the remaining portion of the allowable catch exclusively to non-coastal States. Arrangements can be made among the parties concerned to allow the coastal fisheries to compete with distant water fisheries for some additional catch beyond what is already guaranteed.

3. There is of course a difficult question : What is a "developing coastal State" ? It is, however, considered unwise to deal with this question in abstract terms partly because none of the existing definitions of a developing country is satisfactory and also because there seems to exist a general understanding in the international community on the meaning of the term, leaving only a limited number of countries in the "grey" area between developed and developing countries. If need arises to decide the status of any of

these countries in the grey area in relation to the present rules of protection, it may be dealt with on a case by case basis among the parties concerned.

4. As regards non-developing coastal States, coastal fisheries in general cannot be considered infant industries which require special protection. Furthermore, such countries usually possess necessary financial and technological means of making internal adjustments, including the modernization of their fishing fleets. In such cases, protection would not only discourage needed adjustments but might even encourage over-investment in inefficient fishing industries at the expense of the legitimate interests of non-coastal States. It is for these reasons that the second group of coastal fisheries eligible for protection under the new regime is limited to what is termed here as "small-scale coastal fisheries," which are by nature not amenable to internal adjustments and therefore are extremely vulnerable to competition. (Although the present text does not give a precise definition of "small scale coastal fisheries," it is considered possible to agree on an appropriate definition in terms of the size of fishing vessels and their local mobility.) Under the rules of protection, such small scale local fisheries of a non-developing coastal State will be entitled to the "preferential catch" defined in terms of the minimum annual catch required for their continued operation on the existing scale. The preferential catch will be determined in such a way as to allow the coastal fisheries concerned to earn reasonable income from their operation but not to encourage their future expansion.[2] If the stock of fish with respect to which a preferential catch is to be established is found to be fully utilized by the coastal and non-coastal States concerned, the preferential catch cannot exceed the average annual catch recorded during a certain number of preceding years (e.g.

2. Note that in the case of the preferential catch for coastal fisheries of a developing coastal State, allowance will be made in principle for the possible growth of their future catch.

five years) by the coastal fisheries requiring protection. This limitation, which is designed to accommodate the minimum interests of non-coastal States, does not preclude the parties concerned from concluding arrangements under which the protected coastal fisheries may compete with distant water fisheries for additional catch beyond what is already guaranteed.

5. The rules of protection under the present regime will not apply to highly migratory stocks, such as tuna and salmon, which cannot be properly regulated by general rules in respect of either protection or conservation. This is not to say that coastal States should always be placed on equal terms with non-coastal States in fishing such stocks. It is considered, however, that as far as these stocks are concerned, problems relating to protection or conservation can better be solved on a regional basis without resorting to general rules.

2.3 Implementation

(1) Measures to implement the provisions of paragraph 2.2 shall be determined by agreement among the coastal and non-coastal States concerned with respect to the individual stocks of fish on the basis of the proposals made by the coastal States.

(2) Catch allocation among the coastal and non-coastal States concerned, including the preferential catch, shall be made within the allowable catch of the stock of fish subject to allocation if the allowable catch is already estimated for conservation purposes.

(3) In order to enable coastal States to utilize fully their preferential catch, the coastal and non-coastal States concerned shall agree on necessary supplementary measures to be applicable to the non-coastal States.

(4) In cases where the allowable catch is not available, the coastal and non-coastal States concerned shall agree on

necessary measures to enable the coastal State to utilize fully its preferential catch. Such measures may include arrangements to minimize interference with the traditional fishing grounds and fishing gears used by coastal fisheries of that coastal State.

(5) In cases where nationals of two or more coastal States which are entitled to the preferential catch under paragraph 2.2 are engaged in fishing a common stock of fish, no coastal State may invoke the provisions of Part II with respect to such stock without the consent of the other coastal States concerned.

(6) The measures adopted in accordance with the foregoing sub-paragraphs shall be consistent with the obligations already assumed by any of the States concerned for conservation purposes.

(7) The measures adopted under this paragraph shall be subject to review at such intervals as may be agreed upon by the States concerned.

Commentary

1. The preferential rights cannot be exercised unilaterally by a coastal State but are made subject to negotiation and agreement with the non-coastal States concerned. This is not an unreasonable limitation on the preferential rights in view of the fact that these rights are defined only in general terms in paragraph 2.2 and, if left entirely to the discretion of the coastal State, they could be easily misused or abused to the serious detriment of the interests of distant water fisheries of other States. Thus, a coastal State which wishes to claim its preferential catch is required to demonstrate to the interested non-coastal States : (i) what its actual needs are and (ii) what specific measures are necessary to meet such needs without unduly affecting the interests of the non-coastal States. If the parties concerned fail to reach agreement on these two points within a reasonable period (six

months), despite their sincere efforts to negotiate, they will have recourse to the procedure for the settlement of disputes under Part IV, paragraph 4.2.

2. If the allowable catch of a stock of fish to which the preferential rights of a coastal State are to be applied is available, country quotas may be established within the limit of that allowable catch, reserving the preferential catch for the coastal State. Quotas thus allocated, however, may not serve as adequate means of protection for the coastal fisheries concerned. Given the relative inefficiency of the coastal fisheries, the quota arrangement may not in itself bring about the intended increase in the catch of the coastal State upto the limit of its preferential catch. In these circumstances, such supplementary measures as closed seasons, closed areas and prohibition of certain fishing gears, which are applicable to the distant water fisheries of the non-coastal States concerned, may be considered necessary in order to enable the coastal State to utilize fully its preferential catch.

3. Quota arrangements based on the allowable catch may not be workable in all cases. In fact, such arrangements are meaningless when the stock conditions are such that their is no practical need to establish an overall catch limitation for conservation purposes. Furthermore, it is often difficult to make a reasonably accurate estimate[3] of the allowable catch, due to the absence of adequate data. Even in such cases, it may still be necessary for coastal States to protect their coastal fisheries by some other means. In these circumstances, such regulatory measures as closed seasons, closed areas, limitations on fishing gears, which are suggested as supplementary measures in the preceding paragraph, will now serve as principal means of protection for coastal fisheries.

4. In cases where no conservation arrangement exists with respect to the stock of fish to which the preferential

3. See paragraph 4 of the Commentary to Part III, paragraph 3.3 of the text.

rights of a coastal State are to be applied, the coastal and non-coastal States concerned may freely negotiate necessary implementation measures pursuant to sub-paragraphs (1)-(4), taking into account the general objective of conservation as defined in Part III, paragraph 3.1. If, however, any of the States concerned has assumed specific obligations under the conservation arrangements already in force with respect to the stock concerned (e.g. a closed season), the implementation measures must be harmonized with such arrangements so that the two sets of measures, respectively for conservation and protection, will not be mutually incompatible.

PART III : CONSERVATION OF FISHERY RESOURCES

3.1 Objective of conservation measures

The objective of conservation measures is to achieve the maximum sustainable yields of fishery resources and thereby to secure a maximum supply of food and other marine products.

Commentary

Fishery resources are not inexhaustible and yet are renewable on a constant level if appropriate conservation measures are taken. Such measures should be designed to maintain a stock of fish on a level which will yield the largest surplus to be exploited without affecting the future size of the stock ("maximum sustainable yield"). Recognition of the concept of maximum sustainable yield as the basic objective of conservation is already reflected in Article 2 of the Convention on Fishing and Conservation of the Living Resources of the High Seas (hereinafter referred to as "the Geneva Convention".

3.2 Obligations to adopt conservation measures

(1) In cases where nationals of one State are exclusively engaged in fishing a particular stock of fish, that State shall

adopt, when necessary, appropriate conservation measures consistent with the objective defined in paragraph 3.1 and in accordance with the principles set forth in paragraph 3.3.

(2) In cases where nationals of two or more States are engaged in fishing a particular stock of fish, these States shall, at the request of any of them, negotiate and conclude arrangements which will provide for appropriate conservation measures consistent with the objective defined in paragraph 3.1 and in accordance with the principles set forth in paragraph 3.3

(3) In cases where conservation measures have already been adopted by States with respect to a particular stock of fish which is exploited by nationals of such States, a new-comer State shall adopt its own conservation measures which are no more lenient than the existing measures until new arrangements are concluded among all the States concerned. If the existing measures include a catch limitation or some other regulations which do not allow nationals of the new-comer States to engage in fishing the stock concerned, the States applying the existing measures shall immediately enter into negotiation with the new-comer State for the purpose of concluding new arrangements. Pending such arrangements, nationals of the new-comer State shall not engage in fishing the stock concerned.

Commentary

Since no State can claim the exclusive exploitation of fishery resources of the high seas and since every State is entitled to benefit from the prudent utilization of such resources, every State is under the obligation to maintain the productivity of the fishery resources which its nationals exploit whether by themselves or with nationals of other States. It is also obvious that international co-operation is essential for effective conservation drogrammes when nationals of two or more States are engaged in fishing the same stock or stocks of fish. Furthermore,

the characteristics of fishery resources are such that it is not possible to apply uniform conservation measures to all cases. Hence sub-paragraphs (2) and (3) are based on the principle that specific conservation measures should be adopted by agreement among the parties concerned. If negotiations among them fail to produce agreement within a specified period (six months), the dispute must be settled in accordance with the procedure set forth in Part IV, paragraph 4.2. This basic framework of the present regime is the same as the principles adopted under Articles 3, 4 and 5 of the Geneva Convention.

3.3 Basic principles relating to conservation measures

(1) Conservation measures must be adopted on the basis of the best evidence available. If the States concerned cannot reach agreement on the assessment of conditions of the stock to which conservation measures are to be applied, they shall request an appropriate international body or other impartial third party to undertake the assessment. In order to obtain the fairest possible assessment of the stock conditions, the States concerned shall co-operate in the establishment of regional institutions for the survey and research concerning fishery resources.

(2) Except as specifically authorized under the present regime, no conservation measure shall discriminate in form or in fact fishermen of one State against those of other States.

(3) Conservation measures shall be determined, to the extent possible on the basis of the allowable catch to be estimated with respect to the individual stocks of fish. The foregoing principle shall not preclude conservation measures determined on some other bases in cases where sufficient data are not available to estimate the allowable catch with any reasonable degree of accuracy.

(4) No State may be exempted from the obligations to adopt conservation measures on the ground that sufficient scientific findings are lacking.

(5) Conservation measures to be adopted shall be designed to minimize interference with the fishing activities relating to stocks of fish which are not the object of such measures.

(6) Conservation measures and the data on the basis of which such measures are adopted shall be subject to review at appropriate intervals.

Commentary

1. Conservation refers to those remedial or preventive measures designed to regulate the exploitation of fishery resources for the purpose of protecting the resources from the depletive effects of overfishing and, at the same time, of enabling the maximum utilization of the resources by the international community. As such, it is essentially a biological concept, the application of which must be based in principle on objective scientific findings related to the stocks of fish concerned. It is often stressed, however, that in view of the inherent difficulties in collecting sufficient data over relatively limited periods of time, it is neither practical nor appropriate to adhere strictly to the principle of "conservation based on scientific findings", particularly when modern fishing techniques have considerably increased man's capacity to fish. It is therefore considered necessary to modify this principle so as to allow the parties concerned to adopt conservation measures on the basis of the best evidence available [sub-paragraph (1)] and also to prohibit them from avoiding the obligations to adopt conservation measures merely because conclusive scientific findings are not yet available [sub-paragraph (4)].

2. The sort of flexibility described above does not mean that conservation measures may be determined in an arbitrary manner. Yet, certain biological data may be interpreted in different ways, making it difficult for the parties concerned to reach agreement on specific measures to be adopted. Thus, for the purpose of facilitating agreement, the

new regime will establish a rule of third party assessment and will encourage the growth of regional institutions which will assume the function of such assessment [sub-pargraph (1)].

3. Conservation is essentially a biological concept, the object of which is fishery resources, and therefore is indifferent to the nationality of fishermen. In this respect, conservation is distinct from the concept of protection of coastal fisheries, which is dealt with under Part II. Thus, conservation measures must be based primarily on the principle of non-discrimination, i.e., the burden-sharing of conservation should be effected in such a way as not to discriminate the fishermen of one State (e.g. a non-coastal State or a new-comer State) against those of other States (e.g. coastal States or traditional fishing States). This is only logical because over-fishing (or under-utilization) may be brought about by any State. Derogation from this principle of non-discrimination shall be permitted for coastal States only in cases where it is specifically authorized under the present regime [sub-paragraph (2)].

4. Although it is desirable for all conservation measures to be adopted on the basis of the quantitatively estimated allowable catch of the stocks of fish concerned, the paucity of data often makes it impossible to estimate the allowable catch with any accuracy at all, particularly with respect to newly-developed or under-utilized stocks. Thus, a rigidly quantitative approach to conservation will prevent the parties concerned in many cases from finding practical solutions. Difficulties establishing the allowable catch should not hinder the application of conservation measures (e.g. protection of spawning grounds, regulation of fishing gears) when and if the need for such action is recognized [sub-paragraph (3)].

5. Some conservation measures (e.g. prohibition of the use of a certain type of gears) may seriously affect the fishing activities relating to these stocks which are not covered by

the adopted measures when such activities are conducted in the water to which the adopted measures will apply. Although it may be sometimes impossible to devise measures which will have no restrictive effects on unrelated fishing activities, it is considered desirable to incorporate in the present regime the principle that the parties concerned should make best efforts to minimize such secondary effects (sub-paragraph (5)).

3.4 Special status of coastal States

(1) It is recognized that a coastal State has a special status with respect to the conservation of fishery resources in the adjacent waters. Such special status consists of :

(a) the obligation of the coastal State to take necessary measures, in co-operation with non-coastal State, with a view to maintaining the productivity of fishery resources in the adjacent waters on an appropriate level with effective utilization of such resources ; and

(b) the rights provided for in sub-paragraphs (2) and (3) below in order to enable the coastal State to carry out effectively the foregoing obligation.

(2) A coastal State has the right to participate on an equal footing in any survey for conservation purposes concerning a stock or stocks of fish in the adjacent waters, whether or not nationals of that coastal State are engaged in fishing the particular stocks concerned. Non-coastal States shall, at the request of the coastal State, make available to the coastal State the findings of their surveys and research concerning such stocks.

(3) Except for such cases as specifically authorized under Part IV, paragraphs 4.1 and 4.2, no conservation measure may be adopted with respect to any stock of fish without the consent of the coastal State nationals of which are engaged in fishing the particular stock concerned (or

majority of the coastal States in cases where there are two or more such coastal States).

(4) The provisions of the foregoing sub-paragraphs shall not apply to the fishing of highly migratory stocks which may be substantially exploited outside the adjacent waters.[4]

Commentary

1. The present regime recognizes a special status of coastal States with respect to the conservation of fishery resources in their adjacent waters. The status has two aspects: general responsibilities to take necessary conservation measures in co-operation with non-coastal States and certain rights to carry out such responsibilities. Such status is derived from the general recognition that the relative proximity enjoyed by coastal States with respect to fishery resources in their adjacent waters enables them, on the one hand, to have better knowledge of the conditions of these resources to which they have easy access and, on the other hand, makes them particularly vulnerable to the productivity of those resources on which their coastal fisheries must depend. (This of course does not mean that all coastal States actually have better knowledge of and are more vulnerable to, the conditions of fishery resources in their adjacent waters than non-coastal States.) It must be pointed out in this condition that the special status is conferred on coastal States not only to safeguard the interests of their coastal fisheries but also to realize the most effective utilization of fishery resources by all the States concerned.

2. In relation to the special status of a coastal State, it is not considered appropriate to define the outer limit of "the adjacent waters" in terms of a specific distance from the coast since the special status should be recognized not in respect of "areas" but in respect of "resources." The migratory range of fish varies from one stock to another. It

4. See paragraph 5 of the Commentary to Part II, paragraph 2.2 of the text.

would therefore be meaningless to establish any arbitrary definition, which would ignore the basic characteristics of fishery resources.

3. The concept of the special status of coastal States adopted under the present regime is an amplification of a similar idea underlying the provisions contained in Article 6 of the Geneva Convention.

3.5 Exemptions of coastal States from the application of conservation measures

Notwithstanding the obligation under sub-paragraph (1) of paragraph 3.4, a coastal State may be exempted from applying conservation measures in cases where the effects of its catch on such measures are considered negligible.

Commentary

Although in principle coastal States are under the general obligation to share the burden of conservation with non-coastal States, it is considered appropriate for the new regime to include a rule which will exempt a coastal State from this burden-sharing if the catch of that coastal State is so small as to give only negligible effects on the conservation measures to be adopted. Exemptions of this kind are practised in some of the existing regional arrangements and would be of use particularly to small-scale coastal fisheries of developing countries which may find certain conservation measures to be too onerous.

PART IV: OTHER PROVISIONS

4.1 Interim Measures

If the States concerned have failed to reach agreement within [six] months on measures concerning preferential catch under paragraph 2.2 or on arrangements concerning conservation measures under paragraph 3.2, any of the said States may initiate the procedure for the settlement of disputes in paragraph 4.2. In such a case, the States concerned shall

adopt the interim measures set forth below until such time as the said procedure is completed. Such interim measures shall in no way prejudice the respective position of the States concerned with respect to the dispute in question.

(a) Each State shall take necessary measures to ensure that its catch of the stock concerned will not exceed on an annual basis its average annual catch of the preceding [five] year period.

(b) In cases where particular fishing grounds, fishing gears or fishing seasons are in dispute in connection with the implementation measures for the preferential catch of a coastal State, the non-coastal States concerned shall, except under sub-paragraph (c) below, adopt the latest proposal of the coastal State with respect to the matter in dispute.

(c) A non-coastal State shall be exempted from the application of the preceding sub-paragraph if the adoption of the proposal of the coastal State would seriously effect either its catch permitted under sub-paragraph (a) above or its catch of some other stock which it is substantially exploiting. In such a case, that non-coastal State shall take all possible measures which it considers appropriate for the protection of the coastal fisheries concerned.

(d) Each State shall inform the special commission established in accordance with paragraph 4.2 and all other States concerned of the specific interim measures it has taken in accordance with any of the preceding sub-paragraphs.

Commentary

1. It is necessary for the new regime to provide for rules which will be applicable to the fishing activities of the States concerned in the interim period during which the procedure for the settlement of disputes in paragraph 4.2 is

invoked. The Geneva Convention adopted the rule according to which coastal States have the right to take unilateral measures which shall be valid as to other States if such measures fulfil certain requirements. The U.S. draft articles submitted to the United Nations Sea-Bed Committee (document A/AC. 138/SC. II/L.4) seem to adopt the same rule.[5] Yet, such a rule, which may be called the rule of unilateral application, creates so many legal and other problems as to make it inoperative for all practical purposes.[6] The present paragraph, therefore, takes a different approach to the question of interim measures and provides for a set of rules as distinct from the rule of unilateral application.

2. The basic rule to be followed by the States concerned during the interim period is to limit their catch to a specific level, regardless of the nature of the dispute (sub-paragraph (a)). The primary objective of this rule is to protect the fishery resources concerned until the dispute is settled by maintaining a *status quo* concerning the fishing activities of the individual States. When the dispute relates to certain regulatory measures (i.e. closed areas, regulation of fishing gears, closed seasons) to be applied to non-coastal States for the purpose of protection, the non-coastal States must adopt, on a temporary basis, the relevant proposals of the coastal State (sub-paragraph (b)). Non-coastal States will be exempted from this additional obligation under specific circumstances, but they still have to take voluntary measures for the protection of the coastal fisheries concerned (sub-paragraph (c)). If the coastal State considers such voluntary measures to be inadequate as interim measures, it may seek under paragraph 4.2 provisional measures to be determined by the special commission.

3. The interim measures described above are designed

5. See Article III, paragraphs 3 and 4.
6. Note that the relevant provisions of the Geneva Convention (Article 7) have never been invoked in practice.

to bring about during the interim period a situation which would be as equitable as possible to the parties concerned whose interests and claims are in conflict with each other.

4.2 Procedure for the settlement of disputes

Any dispute which may arise between States under the present regime shall be referred to a special commission of five members in accordance with the following procedure, unless the parties concerned agree to settle the dispute by some other method provided for in Article 33 of the Charter of the United Nations :[7]

(a) Not more than two members may be named from among nationals of the parties, one each from among nationals of the coastal and the non-coastal States respectively.

(b) Decisions of the special commission shall be by majority vote and shall be binding upon the parties.

(c) The special commission shall render its decision within a period of six months from the time it is constituted.

(d) Notwithstanding the interim measures taken by the parties under paragraph 4.1, the special commission may, at the request of any of the parties or at its own initiative, decide on provisional measures to be applied if the commission deems necessary. The commission shall render its final decision within a further period of six months from its decision on such provisional measures.

Commentary

1. The present regime provides for a procedure for the settlement of disputes by arbitration without prejudice to the use of any other method of settlement by agreement among the parties concerned. Such a procedure, which is similar to the one adopted by the Geneva Convention in its Articles

7 Sub-paragraphs 5 A, C and F of Article III, paragraph 7 of the U.S. draft articles (document A/AC 138/SC.II/L. 4) may also be adopted for the purposes of the present regime.

9-11, is essential to any general regime concerning fisheries of the high seas if it is to be both effective and equitable.

2. The suggested modifications to the U.S. draft articles are based on the following considerations :

(i) A special commission should not become unwieldly large by allowing the participation without vote of nationals named by any of the parties to the dispute ;

(ii) Instead of adopting the rule of unilateral application of disputed measures by coastal States and empowering the special commission to suspend their application, it is considered more equitable to establish a set of interim measures and make such measures subject to whatever provisional measures to be determined by the commission.

(iii) The special commission should in any case make its decision within a fixed period of time. If the commission thinks that more time is required to render the final decision, it should decide on provisional measures (e.g. extension of the interim measures in force).

4.3 Enforcement of regulatory measures

(i) Right of control by coastal States

With respect to regulatory measures adopted pursuant to the present regime, these coastal States which are entitled to the preferential fishing rights and/or the special states with respect to conservation have the right to control the fishing activities in their respective adjacent waters. In the exercise of such right, the coastal States may inspect vessels of non-coastal States and arrest vessels of non-coastal States violating the regulatory measures. The arrested vessels shall be promptly delivered to the duly authorized officials of the flag States concerned. The coastal States may not refuse the participation of non-coastal States in control, including

boarding of officials of non-coastal States on their petrol vessels at the request of the latter States. Details of control measures shall be agreed upon among the parties concerned.

(*J*) *Jurisdiction*

(a) Each State shall make it an offence for its nationals to violate any regulatory measure adopted pursuant to the present regime.

(b) Nationals of a vessel violating the regulatory measures in force shall be duly punished by the flag States concerned.

(c) Reports prepared by the officials of a coastal State on the offence committed by a vessel of a non-coastal State shall be fully respected by that non-coastal State which shall inform the coastal State of the action taken or the reasons for not taking any action if that is the case.

Commentary

1. Under the present regime no State or group of States has the exclusive right to enforce regulatory measures adopted in connection with the preferential fishing rights or the special status of coastal States. Accordingly, the coastal States concerned have the right to control the fishing activities of non-coastal States in their adjacent waters, but they must accept joint control with non-coastal States which wish to co-operate with the coastal States in the enforcement of the regulatory measures. The recognition of such right of coastal States seems appropriate in view of their legitimate interests in the orderly enforcement of the regulatory measures. The regulatory measures referred to in this paragraph include interim measures under paragraph 4.1 and provisional measures under paragraph 4.2.

2. In view of the legal status of the high seas, which

include the adjacent waters, each State must reserve to itself criminal jurisdiction over its vessels violating the regulatory measures adopted under the present regime. Flag State jurisdiction, however, is often suspected by coastal States as tantamount to loose enforcement. In order to secure strict enforcement of regulatory measures and to remove the concern of coastal States, it is considered necessary to establish rules accordingly to which any violation will be duly punished by the flag State and the coastal State concerned will be informed by the flag State of its action.

4.4 Co-operation with developing States

For the purpose of promoting the development of fishing industries and the domestic consumption and exports of fishery products of developing States, including land-locked States, developed non-coastal States shall co-operate with developing States with every possible means in such fields as survey of fishery resources, expansion of fishing capacity, construction of storage and processing facilities and improvements in marketing systems.

Commentary

Few developing coastal States will be in a position in the near future to take full advantage of the preferential fishing rights recognized under the present regime. The same can be said with respect to developing land-locked States, which presently have little capacity to benefit from better and more equitable utilization of fishery resources of the high seas to be achieved by the present regime. Developing countries in general are in need of assistance and co-operation from developed countries (and international organization) in order to expand and modernise their fishing and other related industries. Although it is not possible for any general regime concerning fisheries of the high seas to deal with this equation in a specific manner, it is considered clearly desirable to establish the principle which will encourage and promote internal co-operation in the field of

fisheries and in other related fields either in the form of private investment (e.g. joint ventures) or financial and technical assistance on a government-to-government basis.[8]

4.5 Regional fisheries commissions

Co-operation between coastal and non-coastal States under the present regime shall be carried out, as far as possible, through regional fisheries commissions. For this purpose, the States concerned shall endeavour to strengthen the existing commissions and shall co-operate in establishing new commissions whenever desirable and feasible.

Commentary

The present regime envisages a network of international arrangements for the protection of coastal fisheries and the conservation of fishery resources. Coordination and harmonisation of these arrangements can best be achieved in the established forums of regional fisheries commissions. Isolated arrangements on an ad hoc basis may create conflicting situations and will hinder the development of effective international programmes for conservation and protection. As already pointed out in relation to the general provisions contained in paragraph 1.2, rules under the present regime may not always be consistent with the commission. Even in such a case, however, member States will not be prevented from making use of the data and other information available in the commission in order to negotiate specific regulatory measures which are independent of the activities of the commission but are not contradictory to them.

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8. Note in this connection that the Second Geneva Conference on the Law of the Sea adopted Resolution II with a similar objective

(II) WORKING PAPER ON "THE EXCLUSIVE ZONE CONCEPT" PREPARED BY THE GOVERNMENT OF KENYA AS MEMBER OF THE WORKING GROUP ON THE LAW OF THE SEA

As is already well known, the 1958 and 1960 Geneva Law of the Sea Conference failed to resolve the limit of the territorial waters. As of today there is a wide variation of territorial sea claims ranging from 3 miles to 200 miles. The diversity of claims is clearly brought out in the table* below:

Territorial Claims 1960 and 1970

Breadth in miles	3	4	5	6	9	10	12	18	25	50 km	130	200	Archi-pelago
1960	26	4	1	10	1	1	13		1	1		1	2
1970	28	4		12		1	48	1	1	1		7	2

The major characteristics of the territorial sea is that the coastal State has complete jurisdiction over its territorial sea with the one exception i.e. the right of "innocent passage" of other nations' ships therein. As defined in the 1958 Territorial Sea Convention "... Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State". Above all no foreign vessels may engage in fishery activities within the territorial sea.

