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LAW OF THE SEA INSTITUTE	Mr. Francis T. Christy, Jr., Director. Law of the Sea Institute, Rhode Island.

III. AGENDA OF THE FOURTEENTH SESSION

I. Organisational Matters :

1. Adoption of the Agenda.
2. Election of the President and Vice-President.
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 Fifteenth Session of the Committee.

II. Matters arising out of the work of the International Law Commission under Article 3 (a) of the Statutes

Question of protection and inviolability of Diplomatic Agents and other persons entitled to Special Protection under International Law.

III. 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).*

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

1. *Organisation of Legal Advisory Services in Foreign Offices (Taken up by the Committee at the suggestion of the Government of India).*
2. *International Sale of Goods (Taken up by the Committee at the suggestion of the Governments of Ghana and India).*

IV. THE LAW OF THE SEA

(i) INTRODUCTORY NOTE

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 developments in the field and the Third Law of the Sea Conference which was then being mooted (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 of the subject, 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 of discussion at the First Law of the Sea Conference 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 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 fishery resources of the sea.

Within a few years of the two U.N. 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 the 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 2467 A (XXIII), adopted on the 21 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 by its resolution 2574 A (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 regime of the high seas, the continental shelf, the territorial sea and the contiguous zone, 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 formulation 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 eleventh session held in Accra in January 1970 and the Committee resolved that, having regard to the paramount importance of the subject to the Asian-African States, it 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 up 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, twenty-five States including eighteen of the Members of the Committee participated in the Colombo session. In addition, Delegations representing the United States of America and five Latin American Governments attended the session in order to explain their viewpoints on various issues before the Colombo meeting of the Committee.

At the Colombo session the principal topics which were taken up for consideration were as follows :-

- (1) Breadth of 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, the type of regime to govern the sea-bed and ocean floor beyond the limits of national jurisdiction and the types of international machinery;
- (4) Islands 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 India, Indonesia, Japan, Kenya, Malaysia and Sri Lanka* for detailed study and preparation on the subject. It also appointed as its rapporteur Mr. Christopher W. Pinto of Sri Lanka. 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 UN Secretary-General's communication pursuant to resolution 2574 (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 to meet 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 Working Group was enlarged by the inclusion of Egypt at the Lagos session of the Committee.

the Third Law of the Sea Conference. 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 the 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 during July 1971 just before the commencement of the summer session of the UN Sea-Bed 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:

- (i) 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 Conference on the Law of the Sea and that basic materials should be made available in French as well as in English;
- (ii) 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 Committee's Secretary-General to address the UN Sea-Bed Committee and the

Afro-Asian Group of the Sea-Bed Committee on suitable dates to be arranged in consultation with their respective chairman 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 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 seabed area and the establishment 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.

At the thirteenth session of the Committee held in Lagos in January 1972, the Law of the Sea was taken up as the priority item and the subject was considered in detail in its various aspects on the basis of working papers prepared by the members of the Working Group and a special working paper on Land-locked States prepared by the Ambassador Tabibi of Afghanistan. The session was attended by delegations from seventeen member States of the Committee and observer delegations representing twenty-seven non-Member States, and eight international organisations including the United Nations. The main topics which were taken up for discussion during the Lagos session, both in the plenary and in the Sub-Committee were (1) International Regime for the Sea-Bed; (2) Fisheries; (3) Exclusive Economic Zone; (4) Territorial Sea and Straits; (5) Regional Arrangements; (6) Archipelagos and (7) Position of Land-locked States. Although the discussions on these topics went into considerable depths and there was full and free exchange of views, lack of time prevented the Delegates from concretising their views more precisely.

The Sub-Committee on the Law of the Sea met in Geneva during July 1972 in order to give further consideration to the topics which were discussed in Lagos and to formulate certain tentative proposals for consideration of the Committee at its fourteenth session. At this meeting concrete proposals were put forward by the representatives of Indonesia and the Philippines on 'Archipelagic States', by the representative of Japan on 'Fisheries' and these formed the basis for discussions in the Sub-Committee. The report of the Sub-Committee as prepared by the rapporteur and the members of the Working Group succinctly sets out an accurate summary of the discussions.

The expanded Sea-Bed Committee of the United Nations held two series of sittings during the spring and summer of 1972 during which considerable progress was made in the preparatory work for the Third Law of the Sea Conference; Sub-Committee II was able to prepare and finalise a list of subjects for consideration at the Conference and thus set at rest all controversies and debates on this delicate issue. A Working Group established by Sub-Committee I for the purpose of examining the various proposals on International Sea-Bed Regime under the Chairmanship of Mr. Christopher W. Pinto also made significant progress and succeeded in producing some tentative solutions. The other Sub-Committees also maintained steady progress on their subjects.

At the fourteenth session of the Committee held in New Delhi in January 1973, which was attended by the Delegations from 19 of the Member States of the Committee and Observer Delegations representing 30 non-Member States and four international organisations, the Law of the Sea and Sea-Bed was again taken up as a priority item. At the beginning of the session, the Working Group on the Law of the Sea met on the 10th of January, 1973, to consider the method of work to be followed at this session. The Working Group, having regard to the agenda of the forthcoming meetings of the UN Sea-Bed Committee and the time available at the disposal of the Committee at the present session, *inter alia*, recommended that deliberations on the subject at the present session, both in the plenary

and the Sub-Committee, should be confined to the following topics :

- (i) Fisheries, Exclusive Economic Zone;
- (ii) Rights and Interests of Land-locked States;
- (iii) International Machinery for the Sea-Bed; and
- (iv) Marine pollution.