For major maritime powers with large fleets of naval, commercial or fishery ships their interest is to keep this zone of coastal State jurisdiction to the minimum, for beyond territorial sea is high seas, in which the so-called "freedom of

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*The source of this table is a paper presented by Dr. E.D. Brown at the Sixth Session of the Law of the Sea Institute at Rhode Island in summer 1971.

the high seas" reigns supreme. Of these the most celebrated are :—

1. freedom of navigation ;
2. freedom of fishing ;
3. freedom to lay submarine cables and pipelines ; and
4. freedom to fly over the high seas.

Conversely, for developing countries with hardly any navies except for coastal defence, and few if any ocean going commercial vessels and fledgling fishing fleets, their interest lies in a broad belt of territorial sea where they would be spared from cut-throat competition, particularly from sophisticated fishing fleets of distant-water fisheries, mainly from the developed countries. That is why many developing States, particularly in Latin America, have resorted to broad unilateral extension of their territorial waters. While so far it is only the Latins who have 'gone the whole hog' and extended their jurisdiction to 200 miles, there are numerous countries in Asia and Africa which have more than 12 miles territorial sea adhered to by a majority of States as shown in the table. Thus, Guinea has 130 miles, Gabon and Ghana 25 miles, Cameroun 18 miles etc. These extensions have been motivated primarily by economic and defence purposes.

As it is to be expected, most of the developed countries have strongly attacked any "unreasonable" extension of territorial waters stressing what they consider their vested interests in the freedoms of the high seas which would be detrimentially affected by such extensions. According to them anything beyond 12 miles would be unreasonable.

On the other hand, the majority of developing countries insist that the present regime of the high seas benefits only the developed countries who had laid down the law and it is harmful to their interests particularly in fishery. The answer, at least as far as the Latin Americans are concerned, is the

extension by the developing countries of territorial waters to 200 miles. It is this impasse which is sought to be overcome through the formulation and elaboration of the "Economic Zone Concept".

The idea of an exclusive economic zone was briefly discussed during the Colombo meeting of the Asian-African Legal Consultative Committee in January 1971 and at the Working Group meeting of AALCC at New Delhi in June 1971. Basically the purpose of the economic zone is to safeguard the economic interests of the coastal State in the area without interfering unduly with other States' legitimate interests, particularly in navigation and overflight and laying of submarine cables, i.e. in all aspects of international communication for which the sea is used.

On closer examination, the claims of 200-mile territorial sea by the Latin American countries do not really amount to full control over that zone except in the case of one or two countries. The great majority recognize the full right of navigation and overflight beyond a 12-mile zone. Even the minority who like Brazil insist on innocent passage in the whole of the 200 miles do not and cannot really enforce it. Consequently the economic zone concept would be the way out for them at the Conference though one suspects that, for tactical reasons, they would continue to insist on territorial sea of 200 miles, finally making their acceptance of the economic zone *provided* it exended to 200 miles, so as to look like a big compromise on their part.

The important aspect of the economic zone concept is of course its outer limits. The Kenya delegation at the July/August Session of the Preparatory Committee proposed a 200-mile zone, that being the maximum which any State could claim. Within that area, fishery and pollution control would be within the exclusive jurisdiction of the coastal State. As will be remembered, the 200-mile limit proposed by Kenya received considerable support from many delegations from

Africa, Asia and, of course, Latin America and in their statements they endorsed that limit. The 200-mile limit is not capricious, but it is motivated by the economic need not only for the present but over the forseeable future. At the time when many developing countries are investing in highly expensive fishing ships we must ensure that they should have sheltered area of sufficient width with least competition, particularly from factory ships to ensure that they are economically viable. Otherwise we may suffer the same fate as some countries whose modern fishing ships have been forced out by such competition. It should also be remembered that it will be wishful thinking to expect the Latin Americans to accept a roll-back of their present 200-mile claims.

The exclusive economic zone concept has been criticised particularly by the certain developed countries which claim that it will lead to loss of marine resources through under-utilization, most developing coastal States not having the means to exploit such a broad area. This claim is unfounded because the coastal State can enter into licensing arrangement with any State or fishing concern, under which they can continue fishing on payment of fees and royalties laid down. What of course they are opposed to is the additional expense involved in paying for licences and/or operating factory ships as far away from the coast as 200 miles away, but why should they get fish which have largely obtained their nourishment from the territorial seas of the coastal States for nothing ?

A more valid objection is that such a zone would make the position of developing land-locked States even more untenable for it would mean that if they wished to fish they would have to go beyond the 200 miles—a considerable expense for countries which among the developing countries are least developed. We consider that the best solution for land-locked countries, particularly in Africa, would be along the basis of regional arrangements, along the lines of the joint Kenya, Tanzania, Uganda and Zambia shipping line

which would enable these countries to engage in fishery within the economic zone of the neighbouring countries. Within the African Group this idea of regional multilateral and bilateral arrangements, not only for the land-locked countries but also for countries like the Republic of Zaire and adjoining Congo which have extremely narrow coasts was very well received. It would also suit countries like Sudan and Ethiopia, bordering on a relatively narrow sea. It is on these basis that the idea of an economic zone received enthusiastic endorsement by the African Group of the Preparatory Committee at Geneva.

Some objections raised by some developed countries were merely propagandistic and really bent on their continued expropriation of the resources of the sea. For instance, they argued that freight charges would go up, navigation would become more hazardous and some countries like Kenya, may find themselves buyers of licences instead of sellers as they claimed there is no fish off the cost of Eastern Africa—which is clearly nonsensical as they would otherwise not be as interested in fishing in the area as they seem to be. Navigation lanes would not be affected merely by extending jurisdiction for specific purposes unconnected with freedom of navigation.

There has also been some objections that the acceptance of an exclusive economic zone would lead to "creeping jurisdiction" whereby control might be extended to other areas—like navigation and defence. But as pointed out above, this need not be the case if the exclusive economic zone concept is well formulated at the Conference and given specific content.

Finally, it could be argued that the insistence on narrow territorial waters leaving a broad area of unrestricted high seas is, in effect, an argument for an economic zone for the benefit of developed countries. It is futile to insist on freedom of the high seas while in fact such freedom benefits

primarily the developed countries who have the means to effectively utilize such freedoms. Freedom of any kind is meaningful only if there is equality of opportunity to make use of it. Just as it is meaningless to talk of freedom of expression while doing nothing to ensure that the masses are literate, it is equally hypocritical to praise freedoms of the high seas when the great majority of nations have no means of enjoying those freedoms. In such a situation such freedom amounts to freedom to exploit others which is what is hoped to be curbed through the concept of an exclusive economic zone.

(III) PRELIMINARY DRAFT AND OUTLINE OF A CONVENTION ON THE SEA-BED AND THE OCEAN FLOOR AND THE SUB-SOIL THEREOF BEYOND NATIONAL JURISDICTION

Working Paper prepared by Mr. Christopher W. Pinto, (Sri Lanka) Rapporteur of the Sub-Committee on the Law of the Sea.

PREAMBLE

CHAPTER 1
THE INTERNATIONAL SEA-BED

Delimitation of the International Sea-bed

Article 1

The International Sea-bed shall comprise that area of the sea-bed and the ocean floor and the sub-soil thereof lying beyond the limits of national jurisdiction as hereinafter defined.*

Article 2

1. Every State shall notify the International Sea-bed Authority established pursuant to Article 20 of this Convention, of the limit of its national jurisdiction defined by co-ordinates of latitude and longitude and indicated on appropriate large scale maps officially recognised by that State.

2. The International Sea-bed Authority may take such steps as may be necessary, in collaboration with the notifying State, to review the contents of such notification.

3. The International Sea-bed Authority shall register

*The status of uninhabited or sparsely populated remote islands, and artificial islands to be considered.

and publish such notification in accordance with rules adopted by it for the purpose. (Such registration my be invoked by any State as evidence of the limits of its national jurisdiction).

Article 3

Where areas of national jurisdiction of two or more States are adjacent to or opposite each other, such States shall, by agreement, precisely delimit the boundary separating their respective national jurisdictions and inform the International Sea-bed Authority of such agreement. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the (seaward) limits of national jurisdiction are measured. If the States concerned agree, the International Sea-bed Authority shall assist them in concluding a satisfactory agreement with respect to the limits of their national jurisdictions.

Article 4

Nothing in this chapter shall affect the validity of any agreement or prejudice the decision of any State with respect to the delimitation of boundaries of sea-bed areas between opposite or adjacent States.

CHAPTER II

BASIC PRINCIPLES APPLICABLE TO THE INTERNATIONAL SEA-BED

Article 5

The International Sea-bed as well as its resources are the common heritage of mankind and shall, as such, be subject to the regime hereinafter set forth.

Article 6

The International Sea-bed shall not be subject to appropriation by any means by States or persons, natural or

juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof. No such appropriation, or claim or exercise of sovereignty or sovereign rights shall be recognized.

Article 7

No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the International Sea-bed or its resources except as provided in this Convention.

Article 8

The International Sea-bed shall be open to use, exclusively for peaceful purposes, by all States, whether coastal or land-locked, without discrimination in accordance with the provisions of this Convention.

Article 9

The International Sea-bed shall be reserved exclusively for peaceful purposes, and every effort shall be made to exclude it from the arms race.

Article 10

States shall act in the area in accordance with the applicable principles and rules of international law including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

Article 11

All activities regarding exploration and exploitation of the resources of the International Sea-bed, and other related activities, shall be governed by the provisions of this Convention.

Article 12

The exploration of the International Sea-bed and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

Article 13

1. In their activities with respect to the International Sea-bed including those related to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States which may be affected by such activities. Consultation shall be maintained with the coastal States concerned with respect to activities relating to the exploration of the International Sea-bed and the exploitation of its resources with a view to avoiding infringement of such rights and interests.

2. Resources of the International Sea-bed which lie across limits of national jurisdiction shall not be explored or exploited except in agreement with the coastal State or States concerned. Where such resources are located near the limits of national jurisdiction, their exploration and exploitation shall be carried out in consultation with the coastal State or States concerned, and where possible, through such State or States.

Article 14

1. With respect to activities in the International Sea-bed and acting in conformity with the provisions of this Convention, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures, for *inter alia* :

(i) the prevention of pollution and contamination, and other hazards to the marine environment, including

the coastline, and of interference with the ecological balance of the marine environment ;

(ii) the protection and conservation of the natural resources of the International Sea-bed and the prevention of damage to the flora and fauna of the marine environment.

2. Coastal States may take measures to prevent, mitigate or obviate grave and imminent danger to their coastlines or related interests from pollution or threat thereof or from other hazardous occurrences resulting from, or caused by, any activities with respect to the International Sea-bed.

Article 15

1. States shall promote international co-operation in scientific research exclusively for peaceful purposes :

(i) by participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries ;

(ii) through effective publication of research programmes and dissemination of the results of research through international channels;

(iii) by co-operating in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

2. No such activity shall form the legal basis for any claims with respect to any part of the International Sea-bed or its resources.

Article 16

Nothing herein shall affect the legal status of the waters superjacent to the International Sea-bed or that of the air space above those waters.

Article 17

1. All activities in the marine environment shall be conducted with reasonable regard for exploration of the International Sea-bed and exploitation of its resources.

2. Exploration of the International Sea-bed and exploitation of its resources shall not result in any unjustifiable interference with other activities in the marine environment.

3. All activities with respect to the International Sea-bed shall be conducted with strict and adequate safeguards for protection of human life and safety of the marine environment.

Article 18

1. Every State shall have the responsibility to ensure that activities with respect to the International Sea-bed, including those relating to its resources, whether undertaken by governmental agencies or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the provisions of this Convention. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

2. Accordingly, each Contracting Party shall :

(i) take appropriate measures to ensure that persons under its jurisdiction or acting on its behalf undertaking such activities comply with the provisions of this Convention ;

(ii) make it an offence for such persons to violate the provisions of this Convention and make such offences punishable in accordance with its administrative or judicial procedures ;

(iii) be responsible for maintaining order on manned installations and equipment operated by it or by such persons ;

(iv) be responsible for damage resulting from such activities to any other Contracting Party or its nationals.

3. Every State shall take appropriate measure to ensure that the responsibility provided for in paragraph 1 of this Article shall apply *mutatis mutandis* to international organizations of which it is a member.

4. A group of States acting together, pursuant to agreement among them or through an international organization, shall be jointly and severally responsible under this Convention.

Article 19

All disputes relating to the interpretation or application of this Convention shall be settled in accordance with the provisions of Chapter VII of this Convention.

CHAPTER III

THE INTERNATIONAL SEA-BED AUTHORITY AIMS AND FUNCTIONS

Section 1

Establishment and aims

Article 20

There is hereby established the International Sea-bed Authority (hereinafter called the Authority).

Article 21

1. The seat of the Authority shall be at.....The seat may be moved to another place by decision of the Assembly adopted by a majority of two-thirds of its members.

2. The Authority may establish such regional centres or offices as it deems necessary for the performance of its functions.

Article 22

The fundamental aims of the Authority shall be :

(i) to give effect to the provisions of Chapter I and to exercise such powers and perform such functions as may be necessary for the purpose ;

(ii) to provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof ;

(iii) to ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal ;

(iv) to take such measures as may be necessary to minimize fluctuations of prices of land minerals and raw materials that may result from the exploitation of the resources of the area and any adverse economic effects caused thereby ; and

(v) to perform such other functions and exercise such other powers as are conferred upon it by other provisions of this Convention or, consistent therewith, by agreement among Contracting Parties.

Section 2

Functions of the Authority

Article 23

The Authority is empowered :

(i) to explore the International Sea-bed and exploit its resources for peaceful purposes by means of its own facilities, equipment and services, or such as are procured by it for the purpose ;

(ii) to issue licences to Contracting Parties, individually or in groups, or to persons, natural or juridical, under its or their sponsorship with respect to all activities of exploration of the International Sea-bed and the exploitation of its resources for peaceful purposes, and related activities, subject to such terms and conditions, including the payment of appropriate fees and other charges, as the Authority may determine ;

(iii) to provide for the equitable sharing by Contracting Parties of raw materials obtained from the International Sea-bed, funds received from the sale thereof, and all revenues and other receipts, as well as scientific information and such other benefits as may be derived from the exploitation of the International Sea-bed and the exploitation of its resources ;

(iv) to establish or adopt in consultation, and where appropriate, in collaboration with the competent organ of the United Nations, and with the specialised agencies concerned, measures designed to minimize and eliminate fluctuation of prices of land minerals and raw materials that may result from the exploitation of the resources of the International Sea-bed, and any adverse economic effects caused thereby ;

(v) to reserve or open specific areas of the International Sea-bed for exploration or exploitation ;

(vi) to encourage, assist and regulate on the International Sea-bed, the development and practical application of scientific techniques for the exploration and exploitation of its resources, and to perform any operation or service useful in such research ;

(vii) to make provision in accordance with this Con-

vention for services, equipment and facilities to meet the needs of research on and development and practical application of scientific techniques for the exploration of the International Sea-bed and the exploitation of its resources for peaceful purposes ;

(viii) to foster the exchange of scientific and technical information and transfer of technology on the peaceful uses of the International Sea-bed and its resources ;

(ix) to promote and encourage the exchange and training of scientists and experts in the field of exploration of the sea-bed and the exploitation of its resources ;

(x) to establish and administer safeguards designed to ensure that materials, services, equipment, facilities and information made available by the Authority or at its request or under its supervision or control are not used in such a way as to further any military purpose ;

(xi) to establish and adopt, in consultation and where appropriate, in collaboration with the competent organ of the United Nations and with the specialised agencies concerned, rules and regulations relating to any aspect of the activities covered by this Convention, including standards of safety for protection of health and minimisation of danger to life and property, and the protection of the marine environment as a whole, and to provide for the application of these rules, regulations and standards to operations covered by this Convention ;

(xii) to acquire or establish any facilities, plant and equipment useful in the carrying out of its authorised functions ; and

(xiii) to take any other action necessary to give effect to the provisions of this Convention.

Article 24

In carrying out its functions, the Authority shall :

(i) conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international co-operation, and in conformity with policies of the United Nations furthering the establishment of safeguarded world-wide disarmament and in conformity with any international agreements entered into pursuant to such policies ;

(ii) submit reports on its activities annually to the General Assembly of the United Nations and, when appropriate, to the Security Council ; if in connection with the activities of the Authority there should arise questions that are within the competence of the Security Council, the Authority shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security ;

(iii) submit reports to the Economic and Social Council and other organs of the United Nations on matters within the competence of those organs.

Article 25

The Authority shall exercise jurisdiction over the International Sea-bed and its resources, for the purpose of performing its functions and giving effect to the provisions of this Convention.

Article 26

The Authority is based on the principle of the sovereign equality of all its members, and all members, in order to ensure to all of them the rights and benefits resulting from

membership, shall fulfil in good faith the obligations assumed by them in accordance with this Convention.

CHAPTER IV

ORGANS OF THE AUTHORITY

Section I

The Assembly

Article 27

The Assembly shall consist of representatives of all Contracting Parties and shall meet in regular [annual] session and in such special sessions as may be determined by the Assembly or convened by its Chairman or convened by the President of the Council at the request of the Council or of a majority of members of the Assembly. The sessions shall take place at the seat of the Authority unless otherwise determined by the Assembly.

Article 28

At such sessions, each Contracting Party shall have one representative who may be accompanied by alternates and by advisers. The cost of attendance of any delegation shall be borne by the member concerned.

Article 29

The Assembly shall elect a Chairman and such other officers as may be required at the beginning of each session. They shall hold office for the duration of the session. The Assembly shall, subject to the provisions of this Convention, adopt its own rules of procedure.

Article 30

1. Each Contracting Party shall have one vote. Decisions pursuant to Articles.....shall be made by a majority of two-thirds of the votes cast. Decisions on other questions, including the determination of additional questions

or categories of questions to be decided by a two-thirds majority, shall be made by a majority of the votes cast.

2. A majority of members shall constitute a quorum.

3. The Assembly may establish, by a majority of two-thirds of its members, a procedure whereby the Council may seek a vote of the Assembly without convening a meeting of the Assembly. The vote shall be considered valid only if the majority of the members of the Assembly cast their votes within the time fixed by the said procedure.

Article 31

The Assembly may discuss any questions or matters within the scope of this Convention or relating to the powers and functions of any organs provided for therein, and make recommendations to the members of the Authority, or to the Council, or to both on any such questions or matters.

Article 32

The Assembly shall be the supreme organ of the Authority and shall perform such functions and exercise such powers as are vested in the Authority under this Convention, including the power to :

(i) elect members of the Council in accordance with Article 33 ;

(ii) suspend a member from the privileges and rights of membership in accordance with Article.....;

(iii) consider the Annual Report of the Council ;

(iv) in accordance with Article 46 approve the budget of the Authority recommended by the Council ;

(v) make arrangements to co-operate with other international organisations (other than informal arrangements of a temporary and administrative character) ;

(vi) approve reports to be submitted to the United Nations pursuant to any arrangement entered into by the Authority pursuant to sub-paragraph (v) hereof ;

(vii) approve decisions of the Council relating to the reservation or opening of specific areas of the International Sea-bed for exploration or exploitation ;

(viii) approve rules and regulations relating to the issue of licences for the exploration of the International Sea-bed and the exploitation of its resources, including the payment of appropriate fees and other charges ; registration of limits of national jurisdiction ; protection of life and property and of the marine environment as a whole ; operational standards and practices ; design and construction standards ; scientific research and any other aspect of the activities covered by this Convention ;

(ix) approve measures designed to minimise and eliminate fluctuation of prices of land minerals and raw materials that may result from the exploitation of the resources of the International Sea-bed, and any adverse economic effects caused thereby ;

(x) approve the financial rules of the Authority, including rules relating to its borrowing powers and acceptance of voluntary contributions, and the manner in which the expenses of the Sea-bed Development Corporation provided for in Chapter V shall be borne ;

(xi) approve rules relating to the equitable sharing by States of benefits of the International Sea-bed and the exploitation of its resources taking into particular consideration the interest and needs of the developing countries, whether land-locked or coastal, in accordance with Chapter VI ;

(xii) approve amendments to this Convention in accordance with Chapter IX ;

Article 33

The Assembly shall have the authority :

(i) to take decisions on any matter specifically referred to the Assembly by the Council ;

(ii) to propose matters for consideration by the Council, and request from the Council reports on any matter relating to the functions of the Council ;

(iii) to determine the remuneration to be paid to the members of the Council, and the salary and terms of the contract of service of the President.

Section 2

The Council

Article 34

1. The Council shall be composed of 35 members as follows :

(a) The outgoing Council (or in the case of the first Council, the Preparatory Committee) shall designate for membership on the Council, the seven Contracting Parties most advanced in sea-bed technology, and the Contracting Party most advanced in sea-bed technology in each of the following areas not being one of the aforementioned seven :

(1) .....

(2) .....

(3) .....

(4) .....

(5) ..... (For negotiation)

(6) .....

(7) .....

(8) .....

(9) .....

(10) .....

(b) The Assembly shall elect to membership of the Council two members which have no sea coast and two members the total area of whose continental shelf at a depth of 200 metres or less is..... ;

(c) The Assembly shall elect to membership of the Council other members, with due regard to equitable representation on the Council as a whole of the areas specified in sub-paragraph (a) of this paragraph so that the Council shall at all times include in this category a representative of each of those areas except North America.

Except for the seven members chosen in accordance with paragraph 3(b) of this Article, no members in this category shall be eligible for re-election for the following term of office.

2. The designations provided for in sub-paragraph 1(a) of this Article shall take place not less than 60 days before each regular session of the Assembly. The elections provided for in sub-paragraphs 1(b) and 1(c) of this Article shall take place at regular sessions of the Assembly.

3. (a) Designated members of the Council shall hold office from the next regular session of the Assembly after their designation until the end of the following regular session of the Assembly.

(b) Elected members of the Council shall hold office from the end of the regular session of the Assembly at which they are elected until the end of the second regular session of the Assembly thereafter. In the election of these members for the first Council, however, seven shall be chosen for a term of one year.

4. Each member of the Council shall have one vote. Decisions on the amount of the Authority's budget shall be made by a two-thirds majority of those present and voting. Decisions on other questions, including the determination of additional questions or categories, of questions to be decided by a two-thirds majority, shall be made by a majority of those present and voting. Two-thirds of the members of the Council shall constitute a quorum.

Article 35

1. Each member of the Council shall appoint an alternate with full powers to act for him when he is not present. An alternate may participate in meetings, but shall not vote.

2. The Council shall function in continuous session at the seat of the Authority, and shall meet as often as the business of the Authority may require.

3. A quorum for any meeting of the Council shall be a majority of its members.

Article 36

1. The Council shall carry out the functions of the Authority in accordance with this Convention, subject to its responsibilities to the Assembly.

2. The Council may appoint such committees as it deems desirable. Membership of such committees need not be limited to members of the Assembly or of the Council or their alternates.

3. The Council shall prepare an annual report to the Assembly concerning the affairs of the Authority and any projects approved by the Authority. The Council shall also prepare for submission to the Assembly such reports as the Authority may be required to make to the United Nations or to any other organisation the work of which is related to that of the Authority. These reports, together with the annual reports, shall be submitted to all members of the Authority at least

one month before the regular session of the Assembly at which they are to be considered.

4. The Assembly shall adopt regulations under which a Contracting Party not represented on the Council may send a representative to attend any meeting of the Council when a request is made by, or a matter particularly affecting that member is under consideration.

5. The Council may, to the extent authorised by the Assembly, adopt such rules and regulations as may be necessary or appropriate for the efficient performance of the functions of the Authority and the conduct of its business including rules and regulations relating to all matters specified in Article 23 of this Convention.

Section 3

The President and Staff

Article 37

1. The Council shall select a President who shall not be a member of the Assembly or of the Council or an alternate for either. The President shall be Chairman of the Council, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Assembly, but shall not vote at such meetings. The President shall cease to hold office when the Council so decides.

2. The President shall be chief of the operating staff of the Authority and shall conduct, under the direction of the Council, the ordinary business of the Authority. Subject to the general control of the Council, he shall be reasonable for the organization, appointment and dismissal of officers and staff.

3. The staff shall include such qualified scientific and technical and other personnel as may be required to fulfil the objectives and functions of the Authority. The Authority

shall be guided by the principle that its permanent staff shall be kept to a minimum.

4. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be to secure employees of the highest standards of efficiency, technical competence and integrity. Subject to this consideration, due regard shall be paid to the contributions of members of the Authority and to the importance of recruiting the staff on as wide a geographical basis as possible.

5. The terms and conditions on which the staff shall be appointed, remunerated and dismissed shall be in accordance with regulations made by the Council, subject to the provisions of this Convention and to general rules approved by the Assembly on the recommendation of the Council.

6. In the performance of their duties, the President and the staff shall not seek or receive instructions from any source external to the Authority. They shall refrain from any action which might reflect on their position as officials of the Authority; subject to their responsibilities to the Authority, they shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Authority. Each Contracting Party undertakes to respect the international character of the responsibilities of the President and the staff and shall not seek to influence them in the discharge of their duties.

Article 38

1. The International Sea-bed Authority shall, as necessary, establish a staff of inspectors. The staff of the inspectors shall have the responsibility of examining all operations conducted within the International Sea-bed to determine whether an operator is complying with the rules and regulations established by the Authority pursuant to this Convention.

2. Under the direction of the Council, the inspectors shall also have the responsibility of verifying compliance with any provision of this Convention, or any undertaking given by an operator thereunder, and with all other conditions prescribed in any agreement to which the Authority is a party.

3. The inspectors shall report any non-compliance to the Economic and Technical Commission established pursuant to Section 4 of this Chapter which, in cases of urgency, shall immediately notify the President of the Council. The President shall bring the matter to the notice of the Council which may call upon the State or States concerned to remedy forthwith any non-compliance which it finds to have occurred.

4. The Council may report the non-compliance to all Contracting Parties and to the Security Council and the General Assembly of the United Nations.

5. In the event of a failure of a State to take fully corrective action within a reasonable time, the Council may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Authority to a Contracting Party and call for return of any materials and equipment made available to the Contracting Party or Parties. The Assembly may also, in accordance with Article.....suspend any non-complying member from the exercise of the privileges and rights of membership.

Article 39

1. The Council may send into the territory of a Contracting Party, and into the International Sea-bed area and any installation established therein, inspectors designated by the Authority after consultation with the Contracting Party or Parties concerned. The inspectors shall have access at all times to all places and data and to any person who, by reason of his occupation deals with materials, equipment or facilities relating to any activity in respect of which a licence

has been issued pursuant to this Convention, and to any books of account and records kept with respect to such activity.

2. Inspectors designated by the Authority shall be accompanied by representatives of the Contracting Party concerned, if such Party so requests, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

Section 4

The Economic and Technical Commission

Article 40

1. The Economic and Technical Commission shall be composed of fifteen members designated by the Council with due regard to equitable representation on the Commission as a whole of the areas specified in sub-paragraph (a) of paragraph 1 of Article 33, and of the categories of States specified in sub-paragraph (b) of that Article so that the Commission shall at all times include a representative of each of those areas and categories. The Council shall invite all Contracting Parties to submit nominations for designations to the Commission.

2. Designations to the Commission shall take place not less than sixty days before the end of a calendar year and members of the Commission shall hold office from the commencement of the next calendar year following their designations until the end of the second calendar year thereafter. The first designations to a Commission, however, shall take effect sixty days after such designation, and those so designated shall hold office until the end of the calendar year next following the year of their designation.

3. The Commission shall elect its Chairman.

4. The Council shall approve such rules and regulations as may be necessary for the efficient conduct of the

functions of the Commission. Decisions shall be by a majority of members of the Commission.

5. Members of the Commission shall serve in their individual capacity and shall receive regular remuneration as the Council from time to time determine.

6. Members of the Commission shall be appropriately qualified in the management of sea-bed resources, and operation of marine installations, equipment and devices, ocean sciences, maritime safety, ocean and marine engineering and mining and mineral technology and practices. They shall also be persons of high moral character who may be relied upon to exercise independent judgment.

7. The Commission shall function in continuous session at the seat of the Authority, and shall meet as often as shall be required for the efficient performance of its functions.

8. The Commission may establish sub-commissions as it deems desirable for the purpose of dealing with specific subjects, or the performance of specific functions assigned to it under this Convention.

Article 41

1. The Commission shall :

(i) issue, revoke, suspend or modify licences for exploration and exploitation of the International Sea-bed ;

(ii) supervise the operations of a licencee in co-operation with the licencee, its State and any coastal State concerned ;

(iii) perform such functions with respect to disputes between Contracting Parties as are specified in Chapter VIII.

(iv) formulate and submit to the Council all such rules, regulations, measures and practices as are contemplated in paragraphs (vii)—(xi) of Article 31.

Such rules, regulations, measures and practices shall come into force for all Contracting Parties upon their recommendation by the Council and approved by the Assembly by a two-thirds majority ;

(v) arrange for and review the collection of international fees and other forms of payment ;

(vi) issue deep-drilling permits ;

(vii) keep currently under review the supply and demand for, and the prices of, raw materials obtained from the International Sea-bed and from land sources and make recommendations to the Council regarding pricing and marketing of sea-bed raw materials, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal ;

(viii) make recommendations to the Council with respect to the promotion of international co-operation in scientific research on and development and practical application of scientific techniques for the exploration of the International Sea-bed and the exploitation of its resources, as well as the transfer of technology to the developing countries ;

(ix) survey the International Sea-bed with a view to establishing a long-term plan for its exploration and exploitation of its resources in a safe and orderly manner, and submit its plans to the Council from time to time, making scientific recommendations regarding portions of the International Sea-bed that may be opened for exploration and exploitation, and portions thereof that may be reserved to the Authority ; and

(x) advise the Council in the exercise of its functions, and make such special studies and reports as may be requested by the Council from time to time.

Section 5

The Tribunal

Article 42

1. There is hereby established, as the permanent judicial organ of the Authority, a Tribunal of fifteen persons, lawyers of the highest distinction, competent in matters within the scope of this Convention, who may be relied upon to exercise independent judgment.

2. The Assembly shall elect members of the Tribunal from among candidates nominated by Contracting Parties. They shall hold office for five years, and may be re-elected. In electing members of the Tribunal, the Assembly shall pay due regard to the importance of assuring representation on the Tribunal of the principal legal systems of the world.

3. The Tribunal shall establish its rules of procedure, elect its President, appoint a Registrar and such staff as may be necessary for the efficient discharge of its functions. The salaries and emoluments and terms of service of members of the Tribunal, and of the Registrar and staff of the Tribunal shall be determined by the Council.

4. A member of the Tribunal, after expiry of his term of office, shall continue to perform his functions as such in relation to any cases proceedings in respect of which were substantially advanced prior to the date of such expiry.

5. A member of the Tribunal may be removed from office by the Council on the unanimous recommendation of the other members of the Tribunal.

6. Upon the occurrence of a vacancy in the Tribunal, the Council shall elect a successor who shall hold office for the remainder of his predecessor's term.

Article 43

The Tribunal shall be responsible for settling disputes relating to the interpretation and application of this

Convention, which have been submitted to it in accordance with the provisions of Chapter VIII of this Convention.

Article 44

Subject to an authorisation under Article 96 of the Charter of the United Nations, the Tribunal may request of the International Court of Justice advisory opinions on legal questions arising within the scope of its activities.

Article 45

Nothing in this Section shall prevent Contracting Parties from settling their disputes by any other means prescribed by Chapter VIII of this Convention.

Section 6

Finance

Article 46

1. With a view to promoting and intensifying exploration of the International Sea-bed and the exploitation of its resources for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries, each coastal State in respect of which an apportionment index below..... has been specified in the scale of apportionment approved by the Assembly pursuant to Section 4 of Chapter VI shall pay to the Authority for credit to a Sea-bed Development Fund, a sum equivalent to.....per cent of the net income derived by that State from all exploitation of the resources of the sea-bed and the ocean floor and the sub-soil thereof lying within its national jurisdiction. States may make voluntary contributions to the Sea-bed Development Fund.

2. Payments to the Authority, pursuant to paragraph 1 of this Article and disbursements from the Fund shall be made in such manner and in such currencies as shall be determined from time to time by the Assembly on the recommendation of the Council.

3. Each coastal State shall report annually to the International Sea-bed Authority concerning the nature and extent of the exploitation of the resources of the sea-bed and the ocean floor and the sub-soil thereof lying within its national jurisdiction.

Article 47

1. The Council shall submit to the Assembly the annual budget estimates for the expenses of the Authority. If the Assembly does not approve the estimates, it shall return them, together with its recommendations, to the Council. The Council shall then submit further estimates to the Assembly for its approval.

2. Expenditures of the Authority shall comprise :

(a) administrative expenses, which shall include costs of the staff of the Authority, costs of meetings, and expenditure on account of the functioning of the organs of the Authority ;

(b) expenses not included in the foregoing, incurred by the Authority in carrying out its functions provided for in sub-paragraphs (ii) - (xii) of Article 23; and

(c) the expenditure of the Sea-bed Development Corporation, to the extent that it cannot be met out of the Corporation's own revenues and other receipts.

3. The expenses referred to in paragraph 2 of this Article shall be met to an extent to be determined by the Assembly on the recommendation of the Council, out of the Sea-bed Development Fund, the balance of such expenses to be apportioned by the Council among the matters in accordance with a scale to be fixed by the Assembly. In fixing the scale the Assembly shall be guided by the scale of apportionment approved by it pursuant to Section 4 of Chapter VI of this Convention.

Article 48

1. Any excess of revenues from licence fees, and other receipts from operators, over expenses and costs shall be credited to a general fund as the Council may determine.

2. The Sea-bed Development Corporation established pursuant to Chapter V of this Convention shall pay to the Authority for credit to the general fund, any excess of its revenues over expenses and costs incurred in the course of its operations. States may make voluntary contributions to the general fund.

3. Determination and payments of amounts to the Authority pursuant to paragraph 2 of this Article shall be in accordance with arrangements entered into between the Council and the Sea-bed Development Corporation and approved by the Assembly, or between the Council and the State making a voluntary contribution, as the case may be.

4. The general fund shall be dealt with and utilised in accordance with Section 4 of Chapter VI of this Convention.

Article 49

Subject to rules and limitations approved by the Assembly, the Council may exercise borrowing powers on behalf of the Authority without, however, imposing on members of the Authority any liability in respect of loans entered into pursuant to this paragraph, and to accept voluntary contributions made to the Authority.

Article 50

Decisions of the Assembly on financial questions and of the Council on the amount of the Authority's budget, shall require a two-thirds majority of those present and voting.

Section 7

Status, immunities and privileges

Article 51

The Authority shall have full international legal perso-

nality. The legal capacity of the Authority shall include the capacity :

(a) to contract ;

(b) to acquire and dispose of movable and immovable property ; and

(c) to institute legal proceedings.

Article 52

To enable the Authority to fulfil its functions it shall enjoy in the territory of each Contracting Party the immunities and privileges set forth in this section.

Article 53

The Authority, its property and assets, shall enjoy in the territory of each Contracting Party, immunity from legal process, except when the Authority waives its immunity.

Article 54

The property and assets of the Authority, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Article 55

To the extent necessary to carry out the operations provided for in this Convention, and subject to the provisions of this Convention, all property and assets of the Authority shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 56

The Chairman and members of the Assembly, the President and members of the Council, members of the Economic and Technical Commission, and members of the Tribunal, and the officers and staff of the Authority, shall enjoy in the territory of each member State :

(a) Immunity from legal process with respect to acts

performed by them in the exercise of their functions except when the Authority waives this immunity;

(b) Not being local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting Parties to the representatives, officials and employees of comparable rank of other Contracting Parties.

Article 57

The provisions of the preceding Article shall apply to persons appearing in proceedings before the Tribunal as parties, agents, counsel, advocates, witnesses or experts ; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 58

1. The archives of the Authority shall be inviolable, wherever they may be.

2. With regard to its official communications, the Authority shall be accorded by each Contracting Party treatment no less favourable than that accorded to other international organisations.

Article 59

1. The Authority, its assets, property and income, and its operations and transactions authorised by this Convention, shall be exempt from all taxation and customs duties. The Authority shall also be exempt from liability for the collection or payment of any taxes or customs duties.

2. Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Authority to the Chairman or members of the Assembly,

or in respect of salaries, expense allowances or other emoluments paid by the Authority to the President and members of the Council, members of the Tribunal, members of any Commission established by the Authority and the officers and staff of the Authority.

Section 8

Relationship with other organizations

Article 60

The Council, with the approval of the Assembly, is authorised to enter into an agreement or agreements establishing an appropriate relationship between the Authority and the United Nations and any other organisations, the work of which is related to that of the Authority.

Article 61

The agreement or agreements establishing the relationship between the Authority and the United Nations shall provide for :

(a) Submission by the Authority of reports as provided for in sub-paragraphs (ii) and (iii) of Article 24 ;

(b) Consideration by the Authority of resolutions relating to it, adopted by the General Assembly or any of the Councils of the United Nations, and the submission of reports, when requested, to the appropriate organ of the United Nations on the action taken by the Authority or by its members in accordance with this Convention as a result of such consideration.

CHAPTER V
THE SEA-BED DEVELOPMENT CORPORATION

Article 62

1. There is hereby established the Sea-bed Development Corporation (the Corporation).

2. The Corporation shall have an international legal personality distinct from the Authority and such legal capacity as may be necessary for the performance of its functions and the fulfilment of its purposes. The Corporation shall function in accordance with the Statute set forth in Annex I to this Convention, and shall in all respects be governed by the provisions of this Convention.

3. The President of the Council shall *ex officio* be President of the Corporation.

4. The President shall have its principal place of business at the seat of the Authority.

Article 63

All Contracting Parties are *ipso facto* parties to the Statute of the Corporation.

Article 64

Subject to the general policies and supervision of the Authority :

(i) The Corporation shall be responsible for the preparation and execution of projects for the exploration of the International Sea-bed and the exploitation of its resources, in implementation of sub-paragraph (i) of Article 23 of this Convention (Corporation Projects) ;

(ii) The Corporation may enter into arrangements with one or more Contracting Parties or with one or more nationals of Contracting Parties acting with the consent and under the sponsorship of such Contracting Parties, for the establishment of joint projects for exploration of the International Sea-bed or the exploitation of its resources (Joint Projects) ;

(iii) All projects of the Corporation shall be subject to approval by the Council, and supervision by the Economic and Technical Commission.

Article 65

1. In relation to portions of the International Sea-bed that are open for exploration and exploitation, Corporation Projects and Joint Projects shall not be accorded treatment in the matter of exploration licences, exploitation licences, exploitation rights, work requirements and other terms and conditions more favourable than any other projects for exploration of the International Sea-bed and the exploitation of its resources ; provided, however, that the Council may in its discretion waive international fees and other forms of payment with respect to Corporation Projects.

2. The Corporation shall make arrangements for marketing of any raw materials recovered through Corporation Projects and Joint Projects.

3. The Corporation shall make arrangements to ensure that any raw materials recovered through Corporation Projects shall not be used to further any military purpose.

CHAPTER VI

SHARING IN BENEFITS

Section 1

Apportionment

Article 66

The Council shall administer rules approved by the Assembly pursuant to paragraph (xi) of Article 31 relating to the equitable sharing of benefits derived from the exploration of the International Sea-bed and the exploitation of its resources, including :

(a) Scientific, technical or other information ;

(b) Raw materials ; and

(c) Revenues and other receipts credited to the general fund established pursuant to paragraph 1

of Article 47, up to a maximum of [.....] thereof.

Section 2

Information

Article 67

1. Each Contracting Party shall make available to the Economic and Technical Commission as soon as possible after the entry into force of this Convention with respect to such Party, and thereafter in a timely manner all such information relating to the exploration of the International Sea-bed and the exploitation of its resources as would, in the judgment of that Party, be necessary or useful to the Authority in carrying out its functions.

2. Each Contracting Party shall make available or cause to be made available to the Authority all information obtained by that Contracting Party or by any licensee which is its national.

Article 68

1. The Economic and Technical Commission shall be responsible for collecting and making available in an accessible form the information made available to it pursuant to the preceding Article, or obtained as a result of the Authority's own research, exploration or exploitation activities or reaching it through any other means. The Commission shall ensure that each Contracting Party receives such information or is notified of its availability in a timely manner through the issue of regular information circulars and, where the character of the information so warrants, such special bulletins as may be necessary.

2. The Commission shall take steps to encourage the exchange among Contracting Parties of information relating to the exploration of the sea-bed and the exploitation of its resources, and shall serve as an intermediary among its members for this purpose.

Section 3

Raw materials

Article 69

1. The Authority may retain in its facilities amounts of raw materials obtained through its own exploitation activities and not offered for sale.

2. Contracting Parties may make available to the Authority raw materials obtained by them as a result of exploitation, in accordance with this Convention, of the International Sea-bed in such form and quantity and upon such terms and conditions as shall be agreed with the Authority. The raw materials made available to the Authority may, at the discretion of the Contracting Party making them available, be stored either by that Party or, with the agreement of the Authority, in the Authority's facilities.

3. The Authority shall notify all Contracting Parties on a regular basis of any raw materials stored in its facilities and described by reference to their quantity, form and composition.

4. The Authority shall be responsible for storing and protecting raw materials in its possession and shall ensure that these materials shall be safeguarded against (i) hazards of the weather ; (ii) unauthorised removal or diversion ; (iii) damage or destruction including sabotage ; and (iv) forcible seizure.

5. Raw materials made available to or obtained by the Authority shall be used or made available to Contracting Parties by the Council in accordance with rules adopted by the Assembly pursuant to paragraph (xi) of Article 31 : provided, however, that (i) no Contracting Party having made raw materials available to the Authority, may designate

any other Contracting Party or Parties, or any specific project to which may it be transferred ; and (ii) no raw materials made available by or through the Authority to any Contracting Party shall be used in such a way as to further any military purpose.

Section 4

Revenues and other receipts

Article 70

1. Revenues and other receipts credited to the general fund pursuant to Article 47 shall be shared equitably among all Contracting Parties.

2. Such funds shall be apportioned and made available in such manner and in such currencies and upon such other terms and conditions as may be approved by the Assembly pursuant to paragraph (xi) of Article 31. The Council shall recommend to the Assembly at each regular session a scale of apportionment based upon the criteria specified in Annex II to this Convention, and so designed as to ensure that each Contracting Party shall receive from the fund a portion commensurate with its needs.

Article 71

1. Distribution of such funds shall be the responsibility of the Council.

2. The Council shall 60 days prior to commencement of each regular session of the Assembly :

(a) Prepare the scale of apportionment for approval by the Assembly;

(b) Review the criteria specified in Annex II to this Convention and make recommendations to the Assembly with respect to any amendments that may be necessary.

CHAPTER VII

SCIENTIFIC RESEARCH AND TRANSFER OF TECHNOLOGY

Article 72

The Contracting Parties undertake to initiate and participate in international programmes of scientific research concerning the International Sea-bed exclusively for peaceful purposes, in the manner and in furtherance of the objectives specified in Article 15 of this Convention.

Article 73

1. When a Contracting Party or its national proposes to carry out research activity in any part of the International Sea-bed, the Contracting Party shall, not less than 60 days prior to the proposed date of commencement of such research, transmit to the Economic and Technical Commission :

(i) a detailed and precise description of the proposed research, including the subject, objectives, location, duration, a list of the equipment to be used indicating their function, the number and function of personnel participating, the nationalities of such personnel and the number and the nationality of the vessels or other installations to be used ;

(ii) a statement that the research is being carried out exclusively for peaceful purposes ;

(iii) a statement that the research is not being carried out for industrial purposes, and is not subject to the rules adopted by the Assembly with respect to industrial research pursuant to sub-paragraph (viii) of Article 31 ; and

(iv) an undertaking that there will be open publication of the results of such research, either by the Contracting Party concerned, or through the Authority.

2. The Commission shall forthwith transmit the notification to all Contracting Parties and enter into consultations with the Contracting Party transmitting the notification with a view to obtaining such clarification as may be necessary.

3. Where scientific research is to take place within 100 miles from the nearest point of the limit of national jurisdiction of a Contracting Party, or of any installation on the International Sea-bed over which a Contracting Party has jurisdiction, the consent of that Contracting Party shall first be obtained. The Contracting Party concerned shall not without sufficient reason withold its consent to scientific research by a qualified institution ; provided, however, that the Contracting Party concerned shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 74

Contracting Parties undertake to examine, in consultation with the Authority, ways and means of facilitating the transfer to the developing countries of technology relating to the exploration of the International Sea-bed and the exploitation of its resources, including such technology as may be protected by patents. The Authority may serve as an intermediary among its members for the purpose of making available all such technology on as wide a basis as possible.

CHAPTER VIII

SETTLEMENT OF DISPUTES

Section 1

Jurisdiction of the Tribunal

Article 75

1. The Tribunal established pursuant to Article 41 of this Convention shall have jurisdiction with respect to :

(a) Any dispute relating to the interpretation or application of this Convention ; and

(b) Any dispute connected with the subject matter of this Convention and submitted to it pursuant to an agreement, contract or licence entered into or issued pursuant to this Convention.

2. When a dispute falling within paragraph 1 of this Article has arisen between Contracting Parties, or between a Contracting Party and a national of another Contracting Party, or between nationals of Contracting Parties, or between a Contracting Party or a national of a Contracting Party and the Sea-bed Development Corporation, the parties to the dispute shall first seek a solution through negotiation, conciliation or other means of their own choice. If the dispute has not been resolved within two months of the commencement of the dispute any Party to the dispute may institute proceedings before the tribunal, unless the parties agree to submit the dispute to arbitration pursuant to Section 2 of this Article.

Article 76

1. Any Contracting Party which questions the legality of measures taken by the Council, or the Economic and Technical Commission on grounds of a violation of this Convention, lack of jurisdiction, infringement of any fundamental rule of procedure or misuse of power, may bring the matter before the Tribunal.

2. Any person may subject to the same conditions, bring a complaint to the tribunal with regard to a decision directed to that person, or a decision which, although in form directed to another person, is of direct concern to the complainant.

3. The proceedings provided for in this Article shall be instituted within two months of either the date of publication of the decision concerned of its notification to

the complainant, or of the date on which he became aware of it.

4. If the Tribunal considers the complaint well-founded, it shall declare the decision concerned to be void, and shall determine what measures shall be taken to redress any damage caused.

5. An order of the Tribunal pursuant to this Article shall be binding upon the Council or the Commission as the case may be.

Article 77

1. The judgment of the Tribunal shall be final and binding and enforceable in the territories of a Contracting Party as though it were a judgement of the highest court of that Contracting Party.

2. If a Contracting Party fails to perform its obligations under a judgement rendered by the Tribunal, the other party or parties to the dispute may bring the matter before the Council which shall decide upon measures to be taken to give effect to the judgment.

Article 78

1. At any time after it is seized of the dispute, the Tribunal may, if it considers that the circumstances so require, order provisional measures for the purpose of preserving the respective rights of the parties, or preventing serious harm to the marine environment.

2. A party to the dispute directly affected by such provisional measures may request their immediate review. The Tribunal shall promptly undertake such review and confirm or suspend its order.

Article 79

1. The Tribunal or any party to proceedings before it may at any time seek the opinion of the Economic and Technical Commission regarding an issue falling within its competence.

2. The Tribunal shall decide whether proceedings shall be suspended until the opinion sought has been made available.

Article 80

Any organ of the Authority and the Economic and Technical Commission may request the Tribunal to give an advisory opinion on any legal question connected with the subject matter of the Convention.

Section 2

Arbitration

(Basic provisions, with reference to Annex III with detailed rules)

CHAPTER IX

AMENDMENT AND REVISION

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CHAPTER X

DEFINITIONS

"Limit of national jurisdiction" shall mean the line, every point of which is not more than.....miles from the nearest points on the baselines from which the breadth of the territorial sea of each State is measured.

(*Other definitions to be added*)

CHAPTER XI

FINAL PROVISIONS

Signature—ratification—implementing legislation—colonial clauses denunciation—suspension—depositary functions. The agreement to be open to all States, with multiple depositaries, if necessary.

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ANNEX I

STATUTE OF THE SEA-BED DEVELOPMENT CORPORATION

ANNEX II

BASE FOR CALCULATION OF SCALE FOR APPORTIONMENT OF REVENUES

ANNEX III

ARBITRATION PROCEDURE

(IV) WORKING PAPER ON

"RIGHT OF TRANSIT FOR LAND-LOCKED COUNTRIES"

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CHAPTER I

International lawyers such as Charles De Visscher believe that "access is a right conferred by nature on every country". Others, such as Marcel Silbert, consider that the principle of freedom of the sea is the foundation of access and yet many others take the view that a country without a sea coast is the beneficiary of servitude of passage across a country having a sea coast. It is significant to note that the high seas conventions and the provisions of the Conventions relating to the Law of the Sea, adopted in 1958 in Geneva, recognise access to sea for the land-locked countries as a matter of right which takes its root in established rules and doctrines of international law. Although the recognition of the freedom of the high seas is connected with the name of Hugo Grotius, nevertheless the right of the land-locked countries to have access to the sea for the purpose of using the high seas, has never been disputed even before Grotius. Since antiquity the high seas are considered as "*Respublica*", "*Res-nullius*" or "*Res-communis*" of mankind. Therefore, if the high seas belong to all nations, land-locked and coastal States alike, then the prerequisite for enjoying the right derived from the freedom of the high seas is the *free transit to the sea*. If the land-locked countries are denied the right of access to the sea, then obviously their right to benefit from the freedom of the high seas on equal footing with the

coastal States, would become illusory and without practical meaning.

Furthermore, the right of transit was considered as one of the fundamental rights of States, and the refusal of this right since the twelfth century has been regarded legally as a just cause of war. The collection of laws in 1151 A.D. by *Gratian* known as Gratian's Decree considered war as just because innocent passage had been refused.

The right of transit, especially the innocent passage, was regarded by many countries as an accepted right and the passage to the sea was always considered free. After the First World War, three more land-locked countries emerged on the territories of the former Austro-Hungarian Empire and as a consequence, all European countries recognised the right of land-locked countries to have their national flags flown by their vessels on the high seas. Article 273, as also Articles 331 to 345 of the Versailles Peace Treaty, Article 255 of the Treaty of Saint-Germain, Article 209 of the Treaty of Trianon and Article 153 of the Peace Treaties of Neuilly were nothing more than the recognition of the rights of land-locked States and were meant to protect the interests of European as well as other land-locked countries of the world. The most important action taken by the League of Nations was indeed the convening of the Barcelona Conference of 1921, in which two important conventions, namely, the Convention on the Freedom of Transit and the Convention on the Regime of Navigable Waterways were drawn up. It was on the basis of the work done at the Barcelona Conference that in December 1923, the Convention and Statute on the International Regime of Railways, the Convention and Statute relating to International Regime of Maritime Ports and the Convention on the Transmission in Transit of Electric Power, were signed which had a direct bearing on the rights of land-locked States. I may add also that on the basis of the principles laid down in Article 23 (e)

of the League Covenant, the recognition of the problems facing land-locked States and the need for the solution of those problems was an important post-war development.

The spirit of understanding, after the Second World War was, however, changed considerably because of the political interests of nations everywhere. Nevertheless the first international effort, after World War II, in favour of land-locked countries, was taken by the General Agreement on Tariffs and Trade (GATT) which came into force on 1st January, 1948, vide Article 5 of the Agreement. Annex (P) of the Havana Charter entitled "Interpretative Notes" also made reference in favour of land-locked countries.

However, the practical approach on a universal scope was taken during the XI General Assembly by the joint efforts of land-locked countries such as Afghanistan, Austria, Bolivia, Czechoslovkia, Nepal and Paraguay, which resulted in the adoption of Resolution 1028 (XI) under which the United Nations General Assembly invited the member States to recognise the needs of land-locked countries in the matter of transit trade. The Resolution of 21st February, 1953, No. 1105 (XI) also requested the plenipotentiary conference on the Law of the Sea to study the question of free access to the sea of land-locked countries as established by international practice and treaties.

The efforts of land-locked countries at the preliminary conference of Geneva in 1958 and the First Law of the Sea Conference in 1958 led to the adoption of Articles 2, 3 and 4 of the High Seas Convention on the right of transit. The adoption of the eight principles during the first UNCTAD Conference in 1964 and finally the conclusion and coming into force of the 1965 Convention on Transit Trade of Land-Locked Countries, legally and economically, opened a new horizon for the relations of countries without sea coast and their transit neighbours. The number of land-locked countries increased to more than thirty nations in less than a

decade, a large number indeed with a common problem of of not having an outlet to the sea and faced with transit problems.

Now the other important factor which should be taken into account, is the growing number of land-locked countries in the community of nations, who form a quarter of the membership of the United Nations, and also half of the Group of 77 developing countries. All these countries are in need of economic development and badly in need of access to world markets and to the resources of the high seas for the purpose of food supply as well as other resources. It was, therefore, as a matter of necessity in view of growing populations and needs of all States including land-locked countries for food supply from the important food reserves of mankind and to benefit from the sea-bed and the ocean floor as well as the subsoil thereof, that the General Assembly of the United Nations decided by resolutions 2467A (XXIII) and 2574A, B, C and D (XXIV) that the exploitation of these resources should be carried out for the benefit of mankind as a whole. The UN General Assembly on 15th December 1969 as well as during 1970, recognised in line with the basic principle of the freedom of the seas, the right of the land-locked countries to share the resources of the sea-bed and ocean floor and of the subsoil thereof. The Sea-Bed Committee at its last meeting held in July-August 1971 in Geneva, recognised the fact that in any future international machinery for the sea-bed area the role of land-locked countries in proportion to their number and in accordance with their needs, as developing countries should be fully recognised. The high seas which is the common heritage of mankind should be saved from the danger of pollution as well as from nuclear tests which is a great menace to the living resources of the sea, and the land-locked countries, which are without potential naval and military power, could help the community of nations to establish machinery for protection of peace on the high seas, the sea-bed and the ocean floor and the subsoil thereof.

CHAPTER II

INTERNATIONAL EFFORTS TO SOLVE THE PROBLEMS OF TRANSIT OF LAND-LOCKED COUNTRIES

A. Bilateral and multilateral agreements before the First World War

The oldest bilateral agreement designed to facilitate transit of a land-locked State is the one signed on 16th March, 1816, between Sardinia, the Swiss Confederation and the Canton of Geneva, Article V of which exempts from all transit duties, goods and products from the free port of Geneva to the State of Geneva.

Mention could be made also of the Convention of 24th July, 1890 between Great Britain and Portugal and of 2nd August, 1929 between Italy and Ethiopia. In Latin America treaties signed between Bolivia, a land-locked country, with Argentina on 9th July, 1868 and 26th March, 1947, with Brazil on 27th March, 1867, 12th August, 1910 and 25th February, 1938, with on Chile 20th October, 1904, 6th August, 1912 and 3rd January, 1955, and with Peru on 5th November, 1863, 27th November, 1905, January 1917 and 30th July, 1955 are worth mentioning.

In Asia the Trade Conventions between the United Kingdom and Afghanistan on 5th June, 1923, the Soviet Union and Afghanistan on 28th June, 1955, Nepal and India 31st July, 1950, and between Thailand and Laos, are among so many bilateral agreements for the solution of transit problems.

B. Multilateral agreements after the First World War

The first international convention concluded in consequence of the Treaty of Versailles and the Conference of Barcelona was the one between Germany, Poland and the Free City of Danzig on 21st April, 1921 concerning freedom of transit between East Prussia and the rest of Germany.

Another important convention was concluded between the Greek Government and the Kingdoms of Serbs, Croats and Slovenes for the regulation of transit via Salonika signed at Belgrade on 10th May, 1923. Another convention relating to ports was concluded between Italy and Czechoslovakia on 23rd March, 1921 regarding concessions and facilities to be granted to Czechoslovakia in the port of Trieste.

It was only after the First World War that many European land-locked countries emerged, and for that reason the Treaty of Versailles in Articles 338 and 379 considered the problems of transit an important question. Article 23(e) of the Covenant which contains the relevant provisions, made the Council of the League on 19th May, 1920 adopt a resolution for a Conference on Freedom of Transit in Barcelona and under the same resolution a Commission of Enquiry of Freedom of Communications and Transit was established. It was the same Commission which submitted a series of useful documents, among them a Draft Convention on Freedom of Transit which was adopted in Barcelona in 1921.

The Barcelona Convention remained indeed a useful convention, particularly for European land-locked countries, until the establishment of the United Nations.

Indeed, it was the United Nations who were faced with a considerable number of land-locked countries in Asia, Latin America and then in Africa. The land-locked countries today altogether form one-fourth of the nations of the world, a large segment of the community of nations. (In Asia : Afghanistan, Laos, Mongolia, Nepal, Bhutan and Sikkim. In Africa : Botswana, Burundi, Chad, Central African Republic, Lesotho, Malawi, Mali, Niger, Rwanda, Rhodesia, Swaziland, Uganda, Upper Volta, and Zambia. In Europe : Austria, Czechoslovakia, Holy See, Hungary, Luxemburg, Switzerland, and San Marino. In Latin America : Bolivia and Paraguay).

In the United Nations the first political attempt for solving the problems of land-locked countries was made at the Economic Commission for Asia and the Far East when during its eighth session the Committee on Industry and Trade of the Economic Commission approved a resolution in which it recommended :

> "That the needs of the land-locked member States and members having no easy access to the sea in the matter of transit trade be given full recognition by all member States and that adequate facilities therefor be accorded in terms of international law and practice in this regard".

During its eleventh session, the General Assembly of the United Nations adopted a Resolution 1028 (XI) in which it invited the member States to recognize the needs of land-locked countries in the matter of transit trade.

It was during the same Assembly on 21st February, 1957 when on the recommendation of the Sixth Committee, the historic Resolution 1105(XI) was adopted in which it was requested that the Plenipotentiary Conference on the Law of the Sea should examine in addition to the draft prepared by the International Law Commission, the question of free access to the sea of land-locked countries as established by international practice of treaties. This request was submitted by the representatives of Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay to the Sixth Committee. After the adoption of this Resolution the representatives of the land-locked countries, by the initiative of Afghanistan, began consultation in New York which resulted in the submitting of an official memorandum by the Government of Afghanistan on 26th August, 1957 to the Secretary-General of the United Nations.

C. 1958 Conference of land-locked States in Geneva

A Preliminary Conference of States without direct territorial access to the sea was held at Geneva from 10th to

14th February, 1958, on the invitation of the Swiss Federal Government. This conference was the sequel to a series of meetings held in New York between representatives of land-locked States, as well as Members of the United Nations, many of whom had taken an active part in the discussions in the eleventh session of the General Assembly on the Draft Articles on the Law of the Sea presented by the International Law Commission, to which the observer of Switzerland to the United Nations had been invited to attend. All these New York meetings were held under the Chairmanship of the author.

These meetings were based mainly on paragraph 3 of Resolution 1105(XI) adopted by the General Assembly on 21st February, 1957, as the result of a joint proposal by Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay, reading :

> "The Assembly recommends that the conference of plenipotentiaries study the problem of free access to the sea of land-locked countries as established by international practice or treaties".

They were also guided by the consideration that the Draft Articles presented by the International Law Commission contained no provisions dealing directly with the position of land-locked States and, further, that in proposing the establishment at the Conference on the Law of the Sea of a special committee to give effect to the above mentioned recommendations, the competent United Nations organs had expressed the desire that information should be assembled and proposals formulated with a view to that committee's work.

The Czechoslovak Government had proposed first of all a meeting of representatives of land-locked States in Prague. Later, the possibility was mooted of holding a meeting in Vienna. Finally, for technical reasons, it appeared more convenient to the delegates at New York of the States

concerned to suggest that this preliminary conference should be held at the actual seat of the United Nations Conference on the Law of the Sea at Geneva, and, on practical grounds, shortly before the main conference. The Swiss Federal Government had issued invitations to the members of Preliminary Conference.

The States invited to the Preliminary Conference were all land-locked States mentioned in the General List drawn up by the United Nations for the invitation to the Conference on the Law of the Sea : State Members of the United Nations and State Members of specialized agencies. Invitations were therefore sent to following States : Afghanistan, Austria, Bolivia, Byelorussian Soviet Socialist Republic, Czechoslovakia, Holy See, Hungary, Laos, Luxemburg, Nepal, Paraguay, San Marino and Switzerland. The Head of the Swiss delegation, Ambassador Ruegger, was elected President of the conference. Mr. Weingart, of the Federal Political Department, Berne, was appointed Secretary.

At the beginning of the session, members of the conference were able to study with the keenest interest the valuable memorandum (A/CONF. 13/29) on the question of free access to the sea of land-locked countries prepared by the United Nations Secretariat, which sets out in detail the current aspects of this problem and the history of earlier attempts to solve it. The Preliminary Conference expressed its unanimous appreciation of this excellent piece of work. It also took note with particular interest of the oral information on the same subject given by Mr. Sandberg representing the Secretariat.

The Preliminary Conference devoted the greater part of its meeting to hearing statements by the delegates of the different States represented on the situation of their particular countries, on the conventional status the majority of them enjoyed under bilateral or multilateral agreements, on their needs and on their experiences.

The Preliminary Conference had before it a number of papers submitted by delegations of land-locked countries. They are summarized below in their order of presentation, and in view of their importance they are reproduced as annexes as well.

(a) *Note dated 26th August, 1967 by the Permanent Mission of Afghanistan to the United Nations*, distributed in New York to the representatives of the States concerned. This document proposes first of all the elaboration of a "Universal Declaration" stating the right of free access to the sea of all countries ; the reiteration of and, if necessary, the elaboration in greater detail of the Barcelona Declaration concerning the right to a flag for land-locked countries ; the elaboration of a "Universal Declaration" recognizing a universal right to transit by air, railroad, road and waterways through the territory of States.

(b) *A memorandum dated 31st January, 1968 by the Swiss Government*, communicated to the Secretary-General of the United Nations in response to a request from the Secretariat, addressed to all States taking part in the Geneva Conference with a view to obtaining observations of governments for the Conference on the Law of the Sea. This document consists firstly of a historical section setting forth the steps taken by the Swiss Confederation over a period of nearly a hundred years, and still more forcefully at the end of the First World War with a view to obtaining express recognition of its right to a flag, and secondly, a statement of a few general principles, such as that of the need for a "genuine link" between the ship and the country whose flag it flies.

(c) Lastly, and above all, *a detailed draft submitted by the Czechoslovak delegation* formulating in twelve articles, with comments in support, texts proposed to the Preliminary Conference as a basis of discussion for a joint proposal by the land-locked States to the Conference on the Law of the Sea.

The Preliminary Conference had a long discussion on the question whether and how far, after finishing the part of its proceedings set aside for the hearing of the statements by the representatives of States and taking note of the papers presented by various delegations, it could at once take a further step forward by formulating forthwith texts to be submitted to the Conference on the Law of the Sea in the name of the States taking part in the Preliminary Conference, or whether the presentation of any such texts should not be held over until a later stage. A number of delegations were in favour of the immediate formulation of texts and urged that the Czechoslovak delegation's draft should be taken as a basis of discussion for a joint draft to be worked out on the spot. Other delegations contended that that procedure was premature so far as they were concerned. Some had accepted the Swiss Government's invitation, being encouraged by the assurance that the essential object of the meetings at the present stage was to exchange information and to have a general exchange of views on principles of common interest. Others did not feel authorized in virtue of their instructions to form an opinion on the details of Articles or Drafts communicated at the meeting itself ; such texts should, in their opinion, be reserved for previous examination by the governments of their countries, which were traditionally closely concerned with the methods of application of the principles affecting their access to the sea. Another idea put forward was that before proceeding to Draft Articles for which it was hoped to obtain general acceptance, it would be appropriate to hear the beginning of the discussion in the Fifth Committee of the Conference on the Law of the Sea. Faced with this situation, the participants in the Preliminary Conference nevertheless agreed unanimously in recognizing and underlining the importance of the moment and of the possibilities which it offered for a reiteration, on the occasion of the proposed codification of the Law of the Sea, of the right granted by

jus gentium to land-locked countries. They considered that, notwithstanding the difference in the positions of the various land-locked States, there was a broad and important common denominator, namely, the recognition by all of a certain number of principles relating to the rights and duties of those States. With a view to making an additional contribution to the general conference they felt that an attempt could and should be made to express these principles which flow from international law in new and upto-date formulae.

The Preliminary Conference accordingly set up among its members a Working Group with instructions to try to formulate these principles afresh. In this matter it was, moreover, guided by the findings which were also the conclusions reached by the Sixth Committee of the United Nations General Assembly at its eleventh session, that, in the work of codification to be considered by the Conference of the Law of the Sea on this point, it would largely be a question of confirming the rights of the land-locked States. The Working Group set up by the Preliminary Conference consisted of the delegates of Austria, Bolivia, Czechoslovakia, Nepal and Switzerland. Prof. Zourek, the Czechoslovak delegate, was appointed Chairman of the Working Group.

After an exhaustive exchange of views, the Group submitted its proposals for the formulation of "principles" at the final meeting of the Preliminary Conference held on 14th February as follows :

Principles enunciated by the Preliminary Conference of the land-locked States

The delegates of the States which have no direct territorial access to the sea, gathered in Geneva from 10th to 14th February, 1958, for a preliminary consultation, desirous to obtain the reaffirmation during the Conference of the Law of the Sea convened by the United Nations of their rights of free access to the sea, taking into consideration the fact that

other States which are not placed in the same geographic situation would not be requested to apply the most-favoured-nation clause, hold that access to the sea of land-locked countries is governed specifically by the following general principles which are part of existing international law :

PRINCIPLE I

Right of free access to the sea

The right of each land-locked State of free access to the sea derives from the fundamental principle of freedom of the high seas.

PRINCIPLE II

Right to fly a maritime flag

Each land-locked State enjoys, while on a footing of complete equal treatment with the maritime State, the right to fly its flag on its vessels which are duly registered in a specific place on their territory.

PRINCIPLE III

Right of navigation

The vessels flying the flag of a land-locked State enjoy, on the high seas, a regime which is identical to the one that is enjoyed by vessels of maritime countries; in territorial and on internal waters, they enjoy a regime which is identical to the one that is enjoyed by the vessels flying the flag of maritime States, other than the territorial State.

PRINCIPLE IV

Regime to be applied in ports

Each land-locked State is entitled to the most-favoured treatment and should under no circumstances receive a treatment less favourable than the one accorded to the vessels of the maritime State as regards

access to the latter's maritime ports, use of these ports, and facilities of any kind that are usually accorded.

PRINCIPLE V

Right of free transit

The transit of persons and goods from a land-locked country towards the sea and *vice versa* by all means of transportation and communication, must be freely accorded, subject to existing special agreements and conventions.

The transit shall not be subject to any customs duty or specific charges or taxes except for charges levied for specific services rendered.

PRINCIPLE VI

Rights of States of transit

The State of transit, while maintaining full jurisdiction over the means of communication and everything related to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the right of free access to the sea shall in no way infringe on its legitimate interests of any kind, especially with regard to security and public health.

PRINCIPLE VII

Existing and future agreements

The provisions codifying the principles which govern the right of free access to the sea of land-locked States shall in no way abrogate existing agreements between two or more contracting parties concerning the problems which will be the object of the codification envisaged nor shall they raise an obstacle as regards the conclusion of such agreements in the future, provided that the latter does not establish a regime which is less

favourable than, or opposed to, the abovementioned provisions.

These seven principles which were the result of the joint efforts of all land-locked countries (12 at that time) was the basic paper before the 1958 Law of the Sea Conference. The gist of these principles is as follows :

Principle I, which may be regarded as the keystone of future regulation, is a statement of the right of land-locked States to free access to the sea, a right deriving from the principle of the freedom of the high seas. Indeed, without such a right, freedom of the high seas would lose its universality.

Principle II, embodying the right of a land-locked State to fly a maritime flag, is really nothing more than a restatement of the Barcelona Declaration of 1921, and thus does not call for more detailed explanation.

Principle III, likewise derives directly from the principle of freedom of the high seas, ensuring for ships on the high seas flying the flag of land-locked States the same treatment in territorial and in internal waters is the logical corollary of this, but here the equality naturally applies only to the regime enjoyed by vessels of maritime States other than the territorial State, which, as a general rule, alone has the right to accord its own vessels more extensive rights, e.g., the exclusive rights of engaging in coast-wise traffic.

Principle IV, adopted at the Preliminary Conference deals with rights of a land-locked State with respect to the use of maritime ports. According to this principle, the land-locked State is entitled to the most-favoured treatment in the maritime ports of coastal States and under no circumstances to treatment less favourable than that accorded to the vessels of the coastal State as regards access to maritime ports, use of those ports and facilities of any kind that are usually accorded. This principle is confirmed by, in parti-

cular, Article 2 of the Statute on the International Regime of Maritime Ports, annexed to the 1923 Convention of the same name. It was precisely to take account of the peculiar position of land-locked States that a provision was included in paragraph 4 of the Protocol of Signature to the abovementioned convention explicitly exempting countries with no sea coast from the condition of reciprocity otherwise laid down by the Convention and the Statute on the Regime of Maritime Ports. This provision confirms the recognition of the right of land-locked States to participation on equal terms in the use of maritime ports and of the need to compensate such States for their adverse geographical situation.

Principle V ensures the right of innocent transit of a land-locked State towards the sea, and *vice versa* through the territories of third States. This principle is of vital importance to land-locked countries, for without this right of transit, they would be unable to enjoy the benefits deriving from the freedom of the high seas.

Principle VI, expressing the right of a State of transit to take measures to protect its sovereignty and legitimate interests, must in the opinion of the Preliminary Conference, form an integral part of any future regulation of the right of access to the sea. It is quite natural that the exercise of the right of land-locked States to free access to the sea must not infringe on the fundamental prerogatives of a coastal State, such States, preserving their sovereign power over their entire territory, are entitled to take any measures which a violation of their legitimate interests, especially with regard to security and public health, might render essential. In this way, the balance is ensured between the interests of land-locked States and those of States of transit.

The purpose of *Principle VII* was to ensure the continuance in force of all individual agreements governing the access of the various land-locked States to the sea. Nor, according to this principle, must the new codification be an

obstacle to these States concluding such agreements with their neighbours in the future, provided that the new agreements do not establish a regime which is less favourable than that based on the seven principles. Clearly, the general corpus of regulations, which should embody a common denominator of the rights hitherto enjoyed by all land-locked States, should not constitute an obstacle to the conclusion of bilateral regulations, according to these States individually more extensive rights than those flowing from the general regime.

Such were the seven principles contained in the Resolution of the Preliminary Conference of Land-locked States. In addition, a further principle which is of great significance both for the land-locked States and for coastal States and States of transit was included in the preamble to the Resolution in question. In view of the peculiar position of the land-locked States and the special regime accorded to them as a result, there is no reason to accord that special regime *ipso facto* to third States on the strength of the most-favoured-nation clause, since the latter States are not in the same position as the land-locked States. In other words, the regulation of the right of land-locked States to free access to the sea is outside the sphere of operation of the most-favoured-nation clause.

I must add that the preparatory work of the Preliminary Conference of twelve land-locked countries which led to the adoption of the seven principles cited above was a great step forward and very useful for further work done at the Fifth Committee of the First Law of the Sea Conference.

This brief meeting had a dual importance: First, the general discussion gave an almost complete view of the problems and circumstances under which all the land-locked countries were living in various parts of the world, and secondly, for the first time in history, all the land-locked countries of the world for a common cause and purpose exchanged views on the exercise of their right of free access

to the sea. The views expressed by the representatives of the land-locked countries in Geneva during the Preliminary Conference showed that these States have obtained in international law in general, a high degree of recognition for their right of free access to the sea.

But the main achievement of the Preliminary Conference could be considered the general support of the land-locked countries for common principles representing a minimum common denominator of the requirements for governing the right of passage to and from the sea. It should be borne in mind that these principles accepted as common denominators were not new, because the right of free access, as we have stated in the previous chapter, was already recognized in international law. However, it was a restatement of legal rules in a single codified system much clearer than was done by the International Law Commission in regard to land-locked States.

For the first time these restatements of rules of international law on the right of free access represented a basis of specific rights without which the exercise of the fundamental right concerning the use of the high seas would be impossible. These specific rights such as the innocent passage over the territory of the coastal States and the use of ports, were clearly stated in the seven articles formulated in the Preliminary Conference.

Above all, the Preliminary Conference provided an outstanding example of co-operation and co-existence between countries who had a common problem because of their special geographic position.

CHAPTER III

THE RECOGNITION OF THE RIGHT OF FREE ACCESS BY THE FIRST LAW OF THE SEA CONFERENCE IN 1958

The first Law of the Sea Conference of Geneva in 1958, after The Hague Peace Conference of 1907, the London

Naval Conference of 1908-1909, and the Conference for the Codification of International Law held at The Hague in 1930, could be considered an historic conference indeed.

One of the reasons that the 1958 conference was one of the most important conferences of our generation in the field of codification and progressive development of international law was careful preparation of work by the International Law Commission of the United Nations and the experiences obtained from the previous conferences, particularly the 1930 Hague Conference. Under Resolution 1105(XI) of the 11th Assembly the purpose of the conference was two-fold, namely :

1. "To examine the Law of the Sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate (paragraph 2 of Resolution 1105(XI)).
2. "To study the question of free access to the sea of land-locked countries, as established by international practice or treaties'.

As I have stated above, at no time did the International Law Commission since its establishment include the question of free access to the sea on its agenda, but did include in its agenda, at its first session (1949) the regime of the high seas and the regime of the territorial sea. At its eighth session the Commission completed its work on both these topics and submitted to the General Assembly seventy-three articles concerning the Law of the Sea as a whole, but no article on the right of free access to the sea. It was on the eve of the first Law of the Sea Conference that the Assembly itself, because of the initiative of land-locked countries, included the question related to land-locked countries on the agenda of the conference.

Under the report of the Secretary-General on the method and procedures of the conference the work of the conference was divided into four main Committees as follows :

(a) First Committee (Territorial Sea and Contiguous Zone) ;

(b) Second Committee (High Seas ; General Regime) ;

(c) Third Committee (High Seas ; Fishing, Conservation of Living Resources) ;

(d) Fourth Committee (Continental Shelf).

The Secretary-General proposed that these four main committees should devote their tasks to Draft Articles prepared by the International Law Commission. On the question of free access to the sea the Secretary-General did not think that it was within the scope of the Law of the Sea, therefore he proposed the establishment of a special committee to consider this question. On this point the author, who took part as the representative of Afghanistan during the first Law of the Sea Conference, challenged the view of the Secretary-General during the first plenary session of the conference and stated that the question of free access to the sea has a direct bearing on the Law of the Sea because this right derives from the cardinal principle on the freedom of the sea. The conference supported the contention of the author and the special committee of land-locked countries was considered as the fifth main committee of the Assembly, and the procedure proposed by the Secretary-General was amended accordingly.

The main difficulty for the land-locked countries during the 1958 Conference was the element of the cold war and its effects on the whole atmosphere of the fifth committee and the claim for free access. In 1958, at which time the Law of the Sea Conference convened in Geneva, relations between East and West were not cordial. Hungary, Czechoslovakia and Mongolia were Communist land-locked countries, therefore,

the West looked towards the whole problem at that time from the point of view of the cold war.

It was under such difficult political relationships that the land-locked countries were asking for the recognition of this right. It is also interesting to state that the European land-locked countries such as Austria, Switzerland and Luxemburg, who had no problems of transit whatsoever at that time, took a very conservative attitude, both during the Preliminary Conference and during the consideration of this issue in the Law of the Sea Conference. The reason was the political relationships between East and West in which they did not want to become involved at that time.

During the discussion of this question in the Fifth Committee various proposals were introduced. Among them these were noteworthy :

(I) *Proposal submitted by Afghanistan, Albania, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxemburg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia and the United Arab Republic* :

1. Right of Free Access to the Sea

Every State without a coastline (land-locked State) has the right to free access to the sea. This right derives from the fundamental principle of the freedom of the high seas.

2. Right to a Flag

Every State without a coastline possesses on terms of complete equality of treatment with maritime States, the right to a flag in respect of such of its ships as are duly registered in a specific place in its territory ; that place shall be the port of registry for such ships.

Commentary : Needless to say, equality of treatment implies equality of rights and obligations.

Right to sail in the Territorial Sea and in Internal Waters

Every State without a coastline has the right to claim that ships flying its flag shall enjoy in the territorial sea and the internal waters of any maritime State a regime identical to that accorded to the ships of other maritime States.

4. Regime Applicable in Ports of the Coastal State

(a) Every State without a coast shall be entitled to the most favourable treatment, and in no event shall such treatment be less favourable than that accorded to ships of the coastal State in maritime ports under the sovereignty or authority of the coastal State as regards freedom of access to the ports, the use of the ports and the full enjoyment of the facilities of all kinds generally granted.

(b) The expression "coastal State" means, for the purposes of this Article, any State whose territory can, in the light of the geographical and economic circumstances, be reasonably regarded as constituting the means of access to the sea for a specific State without a sea coast.

(c) For the purposes of this Article, the expression "maritime ports" means ports normally used by merchant ships and open to international trade.

5. Right of Free Transit to the Sea

(a) Transit from a land-locked country towards the sea and *vice versa* by all means of transportation and communication shall be freely accorded, subject to existing special agreements and conventions.

(b) The transit shall not be subject to any customs duty or special charges or taxes levied by the coastal State or by the State of transit, except for charges levied for specific services rendered.

Note : The Austrian delegation was of the opinion that the principles expressed in Article V had no wider implications than the obligation deriving from the Statute of Barcelona, of which Austria is a signatory.

6. Form of the Exercise of the Right of Access to the Sea

The form in which a land-locked State is to exercise the rights mentioned in Articles IV and V shall, insofar as it is not determined by existing international treaties, be laid down by agreement between the land-locked States and the coastal States and States of transit.

7. Rights of Protection of the State of Transit

The coastal State or State of transit, maintaining full sovereignty over its territory and in particular over the means of communication and all matters relating to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the rights mentioned in Articles IV and V shall in no way infringe on any of its legitimate interests whatsoever, especially its interests in security and public health.

Commentary : It was pointed out that it might be desirable to provide for a system of peaceful settlement of disputes, so as to ensure the rapid settlement of any controversies which might arise in connection with the interpretation of the expression "legitimate interests".

Note : The delegation of Bolivia stated that its arrangements for transit through the territory of the coastal States towards the Pacific were broad and liberal and that they remained in force at all times and in all circumstances, and that consequently the clause included in Article VII was not applicable to those arrangements.

8. Relation of the New Regulations to Previous Agreements

Articles I to VII neither abrogate nor affect agreements which are in effect between two or more of the contracting parties concerning questions regulated under the said Articles, nor do they preclude the conclusion of similar agreements in the future, provided that such future agreements do not institute a less favourable regime and do not conflict with the aforesaid articles.

9. Exclusion of the Application of the Most-Favoured-Nation Clause

The present provisions as well as those of multilateral and bilateral agreements concluded or to be concluded between land-locked States and countries of transit and coastal countries are excluded from the application of the most-favoured-nation clause.

Note : The delegations of Austria, Luxemburg and Switzerland reserved their position as to the form and mode of codification of the rights of land-locked States.

(II) Proposal by Italy, the Netherlands, and the United Kingdom

This proposal, which comprised Parts I and II, was submitted on the understanding that no major change be suggested by other committees in the structure of the various provisions concerning the Law of the Sea adopted by the International Law Commission (A/3159) but it was too far from the real needs of the land-locked States.

(III) Proposal by Switzerland

1. The Swiss delegation proposed that Article 15, paragraph 1, Article 27 and Article 28 in the International Law Commission's draft should be worded as shown below.

(Should Articles 15, 27 and 28 of the draft be modified by the committees concerned, these amendments should be adapted to the final wording) :

Article 15

"1. Subject to the provisions of the present rules, ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the territorial sea".

Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia*, both for coastal and for land-locked States : (*The rest of the article is unchanged*)".

Article 28

"Every State, whether coastal or land-locked, has the right to sail ships under its flag on the high seas".

2. In order to codify the right of free access to the sea for land-locked States, the Swiss delegation proposes an additional article, to be inserted in the International Law Commission's draft in the appropriate place and worded as follows : "Access to the sea for land-locked States Article"...

"1. In order to enjoy the freedom of the seas on equal terms with coastal State, coastal States shall,

(a) Accord the land-locked States, on a basis of reciprocity, free transit through their territory, and

(b) Guarantee to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and a land-locked State shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the land-locked State, all matters relating to equal treatment in ports and freedom of transit".

(IV) **Proposal by Bolivia**

"Ships of a land-locked State shall have a special right of passage through the territorial sea and internal waters of the coastal State contiguous to its territory, for the purpose of entering or leaving ports of the latter State".

After exhaustive discussion of all these different proposals the Fifth Committee on 11th April, 1968, finally established a Working Group consisting of the representatives of Bolivia, Czechoslovakia, Nepal and Switzerland (land-locked States), Chile, the Federal Republic of Germany, Italy and Thailand (the States of transit), and Ceylon, Mexico, Tunisia, and the United Kingdom (States not included in the two preceding categories) with the following term of reference :

The Working Group held two meetings, on 11th and 12th April, 1958, with the late Mr. Perera (Ceylon) in the Chair.

The Working Group was unable to resolve many of the conflicts which raged in the Committee. At least one major achievement was that the Group focussed the attention of the Committee on the nature of the instruments in which the subject matter would be finally embodied.

The agreement that the subject-matter covered by the Swiss proposal be treated as suitable for inclusion in a convention was accepted by the Working Group.

It was on the basis of the work of the Working Group that the Fifth Committee finally succeeded in adopting unanimously to the conference the following proposal :

I. Draft Articles to be adopted by the Conference on the basis of the International Law Commission text. Articles 15, 17 and 28, to read as follows (the proposed additions are underlined).

Article 15, Paragraph 1

"Subject to the provisions of the present rules, ships of all States, *whether coastal or [not*, shall enjoy the right of innocent passage through territorial sea".

Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia both for coastal and non-coastal States* :

(1) Freedom of navigation ;

(2) Freedom of fishing ;

(3) Freedom to lay submarine cables and pipe-lines ;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 28

"Every State, whether coastal or not, has the right to sail ships under its flag on the high seas".

II. Insert the following new Article at an appropriate place in one of the conventions to be adopted by the Conference :

"Access to the Sea for States having no sea coast

Article

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea coast shall, by common agreement with the latter, and in conformity with existing international conventions accord :

(a) To the State having no sea coast, on a basis of reciprocity, free transit through their territory ; and

(b) To ships flying the flag of that State, treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and the State having no sea coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions".

This proposal was adopted unanimously by the conference and was included as established rules of international law as Articles 2, 3 and 4 of the High Seas Convention. This was indeed a great legal milestone in favour of land-locked States.

CHAPTER IV

CONSIDERATION OF LAND-LOCKED PROBLEMS, UNDER ITEM 10 (e) OF THE AGENDA OF THE FIRST UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) 1964

It was in the First UNCTAD Conference in 1964 that the problem of land-locked countries, both from the point of

view of theory and practice was tackled positively under Item 10 (e) of the agenda.

The Fifth Committee of that Conference established a Sub-Committee with the following terms of reference :

"To consider the proposal for the formulation of an adequate and effective International Convention, or other means to ensure the freedom of transit trade of land-locked countries and to formulate recommendations on this matter for consideration by the Committee".

The Fifth Committee also elected the following forty members to take part in the work of the said Committee : Afghanistan, Argentina, Bolivia, Burma, Burundi, Byelorussian S.S.R, Cameroon, Ceylon, Chad, Czechoslovakia, Dahomey, Federal Republic of Germany, France, Hungary, India, Indonesia, Iran, Israel, Italy, Laos, Mali, Mongolia, Nepal, Niger, Nigeria, Pakistan, Paraguay, Peru, Poland, Portugal, Republic of Viet-Nam, Romania, Spain, Switzerland, Thailand, Turkey, Union of Soviet Socialist Republics, United Kingdom, Upper Volta and Yugoslavia.

At the first meeting, held on 5th April, 1964, the Sub-Committee elected by acclamation Dr. Abdul Hakim Tabibi (Afghanistan), who was at the same time Rapporteur of the Fifth Committee as Chairman and Mr. Yaya Diakite (Mali) as Rapporteur and Mr. Guido Brunner (Federal Republic of Germany) as Vice-Chairman.

The Sub-Committee had before it two documents issued in connection with Item 10 of the agenda of the Conference : a document entitled "Activities of Economic Commission for Asia and Far East related to the United Nations Conference on Trade and Development", which dealt in part with the question of transit trade of land-locked countries ; and a document entitled "Problems of Land-Locked Countries" containing a letter addressed to the Secretary-General of the Conference by Afghanistan, Laos and Nepal, and five annexes

with information required for the consideration of the question of transit rights of land-locked countries.

The following documents were issued at the request of the Sub-Committee :

List of land-locked countries which were members of the Conference ;

Memorandum submitted by the preliminary conference of land-locked countries in 1958 ;

List of transit countries submitted by land-locked countries in accordance with a decision taken by the Sub-Committee at its second meeting on 8th April, 1964 ;

Signatures, Ratifications and Accessions to the 1921 Barcelona Convention and Statute on Freedom of Transit.

The Sub-Committee had before it the following proposals :

A draft convention on transit trade, submitted by the representatives of Afghanistan, Laos and Nepal and later co-sponsored by Burundi, the Central African Republic, Chad, Mali, Niger, Rwanda, Uganda and Upper Volta ;

A joint draft resolution submitted by Bolivia and Paraguay with which Hungary associated itself ;

A draft recommendation submitted by the delegation of Italy, to which amendments were submitted jointly by Chile, the Federal Republic of Germany, Pakistan, Switzerland, Thailand and the United Kingdom ;

A declaration submitted by the land-locked countries of Africa (Burundi, Central African Republic, Chad, Mali, Niger, Rwanda, Uganda and Upper Volta) ;

A draft resolution submitted by Czechoslovakia ; and

A proposal submitted by the delegation of Switzerland.

Principles relating to transit trade of land-locked countries :

The Sub-Committee considered the principles submitted by the first Working Group, the amendments submitted to them by the Union of Soviet Socialist Republics, by the United Kingdom, and other amendments submitted orally by some delegations. It adopted these principles unanimously with some modifications, together with a preamble and an Interpretative Note. The text, as adopted by the Sub-Committee and set forth in its interim report to the Fifth Committee reads as follows :

The United Nations Conference on Trade and Development :

Having regard to the various aspects of the problem of transit trade of land-locked States,

Considering that, for the promotion of the economic development of the land-locked States, it is essential to provide facilities to enable them to overcome the effects of their land-locked position on their trade,

Adopts the following principles together with the Interpretative Note :

Principle I

The recognition of the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development.

Principle II

In territorial and on internal waters, vessels flying the flag of land-locked countries should have identical rights, and enjoy treatment identical to that enjoyed by vessels flying the flag of coastal States other than the territorial State.

Principle III

In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea. To this end, States

situated between the sea and a State having no sea coast shall, by common agreement with the latter, and in conformity with existing international conventions, accord to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State as regards access to sea ports and the use of such ports.

Principle IV

In order to promote fully the economic development of the land-locked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit in such a manner that they have free access to regional and international trade in all circumstances and for every type of goods.

Goods in transit should not be subject to any customs duty.

Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country.

Principle V

The State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind.

Principle VI

In order to accelerate the evolution of a universal approach to the solution of the special and particular problems of trade and development of land-locked countries in the different geographical areas, the conclusion of regional and other international agreements in this regard should be encouraged by all States.

Principle VII

The facilities and special rights accorded to land-

locked countries in view of their special geographical position are excluded from the operation of the most-favoured-nation clause.

Principle VIII

The principles which govern the right of free access to the sea of a land-locked State shall in no way abrogate existing agreements between two or more contracting parties concerning the problems, nor shall they raise an obstacle as regards the conclusion of such agreements in the future, provided that the latter do not establish a regime which is less favourable than, or opposed to, the abovementioned provisions.

Interpretative Note

These Principles are interrelated and each Principle should be construed in the context of the other Principles.

At its 17th and 18th meetings on 13th May, the Sub-Committee, after consideration of the draft submitted by its second Working Group and an amendment thereto submitted by Afghanistan, adopted the following recommendation :

The United Nations Conference on Trade and Development having regard to the various aspects of the problems of transit trade of land-locked States ;

Noting Resolution 1028 (XI) on the subject adopted by the United Nations General Assembly which recognized "...the need of land-locked countries for adequate transit facilities in promoting international trade . . ." and invited the Governments of Member States " . . . . to give full recognition to the needs of land-locked Member States in the matter of transit and trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries" ;

Noting Resolution of the Economic Commission for Asia and the Far East (ECAFE) Ministerial Conference of 1963 on Asian economic co-operation, "recognising the right of free transit for land-locked countries and the special considerations which apply to their transport and transit problems and the importance of the relationship of these problems to questions of regional co-operation and the expansion of inter-regional trade" ;

Noting further the ECAFE Resolution 51 (XX) on the transit trade of land-locked countries, which strongly recommended that the subject be given urgent and sympathetic consideration at the forthcoming United Nations Conference on Trade and Development with a view to formulating an adequate and effective international convention to ensure the freedom of transit trade of land-locked countries ;

Considering that, for the promotion of the economic development of the land-locked States, it is essential to provide facilities to enable them to overcome the effects of the land-locked position on their trade ;

Taking into consideration that the existing multilateral conventions relating to the transit trade of the land-locked countries needs to be brought up to date and it is therefore essential to formulate an adequate, effective international convention to ensure the freedom of transit trade of land-locked countries :

(1) *Requests* the Secretary-General of the United Nations to appoint a committee of twenty-four members representing land-locked, transit and other interested States as governmental experts and on the basis of equitable geographical distribution ;

(2) *Requests* this committee to prepare a new draft convention treating the proposal made by Afro-Asian land-locked countries as a basic text and taking into account the principles of international law, conventions and agreements in force and submissions by Governments in this regard, as well as the records of the Sub-Committee on land-locked countries established by this Conference, and to submit the new draft convention to a conference of plenipotentiaries for consideration and adoption ;

(3) *Requests* the Secretary-General to prepare, in consultation with the specialized agencies or any other competent body of the United Nations, full preparatory documentation for circulation to the members of the said committee in sufficient time prior to the convening of the committee ;

(4) *Recommends* that the said committee be convened during 1964 and the conference of plenipotentiaries be convened by the United Nations in the middle of 1965.

Among other observations made during the debates of the Sub-Committee, the following should be mentioned :

The Sub-Committee noted the propositions made by the delegations of Bolivia and Paraguay, mentioned in document E/CONF. 46/SC. 1/L.5, for the creation of a commission to study the special problems of each land-locked country, and thought that it merited further study.

The representatives of some countries considered that, should the Conference create an international trade organization or other standing body, elaboration of the convention should be entrusted to the Secretary-General of that organisation or body.

There was a general feeling that of the twenty-four members of the proposed committee, ten members should be from land-locked countries, ten from transit countries and four from other interested States.

The land-locked countries of Africa expressed their desire that the principles stated by the land-locked countries at Geneva on 14th February, 1958 should be reaffirmed at the Conference, and proclaimed their solemn adherence to those principles.

The land-locked countries of Africa and Asia expressed their dissatisfaction because the Sub-Committee had not had time to discuss the draft convention submitted by them as a working document in accordance with the Sub-Committee's terms of reference. Their views were expressed in a note which was brought to the attention of the Fifth Committee.

The report of the Sub-Committee was submitted to the Fifth Committee at its 31st and 32nd meetings on 19th and 22nd May, 1964 and the Committee took note of it and decided to incorporate it in a committee's report, for submission to the Conference and it also proposed that the Conference adopt the Declaration of Principles of International Economic Co-operation with its Interpretative Note and recommended that participating governments take these Principles into account in their trade relations.

The Committee also adopted the recommendation of the Sub-Committee on the preparation of a convention at a Conference of Plenipotentiaries in the middle of 1965. All these recommendations which were in the body of the report of the Fifth Committee of UNCTAD-I were adopted by the Conference on 15th June, 1964 and became a part of the Final Act of the First UNCTAD.

The Preparation and Adoption of the Convention on Transit Trade of Land-Locked Countries

A. Preparation for the Convention

The Committee on the Preparation of a Draft Convention relating to Transit Trade of Land-locked Countries was established by the Secretary-General in pursuance of the recommendation contained in Annex A.VI.

1 of the Final Act of the United Nations Conference on Trade and Development (UNCTAD), in the following terms:

"RECOMMENDS that the United Nations ;

"1. Request the Secretary-General of the United Nations to appoint a committee of twenty-four members representing land-locked, transit, and other interested States as governmental experts and on the basis of equitable geographical distribution and to convene the said committee during 1964 ;

"2. Request the said committee to prepare a new draft convention treating the proposal made by African-Asian land-locked countries as a basic text and taking into account the principles of international law, conventions and agreements in force and submissions by Governments in this regard, as well as the records of the Sub-Committee on Land-locked Countries established by the Conference, and to submit the new draft convention to the Secretary-General for presentation to the Conference of Plenipotentiaries to be convened in accordance with paragraph 4 below ;

"3. Request the Secretary-General to prepare, in consultation with the specialized agencies or any other competent body of the United Nations, full preparatory documentation for circulation to the members of the said committee in sufficient time prior to the convening of that committee ; and

"4. Decide to convene a Conference of Plenipotentiaries in the middle of 1965, for consideration of the draft and adoption of the convention".

In accordance with paragraph 1 of the above resolution, the Secretary-General designated the following States as members of the Committee: Afghanistan, Argentina, Austria, Bolivia, Chile, Czechoslovakia, India, Ivory Coast, Japan, Liberia, Mali, Nepal, Netherlands, Niger, Nigeria, Pakistan, Paraguay, Senegal, Switzerland, Union of Soviet

Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta and Yugoslavia.

The Committee met at the United Nations Headquarters, New York, from 26th October to 20th November, 1964 and held thirty public meetings.

In their statements, representatives recalled efforts which have been made on the international level for the improvement of the position of the land-locked countries in respect of access to the sea from the Barcelona Convention to the Geneva Convention on the High Seas, culminating in the adoption of the general principles by UNCTAD and the various bilateral arrangements which have been concluded between specific land-locked countries and neighbouring transit States. The task before the Committee was, in accordance with the resolution adopted at UNCTAD, to elaborate a general convention to ensure the international acceptance of the basic arrangements which have been evolved over the past four decades to assist the land-locked countries.

As to the content of the Convention to be drafted there was general agreement that it should harmonize the general principles adopted unanimously at UNCTAD with the draft submitted by the African-Asian land-locked countries. It was agreed that the provisions of the draft Convention should generally be in accord with the principles adopted at Geneva by UNCTAD and with existing general conventions; in particular there was general agreement that, while emphasizing the need for freedom of transit of land-locked countries, the sovereign rights of the transit States should be taken into account. It also generally concerned the transit trade of land-locked countries, the development of which was clearly recognized as essential for accelerating their economic development through international trade.

In accordance with paragraph 2 of the recommendations of UNCTAD the representatives decided that the draft Convention of the African-Asian land-locked countries should serve as the basic text for the discussions of the Committee and in the light of comments already made by representatives on specific articles, amendments and other improvements thereto could also be considered.

As indicated above, the Committee took as a basis of discussion the draft Convention submitted by the African-Asian land-locked countries.

At its 26th meeting on 18th November, the Committee agreed that, where requested, observations or reservations of members indicating their positions in respect of the various articles of the draft Convention referred by the Committee to the Plenipotentiary Conference would be recorded in the final report. It had also been pointed out by the Chairman that the States represented at the future Conference of Plenipotentiaries would not necessarily be bound by the statements made by their representatives in the Committee.

B. Convening of the United Nations Conference for the Adoption of the Convention

The General Assembly of the United Nations at its 1328th plenary meeting on 10th February, 1965 decided to convene an International Conference of Plenipotentiaries to consider the question of transit trade of land-locked countries and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. This decision was taken in pursuance of a resolution adopted by the First United Nations Conference on Trade and Development at Geneva in June 1964 as we have explained in detail in the previous section.

The United Nations Conference on Transit Trade of Land-locked Countries met at the Headquarters of the United Nations in New York from 7th June, 1965 to 8th July, 1965.

The Governments of the following sixty States were represented at the Conference: Afghanistan, Argentina,

Austria, Belgium, Bolivia, Brazil, Burundi, Byelorussian, Soviet Socialist Republic, Cameroon, Central African Republic, Chile, Congo (Brazzaville), Czechoslovakia, Federal Republic of Germany, France, Greece, Holy See, Hungary, India, Ivory Coast, Japan, Kenya, Laos, Liberia, Luxemburg, Malawi, Mali, Mongolia, Nepal, The Netherlands, Niger, Nigeria, Pakistan, Paraguay, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Yugoslavia and Zambia.

The Governments of Australia, Congo (Democratic Republic of), Cuba, Denmark, Ghana, Iran, Iraq, Israel, Mauritania, Peru and Venezuela designated observers to the Conference.

The Inter-governmental Maritime Consultative Organization participated in the Conference as an observer in accordance with Rule 57 of the Rules of Procedure of the Conference.

The following non-governmental organizations participated in the Conference as observers in accordance with Rule 58 of the Rules of Procedure of the Conference : International Chamber of Commerce and International Confederation of Free Trade Unions.

The Conference elected Mr. Paul Reugger (Switzerland) as President. Mr. A.A.O. Ezenwa (Nigeria) served as Acting President from 6th to 8th July.

The Conference elected the following representatives as Vice-Presidents : Dr. Abdul Hakim Tabibi (Afghanistan); Mr. D. Lucio Garcia del Solar (Argentina); Mr. Fernando Ortiz Sanz (Bolivia); Mr. J. B. Beleoken (Cameroon); Mr. Josef Smejkal (India); Mr. Yaya Diakite (Mali); Mr. A.A.O. Ezenwa (Nigeria); Mr. Jaime de Pinies (Spain);

Mr. G. S. Gurgushev (Union of Soviet Socialist Republics); and Mr. A. B. C. Danieli (United Republic of Tanzania).

The Conference had before it as the basis for its work the report of the Committee on the Preparation of a Draft Convention relating to Transit Trade of Land-locked Countries (A-5906). The draft Convention transmitted by the Committee, the Afro-Asian draft Convention, as well as all the amendments, were annexed to the report.

On the basis of its deliberations, as recorded in the summary records of the plenary meetings, the Conference prepared the Convention entitled "Convention on Transit Trade of Land-locked States".

This Convention, which was adopted by the Conference on 8th July, 1965, was opened for signature on that day, until 31st December, 1965, at the United Nations Headquarters in New York. The Convention provides for ratification and accession, in accordance with its terms.

In addition, the Conference adopted two resolutions which are annexed to the Final Act of the New York 1965 Conference.

This Convention, which consists of a detailed preamble stating the legal right of the land-locked States and 23 Articles came into force on 9th June, 1967, and was a final legal and practical step for the solution of the problems which the land-locked countries were facing.

As a matter of fact, the most positive action which the UNCTAD-I took towards the development of international trade was the decision on the right of transit trade of land-locked countries. The preamble of the Convention lays the legal foundation of the right of transit for land-locked States, and the main body of the Convention which consists of 23 Articles explains the practical rules of transit for mutual benefit of land-locked as well as transit countries. But

legally speaking this Convention establishes principles of most-favoured treatment in favour of the land-locked countries of the world.

Consideration of Land-Locked Problems under Item 9 (g) of the Agenda of the United Nations Conference on Trade and Development

The following are the relevant extracts from U. N. Document No. A/AC. 138/37 :

187. The second session of the United Nations Conference on Trade and Development, held in 1968, included on its agenda as item 9 (g) the question of the "special problems of the land-locked countries". Resolution 11 (II), which was adopted unanimously by the Conference, urged in part A that States which had not already done so to become parties to the Convention on Transit Trade of Land-locked States. The operative provisions of part B of the resolution, among other matters, recommended that, in view of the special problems of land-locked developing countries, the land-locked situation should be considered as a factor in determining the criteria for the identification of the least developed among the developing countries (operative paragraph 1) ; that appropriate attention be accorded to the special needs of land-locked developing countries with respect to projects for the development of the transport and communications infrastructure (including joint projects with transit countries) (operative paragraph 4); and called on transit countries to extend their co-operation to the formulation and execution of such projects (operative paragraph 4). The Conference also recommended that land-locked developing countries and transit countries should enter into consultations, whether bilaterally or on a regional or sub-regional basis, with a view to examining the special difficulties of land-locked countries, in particular as regards facilities for transit trade (operative paragraph 5). Developed countries and the international organizations concerned were asked to

consider the granting of loans on favourable terms to assist the development of the transport and communications facilities referred to (inoperative paragraph 6). It was also suggested that Liners Conference and insurance companies should be asked to bear in mind the special problems of land-locked countries in forming their tariff policies (operative paragraph 7). The economic commissions concerned with the developing regions were asked to pay special attention to the problems of land-locked countries in the field of trade expansion and economic development, particular reference being made in this connexion to regional and sub-regional groupings and to the need for greater participation by land-locked developing countries in regional and international trade (operative paragraph 9).

188. Part B of the resolution also requested the Secretary-General of UNCTAD

> "... to establish a group of experts to carry out a comprehensive examination of, and to report upon, the special problems involved in the promotion of the trade and economic development of the land-locked countries, a special study to be made in this examination of the transport problems, outlining possible ways by which the adverse effects of higher transportation costs on the trade position, production costs and execution of economic development programmes of the land-locked developing countries might be minimized".

2. Eighth session of the Trade and Development Board, 1969

189. During its eighth session the UNCTAD Trade and Development Board adopted, on 17 May 1969, a statement on the contribution of UNCTAD to the Second United Nations Development Decade. The statement made provision for the elaboration of special measures in favour of land-locked developing countries, within the context of UNCTAD's contribution to the international strategy for

development. Section C of the appendix to the statement provided, *inter alia*, that, in the light of the general recommendations made in Conference resolution 11 (II), specific measures in favour of these countries would be elaborated by the Board after its consideration of the report of the Group of Experts. It was also stated that, when any agreement was discussed and elaborated in the field of trade and development, it was desirable that any special problems of the land-locked developing countries receive due attention.

3. General Assembly resolution 2569 (XXIV) of 13 December 1969 on special measures in favour of the land-locked developing countries

190. Following its consideration of the report of the eighth session of the Trade and Development Board, the General Assembly adopted resolution 2569 (XXIV) of 13 December, 1969, on "special measures in favour of the land-locked developing countries". The General Assembly welcomed the agreement reached in the Board whereby specific measures in favour of these countries would be elaborated in the context of UNCTAD's contribution in the international development strategy, requested the Board to consider, on the basis, *inter alia*, of the report to be submitted by the Group of Experts, the adoption of practical measures for the implementation of resolution 11 (II) of the second session of the Conference ; and further urged all States which had not done so to become parties to the Convention on the Transit Trade of Land-locked States.

4. Report of the Group of Experts on special problems of the land-locked countries

191. The Group of Experts which was convened by the Secretary-General of UNCTAD pursuant to resolution 11 (II) met in Geneva from 11 May to 4 June 1970. Their report contained three chapters. The first, entitled "The nature and significance of the problems confronting land-

locked countries" described in turn the geographical characteristics and the economic environment of the land-locked developing countries, problems in the fields of transport, trade and payments, and development ; legal, administrative and political issues, and the over-all significance of the land-locked position. Chapter II, "Policy areas and measures in relation to the problems of the land-locked developing countries", dealt, *inter alia*, with modes of transport ; trade relationships; the structure of production ; services, industries and marketing ; the regional approach ; and the question of foreign finance and aid. The concluding chapter listed a series of "specific policy measures for land-locked developing countries". The recommendations were divided into three broad groups ; administrative and other measures not requiring investment ; measures requiring investment in the transport and communications infrastructure ; and measures directed towards adapting the economic structure of the land-locked developing countries to their land-locked position. In putting forward its recommendations, the Group also indicated the reasons which had guided its choice and the factors to be considered in the application of the proposals. Whilst it is difficult therefore to give a full account of the recommendations, the following points may be noted. As regards administrative and other measures, the Group recommended that agreements should be concluded between land-locked developing countries and their transit neighbours with respect to the appointment of representatives in transit ports, the establishment of procedures for inter-governmental consultation, and the simplification of customs and other formalities. As regards transport facilities, agreements should be sought between neighbouring countries which would facilitate the free circulation of road vehicles on a reciprocal basis, the free movement of rolling stock, and secure the freedom of navigation on inland waters. With respect to the transport infrastructure, it was pointed out that all the measures proposed would require investment,

often on a heavy scale. Financial and technical assistance would be needed by both land-locked developing countries and their transit neighbours. The suggestions put forward accordingly envisaged that steps be taken for the evaluation, installation and maintenance of transport facilities in transit as well as in land-locked States. Amongst the specific recommendations made was a proposal that consideration should be given to the establishment of alternative transport routes to the sea from land-locked countries where this was economically feasible, specific attention being given in this connexion to the establishment of trunk routes which all countries within a region could use. It was also proposed that

> "... technical and financial assistance should be given for the investigation, and the establishment where economically feasible, of new forms of transport, with particular reference to pipelines for oil, natural gas and other suitable products."

192. The recommendations made with regard to the economic structure referred to the need for feasibility studies and investment to adapt the economies of the States concerned to their land-locked situation : the steps to be taken included the development of import substitute industries, the processing of raw materials for export, and thorough exploration to determine the resource endowment of minerals of land-locked countries.

193. Having regard to the comprehensive nature of the study made by the Group of Experts, it may be of interest to note the accent placed in the conclusion of the report on the need for regional measures. The two final paragraphs of the report of the Group of Experts are as follows :

> "129. In all of the policy measures suggested particular emphasis must be placed on regional co-operation and integration, and this is most important in the measures relating to economic structure. Most of the eighteen land-locked developing countries are too small and too little developed to be able to achieve significant results acting independently. We wish to emphasize that the development strategy of a land-locked developing country will frequently call for combined efforts by these countries themselves, their transit neighbours and the international community. In this context there are in all regions multinational projects for the improvement of the regional infrastructure and the common exploitation of natural resources from which both a land-locked country and its neighbours could greatly benefit.
>
> 130. Where particular groups of land-locked developing and transit countries decide that the best strategy lies in joint enterprises in transport and other fields, in preferential trade and tariff agreements, or in closer arrangements for economic co-operation and integration, it is imperative that there should exist some regular machinery for approaching the problems of the land-locked developing countries on a regional or subregional basis. In this respect the three regional economic commissions of the United Nations, regional and subregional economic organizations and regional development banks have an important role to play in providing a forum for discussion and a platform for action."

194. Lastly, the report contains, in its series of annexes, an annex III which gives data on the transport methods and access to the sea of the land-locked developing countries. Annex IV, describing the arrangements made in the field of transport related to land-locked developing countries, has already been referred to.

5. Tenth session of the Trade and Development Board, 1970

195. During the first part of its tenth session (26 August—

24 September 1970) the Trade and Development Board considered the report submitted by the Group of Experts and, on the basis of the report, adopted resolution 69 (X). The resolution invited the land-locked developing countries and their transit neighbours to take note of the recommendations made by the Group of Experts in evolving mutually acceptable solution (operative paragraph 1), and affirmed the need to take effective remedial steps to solve the problems of land-locked developing countries within the context of the international development strategy (operative paragraph 2). The Board also recommended that the Governments of land-locked developing countries and their transit neighbours should continue their joint efforts to make arrangements to review administrative and other measures governing the flow of transit trade and trade between land-locked and transit States, with a view to facilitating that trade, curbing smuggling and diversion of trade, and arranging for regular intergovernmental consultations (operative paragraph 3). The Governments concerned were also recommended to co-operate in the elaboration and promotion of projects for the development of road, rail, water and other transport systems, for their mutual benefit (operative paragraph 4). In further provisions of the resolution the Board

— invited the United Nations Development Programme, the specialized agencies, international financial institutions and the Governments of developed countries members of UNCTAD to take into account the appropriate recommendations of the Group of Experts and the special needs of land-locked developing countries and their transit neighbours, particularly in the field of transport, and to give favourable consideration to requests from these countries for financial and technical assistance, including, where appropriate, financial assistance on soft terms, to achieve the objectives of the present resolution and therefore requests the Secretary-General of UNCTAD to transmit the report of the

Group of Experts and the present resolution to the above-mentioned organizations for appropriate action ; (operative paragraph 7)

— instructed the Committee on Shipping and the Committee on Invisibles and Financing related to Trade to study and make proposals designed to assist land-locked developing countries, including proposals regarding reduction of their balance of payments burden in respect of transit trade and insurance costs ; (operative paragraph 8)

— invited the United Nations Development Programme, specialized financial institutions and the Governments of developed countries to assist transit developing countries to improve their port installations and facilities which should help to meet the transshipments of land-locked countries ; (operative paragraph 9) and

— invited the Intergovernmental Group on trade expansion, economic co-operation and regional integration among developing countries, to include in its agenda a review and analysis of the special problems of the land-locked developing countries, with a view to giving special consideration to need for their greater participation in the regional and international trade. (operative paragraph 10)

196. The resolution also requested the appropriate organs of UNCTAD to recommend specific practical measures for alleviating the special problems of land-locked developing countries within the context of the international strategy. The resolution requested the Secretary-General of UNCTAD to submit to the Board at its eleventh session and to the third session of the United Nations Conference on Trade and Development a progress report on the actions taken pursuant to the resolution.

B. General Assembly resolution 2626 (XXV) of 24 October 1970 on international development strategy for the Second United Nations Development Decade

197. Following consideration of the subject by the Preparatory Committee for the Second United Nations Development Decade, which made use of various relevant documents, including those of UNCTAD bodies, the General Assembly adopted, without vote, resolution 2626 (XXV) proclaiming the Second United Nations Development Decade, starting from 1 January 1971, and adopting the international development strategy to be followed. Part C of the Strategy, listing policy measures, contained headings dealing with "special measures in favour of the least developed among the developing countries" and "special measures in favour of the land-locked developing countries". The paragraph under the last-mentioned heading provides :

> "National and international financial institutions will accord appropriate attention to the special needs of land-locked developing countries in extending adequate financial and technical assistance to projects designed for the development and improvement of the transport and communications infrastructure needed by these countries, in particular of the transport modes and facilities most convenient to them and mutually acceptable to the transit and land-locked developing countries concerned. All States invited to become parties to the Convention on Transit Trade of Land-locked States of 8 July 1965 which have not already done so, will investigate the possibility of ratifying or acceding to it at the earliest possible date. Implementation of measures designed to assist the land-locked countries in overcoming the handicaps of their land-locked position should take into account the relevant decisions and resolutions which have been or may be adopted in the United Nations Conference on Trade and Development."

C. Economic Commission for Africa

198. In addition to its efforts directed towards measures of regional and subregional co-operation, which have been designed to benefit land-locked as well as coastal States, ECA has also taken a number of more specific steps to assist land-locked countries in Africa. ECA submitted a study dealing with the transit problems of African land-locked States to the Committee on Preparation of a Draft Convention relating to Transit Trade of Land-locked countries, which met in 1964. References to the problems of land-locked countries have also been made in the context of the Commission's work relating to transport, customs administration, and trade and development. ECA has, in addition, adopted two resolutions on land-locked countries. In resolution 167 (VIII) of 24 February 1967, the Commission invited the Executive Secretary to take the necessary steps with a view to the signature of the Convention on Transit Trade of Land-locked States by all member States and effective implementation of its recommendations by the Governments of African States.

199. Resolution 218 (X), on the question of Africa's strategy for development in the 1970s, adopted on 13 February 1971 at Commission's tenth session (the first meeting of the Conference of Ministers of ECA), also included a provision on land-locked countries. The relevant passages of paragraph 8 of the resolution, which sets out the strategy for development, read as follows :

> "(42) Thirteen out of a total of eighteen land-locked countries can be found in Africa. The position of these countries, in particular because of the high costs of transportation, the poor development of their infrastructure ; inadequate and inconvenient transport, storage and port facilities ; the lack of opportunity to use their own transport equipment and to establish their

own transport facilities ; and the unfavourable trend of transport tariffs and charges, is a factor seriously inhibiting the expansion of their trade and economic development.

"(43) The solution of the special problems of the land-locked and island countries require special measures to be taken in their favour within the region and in the broader framework of the Second United Nations Development Decade. The various elements of such a strategy would include the following :

(i) detailed studies identifying their most serious bottlenecks to rapid economic development ;

(ii) effective recognition of their right to, and facilitation of, free access to the sea ;

(iii) priority attention to their financial and technical assistance needs, including the granting of soft-term loans and the provision of funds designed to subsidize their additional transport costs ;

(iv) application of special measures in their favour along the lines of those accorded to the least developed among the developing countries.

200. The following developments should also be mentioned : (a) the United Nations Development Programme has completed a feasibility study of a trans-Saharan route. Algeria has already initiated action domestically and submitted an application to UNDP ; (b) ECA is following up road network development among the *Entente* countries, namely, Ivory Coast, Togo, Dahomy, Niger and Upper Volta, with links to Ghana ; (c) a meeting of six African countries and prospective donors is due to start on 14 June to examine arrangements for initiating a trans-Central African highway involving Kenya, Uganda, the Democratic Republic of the Congo, the Central African Republic, Cameroon and Nigeria ; (d) ECA is following up the activities of

rural development projects which include trade outlets *vis-a-vis* neighbours and exports ; (e) under the leadership of Mauritania, the Senegal River basin States are supporting a road from Mauritania to the West African coast to be known as Unity Road. Development of the Senegal basin might extend port facilities for relatively large boats up to Gouina in Mali.

D. Economic Commission for Asia and the Far East

201. As regards more recent actions, a meeting of government experts on trade expansion was convened by ECAFE in August 1968, to examine various aspects of regional trade expansion policy and payments arrangements, including problems of land-locked countries. The meeting recognized the geographical handicaps of such countries, which had resulted in high transportation costs for their external trade, and felt that improved transportation methods and facilities should be found to reduce such costs.

202. Since the land-locked as well as the transit countries in the ECAFE region were developing countries with limited resources, the meeting recommended that the developed countries should give special consideration to extending technical and financial assistance to both the land-locked and transit countries, with a view to overcoming the former's special difficulties. International and regional financial institutions were also urged to extend loans with specially favourable terms for such purposes. Full exploration of the possibility of modernizing transportation methods, such as by the use of roll-on and roll-off facilities, palletization and containerization should be made with the expert assistance of the developed countries. In this connexion, the meeting drew the attention of Governments and international financial institutions to UNCTAD resolution 11 (II).

203. The meeting also discussed a proposal to establish a standing intergovernmental consultative committee on

transit trade of land-locked countries, consisting of land-locked countries, transit countries and others interested in the trade expansion and economic development of the land-locked countries in Asia. It felt that, although ultimately the transit problems faced by both the land-locked and transit countries required solution on a bilateral basis in the context of the circumstances pertaining to each particular case, consultations at the regional level could supplement the measures for dealing with the transit trade problems of the land-locked countries and assist in finding suitable solutions thereto. While this proposal was supported by several experts at the meeting, it was felt that consideration of any such proposal should await the results of the special study of the Group of Experts constituted by the Secretary-General of UNCTAD in accordance with UNCTAD resolution 11 (II).

204. Pursuant to a recommendation of the meeting, ECAFE secured the services of the trade expert from a developed land-locked country, who prepared a study on the export promotion problems and needs of three Asian land-locked countries. Follow-up action on the recommendations made has already been taken by some countries.

205. In February 1970 the ECAFE Committee on Trade agreed that there was an urgent need for introducing special measures to assist the land-locked countries in over-coming the impediments they faced in their efforts to expand their international trade. It welcomed a suggestion that the Executive Secretary create a unit in the ECAFE International Trade Division to deal with the special problems of the land-locked countries and the least developed among the developing countries of the region. It was also suggested that the ECAFE secretariat undertake studies on the effects of the freight structure in the over-all trade of land-locked countries, with a view to ensuring favourable freight rates for those countries, as well as a study of the possibility of improving the present international railway and highway systems so as to provide better communications

between the land-locked countries and the nearest seaports.

206. In resolution 107 (XXVI) of 23 April 1970, on transit problems of land-locked countries, the Commission requested the Executive Secretary to assist in promoting and continuing the institutional arrangements required for a smooth implementation of the recommendation concerning the transit problems of the land-locked countries in the region, and to prepare a long-term plan for solving their problems, for implementation during the Second Development Decade. The Commission also urged the member countries concerned which had not yet ratified or acceded to the 1965 United Nations Convention on Transit Trade of Land-locked States to give favourable consideration to the possibility of doing so at an early date, so as to facilitate the development of intra-regional and world trade. At that session, the representative of the Republic of Viet-Nam made an offer to provide access to the sea for Laotian traffic on the completion of the necessary infrastructural requisites in the country.

207. Pursuant to the decision of the Committee on Trade and the Commission, a unit was created in the ECAFE International Trade Division in 1970 to give continuous attention to the problems of land-locked and less developed countries of the region with a view to providing suitable solutions thereto, and in order to co-ordinate the activities of other substantive divisions of the secretariat. The unit is also responsible for maintaining close co-operation with the UNCTAD secretariat and other United Nations bodies dealing with the subject.

208. The Council of Ministers on Asian Economic Co-operation, at its fourth session held at Kabul in December 1970, in considering proposed schemes of regional trade and monetary co-operation as well as related supporting projects, adopted the "Kabul Declaration on Asian Economic Co-operation and Development" in which, recognising the need for adequate transit facilities for the land-locked countries

and the difficulties encountered in promoting the economic development of the least developed among developing countries of the region, the Council urged the member and associate member countries of the region, in co-operation with the ECAFE secretariat, *inter alia*, to render every possible assistance to the land-locked countries of the region to enable them to enjoy the right of free access to the sea ; to provide port and transport facilities, minimum and simple customs formalities, reasonable transport charges and transit by air and overland routes ; and to accord specially favourable treatment to imports from the least developed among the developing countries in respect of tariff and non-tariff barriers. It was also agreed in this context that disputes between two countries in the region should not be allowed to affect adversely the interests of third countries in the region.

209. Under the programme of work and priorities in the field of trade for 1971 and 1972, ECAFE has given high priority to subjects relating to the special problems of land-locked and least developed among developing countries of the region. In accordance with the recommendation of the Committee on Trade, which was endorsed by the Commission at its twenty-seventh session held in April 1971, the ECAFE secretariat proposes to work out a plan to organise a mission of experts, in 1971/1972, to visit the land-locked countries of the region in order to identify their trade and economic problems and evolve suitable solutions thereto. The mission will comprise experts in the fields of transport and communications, trade promotion and policy, and industrial development. The ECAFE secretariat also proposes to organize in the land-locked and least developed among developing countries of the region, roving seminars and training courses in trade promotion and policy in 1971 and 1972, with the co-operation of the UNCTAD/ GATT International Trade Centre.

210. Finally, at its twenty-seventh session held in April 1971, the Commission adopted resolution 114 (XXVII),

on the special problems of land-locked countries, in which it requested the Executive Secretary to establish a specia body to make recommendations for the purpose of implementing the provisions of the Kabul Declaration in regard to the land-locked countries, as well as the 1965 United Nations Convention on Transit Trade of Land-locked States. A report on the work of the special body is to be submitted to the Commission at its next session.

CHAPTER V

LAND-LOCKED COUNTRIES AND THE EXPLORATION AND EXPLOITATION OF THE RESOURCES OF THE SEA-BED AND THE OCEAN FLOOR AND THE SUB-SOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION

Since the 1958 Law of the Sea Conference by which the High Seas Convention and the Convention on the Continental Shelf, among other things, were adopted, major events have occurred both in the legal as well as technical fields. Under the provisions of the Continental Shelf Convention, coastal States were given exclusive rights with respect to the resources of the continental shelf. But during the decade after 1958, technological and scientific progress proves that exploitation and exploration could proceed at depths considerably greater than the 200 metres which the International Law Commission and the Law of the Sea Conference in 1958 considered to be sufficient.

Therefore, in the light of these new developments and following upon the work of the *Ad Hoc* Committee in 1968 the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction was set up to consider the new factors raised. The Declaration of Principles adopted by the General Assembly on

17 December 1970, on the basis of the Committee's deliberations, includes the following provisions :

"1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.

2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

3. No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international regime to be established and the principles of this Declaration.

4. All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international regime to be established.

5. The area shall be open to use exclusively for peaceful purposes by all States whether coastal or land-locked, without discrimination, in accordance with the international regime to be established.

× × ×

7. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

× × ×

9. On the basis of the principles of this declaration, an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The regime shall, *inter alia*, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

× × ×"

It was particularly under the provisions of paragraphs 5 and 9 that the General Assembly declared that in any international regime the land-locked countries will participate on the same footing as coastal States and will benefit from the sea-bed exploitation.

In the course of deliberations on this question in the Sea-Bed Committee, at its session held in March during the Summer of 1971, the right of sharing of benefits from exploration and exploitation by the land-locked countries as the least developed countries was reaffirmed. Therefore, in any international machinery, representation of land-locked countries should be fully recognised and likewise, they must take part on a equal footing with the coastal States, in the direct exploration and exploitation of sea-bed resources.

In issuing licences for exploration and exploitation of the sea-bed, the economic needs and requirements of the land-locked countries, as the least developed countries should be taken into account. Now that it is considered as an established legal regime that opportunities for engaging in sea-bed activities are open to all, whether land-locked or

coastal States, the co-operation of coastal States with their land-locked neighbours on matters of transit and use of its equipment and other facilities, if they wish to engage in sea-bed activities, is essential ; and indeed this co-operation and recognition of mutual interests is based on the fundamental principles of free access to the sea. To exploit the resources of the sea, the land-locked countries particularly those who are the least developed, are in disadvantageous position which makes it necessary for their neighbours as well as the international community as a whole to initiate appropriate arrangements to overcome the geographical disadvantages of the land-locked countries. In this respect the principles contained in the 1958 High Seas Convention and the Convention on Territorial Sea, relating to innocent passage, as well as the Convention on Transit Trade of Land-locked States, adopted in New York on July 8, 1965 could be applied along with other general principles of international law. By the application of these principles and on the basis of the most-favoured-nation treatment, the problems of the land-locked countries, and the disadvantages which they suffer from, may find a solution. The Declaration of Principles governing the Sea-Bed and Ocean Floor and the Subsoil thereof, beyond the limits of National Jurisdiction, adopted at the twenty-fifth Session of the General Assembly provides for a rational management of the area and its resources by the international regime to be established. It is in this regime that arrangements ought to be made for the land-locked States to benefit along with coastal States without discrimination or disadvantage. Since the majority of the land-locked States of the world, who happen to be the least developed nations, are in Asia and Africa, particular attention is required by our own region to recognise a just regime not only to benefit the coastal but the land-locked countries as well.

(V) A SHORT NOTE ON THE ACTIVITIES OF THE COMMITTEE FOR CO-ORDINATION OF JOINT PROSPECTING FOR MINERAL RESOURCES IN ASIAN OFF-SHORE AREAS*

Prepared by

the A.A.L.C.C. Secretariat

The Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian off-shore Areas (CCOP), is an intergovernmental body established under the sponsorship of the United Nations Economic Commission for Asia and the Far East (ECAFE). At the first session of the Committee held in June 1966 only four States, Republic of China, Japan, Republic of Korea and the Philippines, participated as full members. Later, Republic of Vietnam, Thailand, Cambodia, Malaysia and Indonesia also joined and today membership in CCOP comprise all nine ECAFE member countries having substantial areas of off-shore territory in Eastern Asia.

Participation by other countries in the activities of CCOP and extension of its facilities to other member countries of the ECAFE region was discussed by the Technical Advisory Group of CCOP and its special advisers. After due consideration it was felt that logistic difficulties would arise by extending the activities of CCOP in the Indian Ocean area. And therefore, it would be in the best interest of the countries concerned in the Indian Ocean area if they could establish a similar organisation with the same objectives as those of CCOP. However, the Committee was of the opinion that if a separate organisation for the countries of the Indian Ocean area were formed, it would be useful for both

* This summary has been prepared from the Reports of the Sessions of CCOP and its Technical Bulletins.

organisations to maintain liaison by exchanging information and holding joint meetings.

Some typical geological features in Eastern Asia

The land and the sea floor off Southern Asia contains a series of swells or ridges separated by basins. Westernmost of the swells is the Malay Peninsula, whose side slopes bound the Gulf of Thailand Basin. At the south end of the Basin is an area of truncated shallow basement extending from Singapore to Natuna Island and Borneo. The Gulf of Thailand basin is about 1100 kilometres long and average of 200 kilometres wide.

The territory of Republic of Singapore and the adjacent waters form part of the Sunda Shelf, which includes the Gulf of Siam, part of the South China Sea and the waters between Borneo, Java and Sumatra in western Indonesia.

The Korean Peninsula separates the Yellow Sea on its western side from the Japan Sea on its eastern side. The east coast of the Peninsula is a steep shoreline of emergence whereas the western and southern coasts have an extremely irregular shoreline indicative of submergence. The waters of the Pacific Ocean are drawn by the tide into the nearly land-locked Yellow Sea, thus causing exceptionally high tidal fluctuation (8 or 9 metres), as a result, the western shore is characterized by broad tidal mud, flat rather than sandy beaches. The southern shore is a typically submerged shoreline with drowned fjords like valleys and many islands.

Taiwan Strait has been classified as a marginal semi-enclosed sea. The floor of the strait, forming part of the continental shelf of Eastern Asia, is about 500 kilometres long and 150 kilometres wide, with water depths ranging down to 150 metres. The shallowest part in the area is the Taiwan Bank, situated southwest of the Penghu Island, and is about 90 kilometres wide and 210 kilometres long with axis trends east-west. The Taichung Bank is a small bank northwest of Penghu Islands and west of Taichung. There are two categories of

faunal gradations, one is related to the distribution of the ocean water masses comprising the cold current, the Kuroshio current, along the mainland coast and the other deep water masses related to submarine topography of the area.

Finally, is the Indonesian archipelago comprising the border areas of the partly submerged northern extension of the Australian continent, and the belt of deep sea basins and island festoons separating those two shelf areas. The vast area of shallow marine shelves is generally less than 100 metres deep. A typical feature of the Indonesian archipelago is the arrangement of most islands into arc systems, of which a non-volcanic outer arc and a volcanic inner arc can be distinguished. The outer row of islands runs through Sumatra, Java, the Nusa Teuggara (lesser Sunda Islands) and the inner around the Banda Sea.

Review of the activities of CCOP

The exploration for mineral resources under the sea is a long term process requiring a high level of technical skill and substantial finance. Besides, ventures of this sort cannot be undertaken without adequate basic geological data for efficient planning of survey projects. The efforts of CCOP, with the help and advice given by the special advisers from the advanced countries and international organisations, have led to discovery and development of the vast potential resources of mineral wealth in the Eastern Asia.

During the short span of five years since its inception the offshore survey programmes undertaken recently through the medium of CCOP had already attracted considerable interest in the mineral potentials, including petroleum, of marine shelves of Eastern Asia. With the discovery of oil fields into substantial productive capacity, a revolutionary change in the pattern of sources of supply of crude oil for the member countries of CCOP would take place, similar to that which had occurred in the early post-war years when the Middle East had begun to develop as a major source of

supply for the world's crude oil, including the ECAFE Region. That would bestow great economic benefits on the countries in whose territories new oil fields might be found, and would reduce substantially the transportation costs for shipping crude oil to other countries of Eastern Asia.

The fourth symposium on the development of petroleum resources of Asia and the Far East, held at Canberra, in Australia in October/November 1969, had placed great stress on offshore operations and had recognised the important role that CCOP was playing in attracting interest to the petroleum potential of the marine shelves of Eastern Asia. It noted that by mobilising both bilateral and multilateral assistance, a substantial number of offshore surveys and investigations had been undertaken through the medium of CCOP and had already yielded concrete results.

The symposium attributed the success of CCOP to : a sound concept, good coordination, valuable assistance received from developed countries both within and outside the region and the co-operation of CCOP member countries in the joint projects, and the establishment of a high degree of co-operation between the member countries themselves.

With regard to longer-range planning and possible new fields of activity that might be considered in addition to work programme, it was noted that the projects in the work programme on which most of the action had been taken had been mainly directed towards revealing new areas with hydrocarbon potential on the shelf areas and investigations of coastal deposits of detrital heavy minerals as a preliminary to investigating the near shore potential. A few projects were aimed at discovering offshore extensions of coal seams and near shore sources of geothermal energy, but planning for these had only recently begun.

It was felt that some part of the CCOP's efforts could be extended to investigation of the continental slopes and

enclosed oceanic basins which existed in some parts of Eastern Asia where other minerals such as manganese and phosphosite might be present ; although economic exploitation of these resources was not feasible at that time, a knowledge of their location might be useful for the future.

It was noted that CCOP surveys had recently revealed that salt domes might exist in the Gulf of Thailand, thus opening up the possibility that deposits of sulpher and potash, in which ECAFE region was notably deficient in sources of supply for fertilizer manufacture, might be associated with them. Further investigation of that possibility would open up a new field of endeavour and the search for similar geologic conditions might be extended to other parts of the marine shelves. Apart from activities aimed directly at discovery of mineral resources, there was the question whether CCOP should also consider sponsoring and encouraging more fundamental and basic research projects in a long-term programme which might eventually lead to some as yet unforeseeable economic application.

A geophysical survey conducted in the East China Sea and Yellow Sea had indicated that the shallow sea floor between Japan and Taiwan might contain one of the most prolific oil and gas reservoirs in the world, possibly comparing favourably with the Persian Gulf area.

Geological investigation of the sea bottom in Korea Strait and vicinity

A programme of sea bottom sampling in the area of Korea Strait and to the south of Cheju Island, was commenced on 23rd September, 1967. The objective of this programme is to obtain geological data bearing on the potentialities for oil and gas on the continental shelf of the Republic of Korea.

Through the medium of technical co-operation between the Republic of China and the Republic of Korea, test dril-

ling is being undertaken in the tertiary sediments of the Pohang area, on the east-west, to evaluate the potentialities for natural gas of which small quantities had been produced from a well from a depth of about 400 metres. Subsurface ecologic data obtained from this drilling programme would have a bearing also on the offshore potentialities of the adjoining area of shallow marine shelf.

Regional geology and offshore prospects for minerals in the Republic of Vietnam

Interest in the offshore prospects for minerals, including petroleum, in the Republic of Vietnam is rather new. Some attention has been given to the mineral content of beach sands, but very little has been done regarding oil and gas possibilities.

The parcels and sparsely islands are rich in phosphate deposits, but they are not truly offshore resources, as they are found on islands. There are no indications of possible phosphate deposits in the Gulf of Thailand. Gluconite has been found in small quantities in the sediments of the Gulf.

The possibility of marine placer deposits occurring in the east coast of Vietnam cannot be ruled out. From the distribution of terrestrial placers, central Vietnam (Da-Nang area) would be more favourable for tin and wolfram.

Showings of oil have been reported from many places on the Indo-China Peninsula, mainly in the Permain limestones of the "Indosimides" series, and in the "upper sand stone series" (Da Nang, Laos).

The picture of mineral and hydrocarbon potential in the offshore area of Vietnam, does not look very optimistic, the only area which seems to have rather good oil and/or gas prospects lies under fairly deep water, and the economic feasibility of development would be questionable with present marine techniques. These conclusions are based only on a

highly hypothetical interpretation of scattered work, so, they may well be false, but the recommendation for acting cautiously and progressively in the field of exploration will still hold true.

The potential Offshore Geothermal Areas of Indonesia

Offshore exploratory activities in Indonesia have so far resulted in two discoveries, one to the north of West Java in the Java Sea and to the north-east of North Sumatra in Malacca Straits, of these the former has proved to be commercial. The latter, however, has been not possible due to technical problems.

In the eastern part of Indonesia, oil has been produced in West Irian. Interest is now being displayed also in the offshore area to the west of the Barisan Mountains of Sumatra, which forms the foredeep of the Barisan Zone on the Indian ocean side, the backdeep being on the continental (eastern) side where the productive Sumatra basins are now situated. Sedimentary deposits with some indications of hydrocarbons have been reported on the island of Nias and on the west coast of Sumatra at Bengkalu.

The future outlook for oil and gas production in Indonesia will depend in part on successful discoveries of new oil in the offshore contract areas. By the end of 1972, the overall oil production in Indonesia may be expected to increase from its present level of 825,000 barrels per day to more than 1 million barrels per day, to which oil production from offshore areas is expected to make an important contribution.

Negotiations are now under way between the Ministry of Mines and Ocean Mining Inc. of U.S.A. to explore offshore areas west and south-west of Sumatra, south-west and south-east of Kalimantan and west and east of Southeastern Sulawesi for various minerals including gold, platinum, tin, zircon, diamond, and phosphosite. This offshore exploration will extend over ten separate areas, covering approximately

20,000 square miles. The exploration programme will involve extensive geophysical work, drilling and sampling. In the event that positive results are obtained from these exploration surveys, Ocean Mining Inc. will join an exclusive contractorship to mine the deposits.

In conclusion, it can be stated that with the recent opening of Indonesia's offshore areas for mineral, oil and gas exploration by private foreign companies it can be expected that in the near future a lot more will become known about Indonesia's offshore mineral potentialities. Knowledge and experience obtained during these large scale offshore exploration activities will undoubtedly be of great value to future exploration efforts in other offshore areas of the western part of the Pacific Region.

Detrital Heavy Mineral Deposits in East Asia

The exploration of offshore deposits of detrital heavy minerals in East Asia is still in its infancy. However, realising the growing awareness of the potential value of detrital heavy minerals in the ECAFE region, the CCOP at its Sixth Session endorsed the recommendation of its Technical Advosory Group to investigate the prospects for commercial accumulations of detrital heavy minerals in the near shore areas of the marine shelves of eastern Asia. As a preliminary step, the organisations concerned in the member countries prepared review of status of investigation and operations in this field in their respective countries. It was clear from these reviews that apart from the production of tin and associated minerals from near shore areas in Southern Asia, little had been done elsewhere in this field although extraction of detrital heavy minerals from beach sands had been undertaken on a small scale in some of the member countries for such minerals as monazite, ilmenite, xenotime and zircon. However, the recent survey, conducted with the assistance of experts provided by the Australian Government, has led to some encouraging assessment of the potential value of detrital heavy minerals in this part of the world. A brief summary of the country-wise report is given below.

INDONESIA

Excluding cassiterite, the detrital heavy minerals found in the beach sands of Indonesia have previously been shown to be important only in Java, although more recently an extension of the deposits has been traced to Bali. Much of the Indonesian coastline still remains to be explored and there may be good reasons to search for titaniferous iron sand deposits along such places as the coastline of West Irian. This report also includes a brief discussion of the by product minerals produced with tin ore on the Islands of Banka, Belitung and Singkep.

The main difficulties connected with future exploration and evaluation stem from lack of experience and a limited budget. The current staff shortage could be readily overcome as many of the operations can be supervised by intelligent laymen, if properly trained. The technical personnel associated with this work appear to be well trained in basic principles and should respond quickly to training in modern exploration, mining and mineral processing techniques.

REPUBLIC OF KOREA

The placer deposits of southern Korea are of two general types, beach placers and fluvial placers. Valuable minerals in the beach placers are predominantly magnetite and ilmenite in the north, and monazite and zircon on the central western coast. The wide-spread fluvial placers may contain significant quantities of gold and monazite and recoverable concentrations of other minerals such as feguso-nite and cinnabar may also be present.

Although conditions are generally favourable for the establishment of a small beach mining industry, the existing data are insufficient for a final evaluation. Investigations should be aimed at establishing projects with sufficient proved reserves for a minimum operating period of ten years at the

scale of mining selected. The economic study should include the cost of hauling concentrates from the various deposits to a central separation plant. This may prove to be a critical factor in the evaluation.

The development of placer mining in Korea will require larger resources of personnel, equipment and funds than are available locally and some early aid may be needed ; an immediate requirement is adequate supplies of bromoform or tetrabromoethane for testing the heavy mineral contents of samples ; the latter is cheaper than bromoform and is equally effective. Consideration might also be given to inviting foreign mining companies to co-operate in joint ventures with Government agencies and private Korean companies.

WEST MALAYSIA

Detrital heavy minerals are distributed widely in West Malaysia and concentrations may be found wherever drainage patterns have developed in and adjacent to the granite and contract metamorphic areas. The minerals of greatest economic interest are cassiterite, gold, wolfram, ilmenite, rutile, zircon, monazite, xenotime and columbite.

Cassiterite has been mined for more than a century and has played a major part in the economic development of the country. However, the residues from tin dressing operations, known locally as "amang", have been largely neglected until recent years when expanding markets for zircon, titanium and the rare earth elements have drawn attention to their potential value as by-product minerals. A number of small operations now produce a total of about 120,000 tons of ilmenite annually and lesser quantities of the other minerals.

PHILIPPINES

Detrital magnetite from beach sands in Luzon is finding a profitable market in Japan because of its relatively favourable titanium content (up to 7 per cent) ; current exports to

Japan are at the rate of about 600,000 tons annually. The concentrates from Luzon are blended with magnetite extracted from beach sands in Japan which has an average of about 53 to 59 per cent of Fe and 8 to 12 per cent of TiO ; pig iron for production of high quality steel is produced from the mixed ores by electric arc smelting. The operating companies, which now have assured markets for their output, should consider revising their operational methods and modernizing their plants ; provided that sound basic principles are applied, both output and profits could be substantially increased. Many other similar deposits are present in the Philippines but few have yet been thoroughly investigated ; some of these could have prospects for producing heavy minerals other than magnetite, as in the case of beach sands in northwestern Palawan Island which contains substantial percentages of ilmenite.

THAILAND

Reconnaissance sampling has revealed the presence of a number of large low grade tin placers along the beaches of southwestern Thailand and along the coast of Phuket Island. The most important deposits are located on the beaches of Mai Khao, Thai Muang, Takua Pa (Phang Nga) and Ko Kho Khao. Some small placers on other beaches may eventually prove to be suitable for mobile plant operation. Cassiterite is the principal mineral of value and, although small amounts of zircon, rutile, ilmenite and Nb-Ta minerals are present, only the tin and Nb-Ta minerals would significantly affect the valuation of the deposits in these areas.

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(vi) NOTE ON MINERAL POTENTIALS

(Prepared by A.A.L.C.C. Secretariat)

A. Possible Impact of Sea-Bed Mineral Production in the area beyond National Jurisdiction on world markets, with special reference to the problems of Developing Countries : A Preliminary Assessment.[1]

Interest in the offshore prospects for the minerals from the sea-bed is rather new. However, from the available geological evidence it is safe to speculate that eventually deep sea exploitation of minerals would not only be possible, but also commercially feasible. Some of the important minerals that might be exploited from the sea-bed are petroleum, manganese, copper, nickel and cobalt. Among them, the exploration of petroleum has achieved a great success in many parts of the world.

Since the last decade consumption of petroleum has been rising at an overall rate of approximately 8 per cent per annum. Today petroleum is the largest single item in the world trade both in terms of value and volume of trade.

According to an estimation prepared by the *Institute Francais du petrole* petroleum resources of the world are abundant and quite sufficient to meet the demand upto the year 2000. The estimation of proved, probable and possible reserves in the major region is presented in the following two tables :

1. This summary has been prepared from the Report of the Secretary-General submitted to the Committee on the Peaceful uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, Document A/AC. 138/36 of 28 May, 1971.

TABLE—1

Petroleum demand forecast 1970-2000*

Year	Consumption in millions of barrel per day	Average annual growth rate	Share of petroleum in total consumption of energy
1970	46		47
1980	90	7	57
1990	154	5.5	65
2000	208	3	59

TABLE—2

Petroleum reserves as at 1 January 1969*

Region	Proved Reserves	Probable Reserves	Possible Reserves
North America (including Alaska and Arctic)	56,000	45,000	200,000
Central America, the Carribean and Mexico	6,300	7,200	35,000
South America	23,000	17,500	80,000
Total American Continent	85,300	69,700	315,000
North Africa	40,700	16,700	37,000
Rest of Africa	6,000	24,200	95,000
Total African Continent	46,700	48,900	132,000
Middle East	300.000	246,000	305,000
Asia & Oceana	14,200	18,300	120,000
Western Europe	1,800	900	35,000
USSR and rest of Socialist block	42,000	41,300	155,000
TOTAL :	490,000	425,100	1,062,000

Source : *Institut Francais du petrole.*

* On shore reserves and off-shore reserves. Under less than 200 metres of water.

In this connection it has been pointed out that offshore petroleum production is increasing at a much faster rate than on-shore. For instance, the off-shore production in 1970 accounted for 18.5 per cent of the total world production and it is expected that by 1980 this contribution will rise upto 32.5 per cent.

Importance of Petroleum production for Developing Countries.

Petroleum plays an important role in the economy of many developing countries. The major developing countries exporting petroleum are : the countries bordering the Persian Gulf, Libya, Algeria, Nigeria, Venezuela, Indonesia and Gabon. In eight of these countries : Libya, Kuwait, Iran, Iraq, Algeria, Saudi Arabia, Venezuela and Gabon, the value of petroleum exports accounted for more than 50 per cent of their total export earnings and contributed as much as 20 per cent of their gross domestic products. The following table indicates this more clearly :

Crude petroleum[1] exports of selected developing countries as a percentage of total exports and gross domestic product, 1968

Country	Exports in 1968 (Millions $US)	Value of petroleum as a percentage of	
		Total exports	Gross domestic product
A. *Petroleum as major foreign exchange earner* (above 10 per cent of total exports)			
Libya[2]	1,860.0	99.6	58.4
Kuwait[2]	1,590.0	96.8	59.7
Iraq[2]	996.0	95.5	35.9
Iran[2]	1,686.6	89.7	19.5

1. Crude petroleum (SITC 331)
Data is obtained from IMF-IFS individual countries.

Source : United Nations Statistical Papers, *World Energy Supplies* 1965-68 ; Organisation for Economic Cooperation and Development, Series C, 1968 (January-December), *Commodity by Trade* ; International Monetary Fund, *International Financial Statistics*, April 1971 ; *Monthly Bulletin of Statistics, March, 1971* ; gross domestic product print-outs in national currency; Agency for International Development, *Data Year Books*.

Country	Exports in 1968 (Millions $US)	Value of petroleum as a percentage of	
		Total exports	Gross domestic product
A. *Petroleum as major foreign exchange earner* (above 10 per cent of total exports)			
Algeria	699.8	84.3	20.8[3]
Saudi Arabia	1,487.3	78.4	43.6
Venezuela	1,973.9	69.1	19.9
Gabon	63.9	51.5	26.8[4]
Lebanon[5]	50.8	34.8	16.9
Indonesia	276.2	33.7	3.8
Tunisia	35.5	22.5	3.3
Nigeria	118.0	20.0	2.9[4]
Bolivia	21.1	13.8	2.5
B. *Petroleum as important foreign exchange earner* (between 3 per cent—10 per cent of total exports)			
Syria	14.1	8.2	1.2
United Arab Republic	51.3	8.2	0.8
Colombia	40.3	7.2	4.4

3. As percentage of gross national product or total exports from AID Yearbook.
4. Using 1967 gross domestic product.
5. Value of petroleum exports as reported by OECD importing countries.

Trinidad and Tobago	29.0	6.2	3.6
Mexico[5]	40.8	3.2	0.2
C. *Petroleum as minor foreign exchange earner* (Less than 3 per cent of total exports)			
Congo (Brazzaville)	1.0	2.0	...
Peru	12.5	1.4	0.3
Liberia[5]	2.18	1.3[3]	0.9[3]
Malaysia	8.1	0.6	0.25[6]
Uruguay[5]	0.54	0.3	0.03
Southern Yemen[5]	0.27	0.2	...
Burma[5]	1.52	0.13	0.08[4]

Solid Minerals

The development in exploitation of off-shore minerals, other than petroleum, has not been so rapid. However, the occurrence of marine nodules and their exploitation in not too distant future is beyond doubt. These marine nodules contain four major metals—manganese, copper, nickel and cobalt. A breakdown of volume and export earnings from these metals in the developing countries is presented in the following four tables :

3. As percentage of gross national product or total exports from AID Yearbook.
4. Using 1967 gross domestic product.
5. Value of petroleum exports as reported by OECD importing countries.
6. Using 1966 gross domestic product.

Manganese exports[1] of developing countries as a percentage of total exports and gross domestic product in developing countries 1969

Country	Export in 1969		Value of manganese exports	
	Thousand metric tons	US dollars (.000)	As a % of total exports	As a % of gross domestic product
A. *Manganese as major foreign exchange earner* (above 10 per cent of total exports)				
Gabon	1,584	30,095	21.2	12.7[2]
B. *Manganese as important foreign exchange earner* (between 3 per cent—10 per cent of total exports)				
Ghana	305	9,149	33.04	0.43[3]
C. *Manganese as major foreign exchange earner* (less than 3 per cent of total exports)				
Democratic Republic of the Congo	272	9,134	1.6	0.63[3]
Brazil	808	25,408	1.10	0.09[3]
India	897	17,619	0.96	0.04[2]
Morocco	73	4,407	0.91	0.14
Guyana	29	501	0.4	0.2[3]
Ivory Coast	82	1,573	0.35	0.12
Trinidad and Tobago	13	487	0.1	0.05[3]
Philippines	31	815	0.08	0.01

Source : Agency for International Development, *Economic Data Book* ; *Bulletin annual de la statistiqu de la Rep. Gabonic 1964 and 1970* ; *Monthly Bulletin of Statistics*, March 1971 ; International Monetary Fund, *International Financial Statistics*, April 1971.

1. Manganese ore concentrate (SITC 283.7)
2. 1967 data.
3. 1968 data.

Copper exports[1] of developing countries as a percentage of total exports and gross domestic product, 1969

Country	Exports in 1969 (millions US $)	Value of copper exports As a percentage of: Total exports	Value of copper exports As a percentage of: Gross domestic product
A. *Copper as major foreign exchange earner* (above 10 per cent of total exports)			
Zambia[2]	720.8	94.6	52.6
Congo-Kinshasa	475.8	83.0[3]	33.0[3]
Chile[2]	730.7	78.3	12.7
Peru	250.1	28.9	6.1[4]
Philippines	150.9	15.6	1.8
Uganda	21.4	10.8	2.4[3]
B. *Copper as important foreign exchange earner* (between 3-10 per cent of total exports)			
Haiti	2.3	6.2	...
Bolivia	7.4	4.1	0.8
Nicaragua	6.3	4.1	0.83
C. *Copper as minor foreign exchange earner* (less than 3 per cent of total exports)			
Mexico	21.5	1.5	0.08[2]
Morocco	2.3	0.5	0.07
Cuba	2.3	0.35[3]	...
China (Taiwan)	3.5	0.3	0.07
South Korea	0.1	0.02	...
India	0.2	0.01	...

Source : Organisation for Economic Co-operation and Development, Series C., 1969 (January-December), *Commodity by Trade : Imports Monthly Bulletin of Statistics*, March 1971 ; International Monetary Fund, *International Financial Statistics*, April 1971.

1. Copper ore concentrates, including matte (SITC 283.1) ; Copper and alloys, unwrought (SITC 682.1) ; Copper and alloys of copper, worked (SITC 682.2).
2. 1968 data based on International Monetary Fund, *International Financial Statistics*.
3. 1968 data.
4. 1967 data.

Nickel exports[1] of developing countries as a percentage of total exports and gross domestic product, 1969

Country	Exports in 1969 (million US $)	Value of copper exports As a percentage of: Total exports	Value of copper exports As a percentage of: Gross domestic product
Cuba	13.4	2.1[2]	...
Indonesia	4.4	5.9	0.06[2]
New Calendonia	67.4[3]	...	...

Source : *Annales des mines* (1968), January 1971 ; Organisation for Economic Co-operation and Development, "*Series C*" 1969 (January-December) *Commodity by Trade*; *Monthly Bulletin of Statistics*, March 1971.

Cobalt exports[1] of developing countries as a percentage of total exports and gross domestic product, 1968

Country	Exports in 1969 (million US $)	Value of cobalt exports As a percentage of: Total exports[4]	Value of cobalt exports As a percentage of: Gross domestic product
Democratic Republic of the Congo	29.7[5]	5.2	0.2
Zambia	4.7[6]	0.6	0.3
Morocco	n.a.	...	...

1. Nickel ore and concentrate, including matte (SITC 283.3) ; Nickel and alloys, unwrought (SITC 683.1) ; nickel and alloys, worked (SITC 683.2).
2. 1968 data.
3. Territory of France.
4. United Nations. *Monthly Bulletin of Statistics*, March 1971.
5. Banque Nationale du Congo, 1970.
6. Republic of Zambia, Annual Statement of External Trade, 1968.

Economic implications of sea-bed mineral production for developing countries

The factors affecting the economic exploitation of the sea-bed minerals by the developing countries include fiscal, commercial, technological and above all the legal framework withinw hich the institutional arrangements have to be defined. As far as technological aspect is concerned, the knowledge of existing exploitable resources is inadequate, and extensive exploratory activity is still required before reaching any final conclusion. Moreover, besides the knowledge of nature and the extent of the resources, it is also essential that the mining and processing methods should not be only technologically possible, but also commercially feasible.

From the petroleum production estimates, it is clear that their impact on the world trade of petroleum will be minor for the developing countries exporting petroleum. On the other hand, the developing countries importing petroleum will have to adjust according to the changing trend of greater diversification of petroleum supplied in the world.

The situation in case of marine nodules is more complex and uncertain because not enough is known about their location and metal content of deposits. In view of this fact, the extent and timing of the impact on the world trade or the four metals—manganese, copper, nickel and cobalt will only be a matter of speculation.

However, if and when, the exploitation of the sea-bed minerals becomes feasible, it would certainly have an impact on the economy of developing countries and ultimately might bring about some changes in the market conditions. This change in market conditions might cause at least two types of disruption: In the first place, the fluctuations in the prices of raw materials. If the prices rise sharply due to temporary shortages, producers will be benefitted and consumers harmed. If, on the other hand, there is an excess of supply prices will drop resulting in benefit for the consumers at the expense of

suppliers, leading to a long-run trend for deterioration in prices.

In general, the basic conclusion concerning the exploitation of sea-bed resources for the benefit of mankind and the developing countries in particular would be that if and when the exploitation of sea-bed minerals becomes technologically possible and commercially feasible, some regulatory and compensatory arrangements will have to be made to protect the interests of the developing countries.

B. Marine Mineral Resources in the Asian-African Countries[1]

In recent years exploration and exploitation of the marine resources have assumed a new importance. One of the most outstanding achievements in this direction has been the development of new techniques and instruments to dig deep below the ocean floor. Various deposits occurring in the continental shelves, continental slopes, continental rise and the ocean floor, have basic differences depending upon the time, place and environment of their geological formations. Be that as it may, without going into details of technical characteristic of each and every marine deposits, a brief survey of their distribution in the Afro-Asian region of the world has been made.

1. Mineral deposited within bedrock

In the saline sedimentary basins of the shelves in Persian Gulf and the southern part of the Red Sea, there are many salt dome structures containing large quantities of elemental sulpher. Also, the geological evidence indicates that the shelf and slope areas of Africa and Middle East may contain bedded salt deposit and potash layers.

Coal is another important deposit which occurs in large quantities beneath the sea floor off coast of Japan, China

1. This summary has been prepared from the report of the Department of Economic & Social Affairs, "Mineral Resources of the Sea", published in 1970.

(Taiwan) and Turkey. Of course, a detailed survey has not yet been made, the possibility of prospects of large deposits of coal in other shelf areas of this region cannot be ruled out.

Probably, beyond the coast of Red Sea, Mediterranean Sea and South Africa, Oil Shales occur in considerable quantities, which could be economically exploited. Besides, important minerals like chromite, platinum, nickel and cobalt have recently been discovered in the sea floor rifts in the Indian Ocean.

2. Surficial deposits

Marine placer deposits like tin, platinum, ilemenite, rutile, zircon, monazite, chromite and iron sand have been abundantly found in beaches and shelf areas, particularly in the coasts of India, Indonesia, Malaysia, Thailand and South Africa.

Gluconite, or "Green Sand" occurs on the outer continental shelf and upper continental slopes of Africa, Japan and the Philippines. Further barite, a barium sulphate mineral, has been found off the coasts of Ceylon and Kai Islands in Indonesia. Recently, another sub-sea surficial deposits, the metalleferous muds associated with saline brines, have been discovered in the Red Sea. These muds contain large quantities of heavy metals such as iron, manganese, zinc, copper, lead, silver and gold.

3. Petroleum resources

A feature of great interest to developing countries is the discovery of petroleum deposits in the adjacent and far off the sea coasts. Recently, the geophysical investigation of the shelf areas of Brunei (Indonesia), Cabinda, Gabon, India, Iran, Japan, Libya, Nigeria and Saudi Arabia have given a convincing proof of the occurrence of potential petroleum deposits. According to an estimation, from the total 52,600 million barrels of proved off shore crude oil reserves,

the Persian Gulf alone contains 43,400 barrels. Besides, Africa has 3,200 and the Far East 1,400 million barrels of petroleum.

A preliminary geological investigation indicates that areas adjacent to large deltas of the great rivers, Indus, Brahmaputra, Ganges, Zambezi and Congo may contain significant petroleum deposits. It is widely speculated that the abyssal floor of enclosed small oceanic basins like Indonesian Archipelago and Sea of Japan may be exploited for economically petroleum potential. Last, but not the least important is the possibility of occurrence of valuable petroleum deposits in the great oceanic basins of Indian Ocean.

4. Marine Phosphorite

Because of the man's limited knowledge no definite progress could be achieved towards the exploitation of enormous phosphorite deposited in the shelf, slope and the ocean floor of the sea. The forms of phosphorite vary from nodules to flat slabs and sand sized pellets.

The continental slope areas off North-West Africa and Equatorial West Africa are rich in phosphorite nodules. Speculation is high that the coasts of Morroco, Guinea, Ghana, and along the coast from the Straits of Gibraltar to Senegal, may also contain huge phospherite deposits. Also, there is a possibility that the shelf areas of large rivers like Niger and Congo may contain large mud deposits which could be economically exploited.

The upper continental slope of the Japanese coast near Tokyo and the area surrounding the submarine banks and ridges of the south-west of Japan may also contain phosphorite deposits. Further, geological investigations indicate that phosphorite may occur in Banda Sea (eastern part of Indonesia), east coast of Viet-Nam, the North Andaman Islands in the Indian Ocean. Finally, it is believed that the shallow waters of Malabar coasts, and the south-east coast

of India contain phosphorite mud banks rich in phosphorite minerals.

5. Potentially, the most important surficial deposit occurring abundantly on the abyssal ocean floor, submarine ridges and sometimes on lower parts of the continental slopes are the manganese nodules. These manganese nodules are of particular importance because they are also the source of many important minerals like copper, cobalt, nickel, molybdeneum and zinc. The Indian Ocean is a rich source of the manganese nodules. Besides, the submarine banks of south-east coast of Japan and the sea floor along the Fuji volcanic zone have also large deposits of manganese nodules.

From the above survey it is clear that the prospects of exploitation of marine minerals in the Afro-Asian region is very wide but the knowledge about them is absolutely insufficient. The success will not only depend upon the solution of technical problems, but at the same time legal, political and economic aspects will have to be tackled simultaneously.

(vii) THE WORLD FISH POTENTIAL AND ITS REGULATION[1]

In the last few years there has been significant increase in the production of fish throughout the world. The production of marine fish (including shell fish) has increased from 27 million tons in 1958 to 56 million tons in 1969. According to FAO estimation, the total demand for fish for both human consumption and for animal feed is projected at 74 million tons in 1975 and 107 million tons in 1985.

Improvements and innovations in fishing equipment and methods, in fish handling and processing, and development of new products and markets since the first United Nations Conference on the Law of the Sea have brought additional fishery resources within the range of commercial exploitation and indeed have led to important cost reductions.

Rapid technological progress has taken place particularly in the field of fish location and the use of sonar in purse seining and aimed trawling. The adoption of a number of new fishing gear and gear handling techniques, such as mid-water trawls, mechanised devices for net handling and fish pump have resulted in increased catches. The generalised use of synthetic fibres for net construction has also had a significant impact on the development of fisheries. New freezing and processing techniques make it possible to handle and store fish on board, so that a large fleet of freezer and factory trawlers has been built and equipped to operate any where in the world. Other characteristics of the long-range fishery are mother ship operations, with one large factory vessel supported by a number of smaller catchers and a

1. Extracts from a F.A.O. Publication entitled *The State of World Fisheries*, (Rome ; 1968).

worldwide net work of fishing ports for unloading, bunkering, repair, or exchange of crews. In the wake of these significant technological developments, the traditional small scale fisheries has also been 'modernized'. The use of synthetic fibre, the mechanisation of small craft and the use of glass fibre and ferro-cement as hull material has been highly successful in yielding greater catch.

The obvious result of these new developments has been that fishing has become transformed from a harvest to a mining process. But, unlike mineral resources, marine living resources are being produced constantly depending upon the geographical location and other natural conditions.

Last but not the least important matter in this connection, is the gulf that has been created between the developed and developing countries, particularly with respect to fishing activities. Of course, fisheries beyond national jurisdiction are open to all, but few large maritime States have taken undue advantages and exploited the interests of developing coastal States. These maritime States have hardly shown any keen interest in turning control of such fisheries over to any international body. The bilateral and regional agreements concluded by these States resulted only in a limited achievement. However, a significant step was taken in 1958, when the United Nations convened a world-wide Conference on the Law of the Sea.

The 1958 Conference adopted several international instruments, including a Convention on Fishing and Conservation of the Living Resources of the High Seas. The Convention, which came into force in 1966 for those who signed and ratified it, was the first attempt to deal with the problem on a world scale. Its scope is limited and it aims mainly at promoting the adoption of conservation measures and providing for machinery to facilitate the settlement of disputes. It also contains provisions stressing the special

interests of coastal States in the maintenance of the productivity of the living resources in any area of the high seas adjacent to their territorial sea and their right to take part on an equal footing in any system of research and regulation for the conservation of the living resources in that area, even though their nationals do not fish there.

The 1958 Conference fully realized that the Convention would have to be supplemented by special and regional agreements. It adopted a resolution recommending that the States concerned should cooperate in establishing the necessary conservation measures through international conservation bodies covering particular areas of the high seas or particular species of living marine resources. It also recommended that these bodies should be used as far as practicable for the conduct of negotiations on conservation measures envisaged in the Convention, for the settlement of disputes and for the implementation of agreed conservation measures. In the resolution the Conference specifically referred to the report of the 1955 International Technical Conference on the Conservation of the Living Resources of the Sea, convened at Rome to make appropriate scientific and technical recommendations in preparation for the 1958 Conference on the Law of the Sea. The 1955 Technical Conference had come to the conclusion that the system of international fishery regulation based on the geographical and biological distribution of marine populations seemed in general to be the most suitable way of handling these problems. This system was based upon conventions signed by the nations concerned.

Specialised fishery bodies

Although the International Council for the Exploration of the Sea (ICES) was formed as early as 1902, most of the existing fishery bodies were established after the second world war. Five of these were set up under the auspices of FAO, the rest as independent convention bodies.

The membership, area and scope of responsibility and main measures adopted by the various commissions have been set out in FAO reports. Most of these commissions issue extensive reports which outline not only the progress made in introducing various regulations, but also the results of the scientific research on which the regulations are based.

Certain fishery bodies were established to cover a particular sea or specified lake or river systems, for example the Joint Commission for Black Sea Fisheries and the Great Lakes Fishery Commission (GLFC). Others were set up to serve a region of the high seas which is precisely delineated by longitude and latitude, for example the International Commission for the North-west Atlantic Fisheries (ICNAF) and the North-East Atlantic Fisheries Commission (NEAFC). The area of competence of many fishery bodies, however, is defined only in general terms, for example the eastern Pacific Ocean for the Inter-American Tropical Tuna Commission (IATTC) and the Indo-Pacific area for the Indo-Pacific Fisheries Council (IPFC). Most conventions setting up international fishery bodies include in their area of competence the territorial sea of member countries. The majority of international fishery bodies were set up to deal with sea fisheries. Practically all the marine waters are covered, in certain regions several times over. This should not, however, lead to the conclusion that all living resources of the sea are the object of scientific investigation and management measures. In fact the composition, species coverage, functions, powers and activities of international fishery bodies vary considerably.

The effectiveness of these bodies depends to a great extent on the participation and collaboration of all the States concerned. Such States would normally include not only those whose nationals and vessels fish in the geographic area served by the fisheries commission or council, but also the coastal States in the area. The provisions of the basic instruments concerning eligibility for membership do not always make it possible for all these States to participate.

In several cases the fishery bodies are as it were land-based, since only States whose territories are situated in the area of competence may become members. These include the Regional Fisheries Advisory Commission for the South-west Atlantic (CARPAS) and the Regional Fisheries Commission for Western Africa (WAF), both set up under the aegis of FAO. A certain number of conventions do not provide expressly or implicitly for the possibility of later accesions, but this should not necessarily be interpreted as excluding the acceptance of new members. Several conventions provide that under certain conditions membership of the fishery body is open to States other than the coastal States in the area of competence or to States other than original members. Thus, any States whose nationals participate in fisheries in the area of competence of IATTC may become members of the commission with the unanimous consent of the contracting parties. A few commissions are open to any States which adhere to the basic instrument simply by addressing the required notification to the depository government. They include ICNAF, the International Whaling Commission (IWC), and NEAFC.

Many international fishery commissions and councils were set up to deal with all fishery resources within their area of competence. Notable exceptions are the International Whaling Commission, the North Pacific Fur Seal Commission, the International Pacific Halibut Commission, the Inter-American Tropical Tuna Commission, and the International Pacific Salmon Fisheries Commission.

There are in practice marked differences in the manner in which fishery bodies deal with any particular stock of fish. This depends to a great extent on the functions of the body concerned. These may be divided into three

categories:

1. Fishery bodies which deal mainly with the encouragement, promotion, and co-ordination of research and which, in the course of their activities, may offer advice and make recommendations on the need for conservation measures. Examples of this type of body are the International Council for the Exploration of the Sea, the International Commission for the Scientific Exploration of the Mediterranean Sea (CIESMM), and the commissions and councils set up under the Constitution of FAO.

2. Fishery bodies whose main function is to formulate conservation measures on the basis of scientific research, this research not normally being carried out by their own staffs (e.g., the International North Pacific Fisheries Commission, the Joint Commission for Black Sea Fisheries, the North-East Atlantic Fisheries Commission). The last of these bodies receives its scientific advice from the International Council for the Exploration of the Sea, included in the first category.

3. Fishery commissions which formulate conservation measures on the basis of scientific investigations carried out by their own staff. They include the Inter-American Tropical Tuna Commission, the International Pacific Salmon Fisheries Commission, and the International Pacific Halibut Commission.

Conventions do not always specify the type of conservation and management measures that may be formulated by the international fishery bodies they establish. Detailed listing of conservation measures shows that these are normally confined mainly to prohibitions and limitations: these include most of the measures listed at the beginning of

the previous section—open and closed seasons or areas, minimum sizes of mesh of fishing nets, size limits of fish and regulation of the use of certain types of fishing gear, appliances and equipment. In a few cases, such as the International Commission for the North-west Atlantic Fisheries, the International Whaling Commission, and the International Pacific Halibut Commission, conservation measures expressly provide for prescribing a maximum or overall catch limit. Few commissions expressly include limitation of effort, and the North-East Atlantic Fisheries Commission places limitation of effort (and catch) in a separate, inactive, category of regulations which can only be actively considered after a specific recommendation to this effect has been passed by the commission.

Very few conventions list specific measures of a positive nature. An exception is the convention setting up NEAFC which provides that the commission may elaborate measures for the improvement and increase of marine resources which may include artificial propagation, and the transplantation of organisms and of young.

In most cases member countries are not under a legal obligation to comply with the conservation and management measures formulated by fishery bodies. The power of the majority of existing commissions is limited to making recommendations, either because the convention concerned expressly so provides or because conservation measures have to be approved by member countries before they can be applied.

In a few cases a procedure has been evolved to facilitate acceptance of the measures formulated by commissions. These measures may be called potentially binding recommendations or conditional decisions. Thus NEAFC may recommend a number of conservation measures and member countries undertake to give effect to any such recommendation adopted by not less than a two-thirds majority of the

delegations present and voting. However, any member country may object to the recommendation within a specified period, in which case it is under no obligation to give effect to it. Other member countries may then similarly object within an additional period. If three or more member countries so object, all member countries are relieved of the obligation to comply with it. A somewhat similar procedure exists with respect to the measures formulated by the International Whaling Commission.

When conservation measures are binding on member countries, each country is required to ensure their application on the high seas by its own nationals and vessels. There is, however, a trend toward a certain measure of international control. In fact, several conventions establishing fishery bodies (e.g., the International Pacific Salmon Fisheries Commission, the International North Pacific Fisheries Commission, the International Pacific Halibut Commission, the Japanese-Soviet Fisheries Commission for the North-West Pacific, and the North Pacific Fur Seal Commission) grant to each member country the right to check the general application of conservation measures on the high seas by the contracting parties. With certain differences of detail, they prescribe a procedure whereby duly authorised officials of any member country may search and seize vessels of other member countries which are acting in violation of the convention or of regulations adopted under it. Such vessels must be delivered as promptly as practicable to the authorised officials of the member country having jurisdiction over them. Only the authorities of that country may conduct prosecutions and impose penalties.

Though these commissions with international control measures at present in operation have limited membership (a maximum of four countries), efforts to ensure international control are not restricted to commissions with a small membership or a limited species coverage. The Convention for the Regulation of Whaling was amended to enable the

International Whaling Commission to deal with methods of inspection and an international observer scheme has been devised but it has not yet proved possible to bring it into operation. Both the International Commission for the Northwest Atlantic Fisheries and the North-East Atlantic Fisheries Commission have also concerned themselves recently with the international enforcement of regulations in their area of competence and have this under active consideration. ICNAF arranged the exchange of inspection visits by enforcement officers of various member countries; NEAFC set up in 1964 a Special Committee on International Control which is studying the possibility of introducing a system of international inspection on the high seas in the near future.

Several conventions contain certain provisions on the manner in which the yield from the resources is to be apportioned among member countries. The convention setting up the International Pacific Salmon Fisheries Commission lays down the principle that the two member countries (Canada and the United States) should share equally in the fishery, and consequently one of the tasks of the Commission is to regulate the fishery with a view to allowing, as nearly as is practicable, an equal portion of the fish that may be caught each year to be taken by the fishermen of each member country.

The convention establishing the North Pacific Fur Seal Commission, which has four member countries, provides for a system of quotas to ensure the distribution of the resources which migrate between the territory of certain member countries and the high seas. As all member countries agree to restrict killing of fur seals to the home islands and to prohibit sealing on the high seas in the Pacific Ocean north of 30° N. Lat. a portion of the total yield is granted to those member countries which do not own any islands on which the seals breed and which otherwise would have no share in the fishery as a result of their agreement not to engage in sealing on the high seas. Of the total number of sealskins taken commerci-

ally each season on land, both the United States and the U.S.S.R. deliver to Canada and Japan 15 percent each of the gross take in number and value.

The convention setting up the International North Pacific Fisheries Commission also contains provisions on the subject, as it embodies rules laying down what is known as the principle of abstention. According to this principle, States not fishing a specific stock in recent years are required to abstain from fishing this resource when States participating in the fisheries have created, built up, or restored the resource through the expenditure of time, effort and money on research and management, and through restraints on their own fishermen. It should, however, be scientifically established that the continuing and increasing productivity of the resource is the result of and dependent on such action by the participating States, and that the resource is so fully utilized that an increase in the amount of fishing would not result in any substantial increase in the sustainable yield.

Most conventions do not prescribe how the yield from the resource should be allocated. International fishery bodies have thus to face this problem at the time of fixing the maximum catch to be taken.

For example, every year since 1961 the Inter-American Tropical Tuna Commission has recommended the establishment of a total catch limit on yellowfin tuna in a specified area of the eastern Pacific and the cessation of fishing operations when the quantity landed plus the expected landings of vessels at sea reach an amount slightly less than the total catch permitted. Under this system, fishing countries can freely compete for a maximum share within the total limit set by the commission. This requires of course not only the agreement of member countries but also the co-operation of other countries fishing in the area. As certain countries would prefer to be allotted a national quota, efforts are being made to reach a solution.

Antarctic whaling may be cited as an example of a shift from the principle of free competition within an overall catch limit to the adoption of national quotas. While for many years the expeditions from the Antarctic whaling countries took part in what were known "whaling olympics," in an effort to maximize their share of the total quota set by the commission the countries started negotiations in 1958 with a view to agreeing on national quotas. An instrument was signed in 1962 for a four-year period. The overall limits are fixed by the International Whaling Commission, but the arrangements on the distribution of the total catch are made by the countries concerned.

The general problem of allocation of yield from the resources of the sea was considered to some extent by the 1955 International Technical Conference on the Conservation of the Living Resources of the Sea and to a greater degree by the 1958 United Nations Conference on the Law of the Sea. Discussions at the 1958 conference centered on the principle of abstention and on the concept of a preferential share for coastal States. No specific provision pertaining to the apportionment of the yield from the resources was included in the Convention on Fishing and Conservation of the Living Resources of the High Seas. However, the conference adopted a resolution on the special situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries.

(VIII) SUMMARY OF THE REPORT OF THE CONSULTATION ON THE CONSERVATION OF FISHERY RESOURCES AND THE CONTROL OF FISHING IN AFRICA[1]

Prepared by
the A.A.L.C.C. Secretariat

At the invitation of the Government of the Kingdom of Morocco, the FAO convened a 'consultation on the conservation of fishery resources and the control of fishing in Africa'. The consultation was held in the capital city of Casablanca, from 20th to 26th May 1971. The participating countries were : Burundi, Congo (Brazzaville), Ghana, Ivory Coast, Liberia, Senegal and Sierra Leone. A detailed information on the nature, abundance and distribution of the fishery resources around Africa, and on the present status of exploitation and utilization of these resources was presented to the Meeting by the FAO Secretariat.[2]

Status and Utilization of Resources

Since the width of the continental shelf of the eastern coast of Africa is narrower than the western coast, the extent of fishing grounds around Africa also varies accordingly. In the shallow waters of the continental shelf demersal fish and other important pelagic stocks (except tuna) are widely distributed. Off the coast of Somalia and the desert area of the western Sahara and Namibia, the fish stocks consist of temperate and sub-tropical species of a high commercial value like sardine, sardineela, horse mackerel, hake and sea breams. On the other hand, the Mediterranean—off the coast of East Africa, and parts of tropical West Africa

1. This Summary has been prepared from the FAO Fisheries Reports, No. 101, Vol. I, published in June 1971.
2. See Document FID : CFRA/71/4.

contain the species of tropical stocks of a much larger variety among which sardinella is the most important.

The production of fish stocks also varies from the east to west coast. The areas off the coast of north-western and south-western Africa are among the most productive in the world. On the other hand, the productivity in some parts of the tropical West Africa and the Mediterranean coast is rather low.[1]

Traditionally, African fisheries are carried out with canoes scattered over vast geographical areas with primitive supporting facilities. The gear used from canoes are handlines, longlines, gillnets and seines, etc. Fishermen engaged in such subsistence or artisanal fisheries far outnumber those conducting industrialized fisheries. Although motorization has improved the efficiency of canoes, their productivity is limited because of their inability to use more effective gear. The techniques used for processing and conservation of fish, as well as the infrastructure for the distribution of fish, hamper the development of these fisheries.

Several countries, in particular those having large fishery resources off their coasts or those which have large populations, have during the last two decades, developed industrialized fleets of medium-sized trawlers, seiners, and more recently shrimpers. The development of these fleets is hampered by lack of skilled crews and officers, and of cheap and productive techniques for processing and conservation of fish, and by inadequate port facilities and distribution networks. Most of these fleets exploit the inshore pelagic and demersal stocks. Navigation is mostly carried out by

1. According to the latest statistics, the production in the west coast was 5.4 million tons (3.4 million south and 2 million tons north of the Congo river). Further, 3,00,000 tons were produced from the east coast and 100,000 tons along the Mediterranean coast of Africa. Nearly 60% of this catch were taken away by the non-African countries from Europe, America and Asia.

land bearings and fish-finding equipment is limited to echo sounders.

A few African countries have developed long-range fishing fleets, for instance Ghana with large stern trawlers and Senegal and Ivory Cost with large and medium-sized tuna seiners. The effect of these fisheries on the stocks has been the subject of a number of scientific studies, particularly by scientists in some individual countries along the African west coast and by international groups convened by regional fishery bodies or by FAO such as the CECAF Working Party on Regulatory Measures for Demersal Stocks.

These studies have determined that various stocks of fish off Africa are being heavily fished. The catches from some of these can only be increased by appropriate conservation measures, such as a regulation of mesh size, or a limitation of the amount of fishing. Most of these stocks, however, can still give an increase in catch from increased fishing, although this would involve a reduction in the catch-per-unit effort.

The heavily fished stocks include many of the major stocks in the upwelling zones off West Africa, as well as some of the more limited stocks in the tropical zone. In the Indian Ocean where, except for tuna and shrimp in some areas, no large-scale fishery has developed yet, there are opportunities for a substantial relative increase above the present low level of total catch, but in absolute terms the increase in catch is not likely to be very large with the exception of resources off Somalia. In the other areas where the resources are limited, e.g. the Mediterranean Sea and in the tropical zone off the west coast of Africa, any increase in catch would also be small in absolute terms and in these areas many of the more productive stocks are already heavily fished. Catches can be increased mainly by fishing less productive and presently under-utilized stocks (e.g. the off shore demersal stocks in the tropical zones of West Africa). There could be also a better utilization of the

various small-sized species which are important elements of the biomass in tropical zones. Aquaculture can also be expected to grow considerably in the coming years, provided aquatic pollution is kept under control.

There are also great opportunities for making more effective use, especially for the benefit of African countries, of the present volume of catches. For example, large quantities of pelagic fish are used for fish meal, by both factory vessels and in coastal countries where the existing markets for fresh or canned fish cannot use all the quantities produced

Fresh fish marketing plays an important role in African coastal districts but poor collection and distribution systems, small-scale operations and inadequate handling and preservation techniques limit the possible expansion under present conditions. Of the catch of African countries destined for human consumption generally more than 50 percent is smoked, salted, dried or processed by a combination of these methods. Smoked or sub-dried products are being increasingly employed. Industrial methods of fish preservation absorb only limited quantities of fish for the home market. Freezing and canning facilities, available in a number countries, have been primarily set up to serve export markets in developed countries, particularly frozen tuna for further processing, canned tuna, canned sardine, frozen shrimp and high valued ground fish species. Fish meal for export plays a significant role in the utilization of landings in three coastal countries.

There is substantial intra-regional trade in cured fish, provided both by countries with important freshwater fisheries such as Chad, Mali, Niger, Tanzania and Uganda, and by some other African countries with large marine resources. But, unless the products are upgraded and diversified, the freshwater fisheries may in the long run be affected by the increasing supplies from marine fisheries.

There should be considerable scope for increased intra-regional trade in various fishery products.

Vessels of non-coastal States, with the exception of the fish meal factory ships, freeze most of their catch primarily at sea. Most of the production is destined for the vessels' home market, but about 100,000 tons of frozen fish, notably from Japanese, Polish, Spanish and Russian vessels, are delivered to West African ports for inland consumption.

Marketing development seems to play a crucial role for increased exploitation of the resources by African countries, as shortcomings in the marketing systems and inadequate processing techniques often act as major constraint to fishery development. Therefore, focussing on the utilization of fish both for domestic consumption and export markets, attention must be directed at improvements in the distribution, handling and processing of fish. The use of modern technology, methods, equipment and management can provide the essential link between an intensified exploitation of the resources and the expansion of markets.

In discussion arising from the information presented, the meeting emphasized that the fishery resources in the waters around Africa represented a rich heritage of African countries and one that had been too long neglected. Every effort should be made to ensure that in the future a full and proper use was made of this heritage.

It was emphasized that the development of fisheries had to be based on an adequate knowledge of the abundance and distribution of the resource. Without such knowledge there was a danger of depiction of the resource by excessive fishing, or of a waste of investment by the construction of large fleets or shore facilities in areas where there were not sufficient fish resources.

While a useful amount of knowledge had already been obtained concerning the stocks and their environment, this information needed continued up-dating, and the extension

to these areas and stocks, such as the coastal areas of the Indian Ocean, for which present information was at present very scanty. This would require an intensification of the current research efforts around Africa.

The meeting noted that several African countries, through lack of funds and facilities, and competing demands for a limited number of capable personnel, would find it difficult, in the immediate future, to set up effective independent national research institutes.

For this reason, and because of the opportunities for economy or improved efficiency offered by the pooling of facilities, emphasis should be placed on developing regional centres of fishery research. There was some discussion regarding the form of such regional centres. It was generally felt that it might be premature to set up regional research institutes and instead a more flexible arrangement was desirable. Existing national institutions should be strengthened to enable them to fulfil a regional role. In this regard the meeting emphasized its belief in the responsibility of all non-African countries fishing in the waters around Africa to assist in strengthening the research capabilities of African countries. This assistance, could take the form of training of scientists, both abroad and in the African countries themselves, as well as direct techniques and financial support to national and regional laboratories and supporting services in African countries.

The meeting also emphasized the need for close co-operation, not merely between African countries, but between all countries carrying out research on, or exploiting the resources in a particular region. All countries fishing a given stock should, as a minimum, collect and make available for joint studies, statistical data on catch and effort and on length composition of the catches. The more detailed surveys, monitoring and assessments of these resources and of related environmental conditions would also benefit greatly

from a planned regional, integrated approach.

In reviewing the status of the present fisheries the meeting noted with concern the small part Africa plays in the harvesting of the resources, and questioned what could be done to increase fish production by the coastal States. The reason for the situation was recognized to be one of a fishery with a lately emerging industrialisation hampered in its development by lack of vessels, equipment and facilities in general, with shortcomings in the marketing systems and processing technology as well as in skilled personnel. The meeting agreed that there was an urgent need to increase the opportunities for the coastal States to achieve a greater participation in the fishery. This would require considerable investments and technical assistance at all levels, and the discussion went on to examine possibilities to secure cooperation to this end.

The meeting emphasized its belief in the duty of the developed countries exploiting the fishery resources in the waters around Africa to assist African countries to develop their fisheries. Many possible forms that such cooperation and assistance should take were pointed out during the meeting.

It was also important that African countries should have access, for the purposes of more effective participation in the fisheries, to the results of all relevant research.

Technical assistance and training at all levels were also very important. This should be provided both through direct bilateral arrangements, as well as through multilateral agencies such as UNDP.

In order to make the most fruitful use of funds for investment, economic research in the form of pre-investment studies and feasibility studies was also required.

The meeting requested FAO to study ways by which investments could be guaranteed, taking into account both

the interest of investors and the country in which the investment would be made. The results of such studies should be made freely available.

The meeting also noted that in some cases entry by African countries into established fisheries was becoming increasingly difficult because of the low level of catch per unit resulting from the high intensities of fishing. It was stressed that arrangements for the conservation and management should be formulated in such a way as to facilitate the entry of African countries.

The over-riding need is, however, to develop these resources for the benefit of Africa as a whole. Account should therefore be taken of the differing needs and endowments of African countries. The most rational development policy in such a situation is one which considers jointly the question of access to fishing grounds, access to markets and opportunities for the use and development of share facilities as integral parts of the same problem. This approach would in general tend to more rational use of scarce investment funds.

So far as the regulation of fishing is concerned it was suggested that there already existed a framework in the shape of the regional commissions within which this could be negotiated.

The meeting strongly emphasized its belief in the responsibility of the more developed countries to cooperate in the development of African fisheries. To this end developed countries should be encouraged to land and process in the African countries the fish caught off Africa. The African countries would, in their turn, need to provide some guarantee to foreign investors which might be given through some form of joint venture arrangement. Another process by which development could be brought about was through the chartering of vessels. Under this system a developing country could gradually acquire the skills of fishing and build

up the port and marketing infrastructure before making the costly investment in long-range vessels of its own.

The Consultation felt that fishery bodies set up within the framework of FAO constituted appropriate fora to discuss, formulate and recommend management measures. In this regard, it welcomed the progress already achieved by CECAF and noted with satisfaction the establishment of a Sub-Committee on Implementation of Management Measures and of a Working Party on Resources Evaluation. It also took note of the discussions held within the Indian Ocean Fishery Commission (IOFC) regarding the management of Indian Ocean tunas and expressed the hope that at its next session the IOFC would reach agreement on the steps required to put management measures for tuna into effect.

The Consultation requested FAO to take into account, when planning and implementing its programmes of work and field activities, the various recommendations embodied in this report. It urged individual African Governments to bear these recommendations in mind when defining their policy with regard to international cooperation in marine fisheries.

The Consultation agreed that one of the main conclusions to be drawn from the discussions was the need for African countries to increase their participation in the exploitation of fishery resources in waters around Africa. Fisheries could contribute significantly to the economic development of African countries ; fish and fishery products were essential to meet the protein requirements of the population of African countries.

In view of the deterioration of the state of resources in some areas, the Consultation felt that African countries should consider what measures would best enable them to participate actively in the conservation of fisheries and the control of fishing off Africa. All delegations present indicated that in their view this should be done by establishing

zones in which coastal States would exercise exclusive rights with respect to fisheries and in which foreign vessels could operate only with the permission of the coastal State, obtained through negotiation. They added that preference should be granted in this respect to other African countries. As to the outer limit of the exclusive fishing zones, several delegates felt that, for technical and scientific reasons, it should coincide with the edge of the continental shelf, while others expressed a preference for a limit determined by a fixed depth. The Consultation fully realized that questions of jurisdiction were outside the competence of FAO and could not be dealt with by a meeting sponsored by the Organization. Noting that consideration of these questions would be beyond its terms of reference, the Consultation recalled that the Sixth FAO Regional Conference for Africa, which had recommended that it be convened had also agreed that the political and legal aspects of conservation and control of fishing would be more appropriately discussed by the OAU. It resolved, therefore, to recommend to the OAU to make the necessary arrangements for the holding of a special meeting to consider these aspects in preparation for the United Nations Conference on the Law of the Sea, scheduled to be convened in 1973.

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* As on Ist March, 1973