The Working Group also recommended that in view of the resignation of Mr. C.W. Pinto (Sri Lanka), Dr. S.P. Jagota (India) should take over as the rapporteur of the Sub-Committee on the Law of the Sea. The recommendations of the Working Group were accepted by the Committee, and accordingly the Committee had discussions on the aforesaid topics in four plenary meetings. In these plenary meetings eleven Delegations and nine Observers made statements. In one of the plenary meetings, the Delegation of India introduced a set of Draft Articles on Exclusive Fisheries Zone. At the end of the discussion in the plenary, the matter was referred to the Sub-Committee for detailed consideration. The Sub-Committee held four meetings and thereafter the rapporteur drew up a report on the work done by the Sub-Committee which was placed before the main Committee. In the wake of discussions on the rapporteur's report, it was decided that the Draft Articles presented by the Delegation of India together with the text of questions posed by the Delegation of Japan, which formed annexure I and II respectively of the rapporteur's report, should be submitted to the member governments with the request that the governments give their concrete comments and suggestions on the Draft Articles to the Secretary-General of the Committee within one month from the close of the session. It was further decided that the Sub-Committee should meet in Geneva for a period of three days immediately prior to the summer session of the Sea-Bed Committee, to which Ambassador Tabibi might be invited as a special invitee. The Committee also took the decision that the study group on Land-locked States, established by the Committee should meet at the earliest. The study group, accordingly, met in New Delhi from 22nd to 26th of March, 1973.

(ii) REPORT OF THE AALCC SUB-COMMITTEE ON THE LAW OF THE SEA INTER-SESSIONAL MEETING HELD IN GENEVA FROM 12TH TO 15TH JULY, 1972

<i>Chairman</i>	Hon'ble Dr. T. O. Elias (Nigeria) H. E. Dr. Mustafa Kamil Yaseen (Iraq)
<i>Secretary-General</i>	Mr. B. Sen
<i>Rapporteur</i>	Mr. C. W. Pinto (Sri Lanka)

I. Organization of Work

The Sub-Committee on the Law of the Sea held an inter-sessional meeting at the Palais des Nations, Geneva, on 12, 13, 14 and 15 July, 1972, in pursuance of a decision taken by the Liaison Officers of the Member Governments and approved by the President of the Committee.

The Sub-Committee first discussed the scope and method of its work. The Secretary-General indicated that the meeting had a twofold purpose, namely to have an exchange of views on matters which were likely to come up before the summer session of the U. N. Sea-Bed Committee and to help in crystallising the essential points on the major issue indicated in the Agenda Paper so as to facilitate the preparation in due course of draft texts on the Law of the Sea by the Committee's Secretariat and the Working Group on the Law of the Sea for consideration at the next regular session of the Committee. The Chairman observed that it would be very useful if the Committee were to prepare draft formulations on the major issues in preparation for the Conference on the Law of the Sea for assistance of the Member Governments and other Asian and African States.

The Sub-Committee decided that it would be useful to discuss the various amendments suggested by certain governments to the List of Issues introduced by 56 countries at the

spring session of the U. N. Sea-Bed Committee (Doc. No. A/AC. 138/66). It would not be the purpose of the discussion to take decisions on any matter relating to the List but merely to clarify certain areas and facilitate further discussion.

The Sub-Committee felt that if satisfactory solutions could be arrived at on the major issues listed in the Agenda Paper a great deal of progress would have been made and it was decided to concentrate on those issues both for the purpose of discussions in the Sub-Committee and for preparation of draft texts.

The Sub-Committee heard statements from the Delegate of Kenya about the work done in the Seminar on the Law of the Sea at Yaounde from 20 to 30 June, 1972. The Delegate of Egypt informed the meeting regarding the conference held in Malta from 5-7 July, 1972, by coastal States of the Mediterranean Sea. The Delegates of Indonesia and Japan also made statements concerning the Law of the Sea Institute meeting held at Rhode Island from 26-30 June, 1972.

The rapporteur suggested that members might wish to give special consideration to their positions on the following issues which could be expected to be the subject of difficult negotiations in the Preparatory Committee over the coming months :

- (1) *Regulation of fisheries* : Proposals thus far made by the developed countries had in common an approach based on what they considered to be the traditional position on fisheries viz. that living resources in waters beyond the territorial sea belonged to the international community and could be harvested by all. Several developing countries, on the other hand, wanted the law to acknowledge their sovereignty over the living resources of the sea in an appropriate zone beyond the territorial sea. The developed countries, in an attempt to meet the demands of the developing world, had proposed adoption of the "preferential catch" approach in various forms. *But the approaches were fundamentally opposed to one another, and he*

wondered whether any compromise between the two, based on "traditional" concepts, was possible.

(2) *Regulation of sea-bed exploitation* :

- (a) Several developing countries were seeking recognition of the principle that a coastal State had sovereignty over the natural resources of the sea-bed in an appropriate zone beyond its territorial sea, the sea-bed beyond that to be placed under the jurisdiction of a new international machinery and exploited for the benefit of mankind as a whole. Some developed countries on the other hand had proposed that there be an intermediate zone between national jurisdiction and the area of the machinery's competence, a zone from which the community (and the machinery) might derive substantial revenues through the agency of the coastal State. The possibility of compromise between the two approaches might be considered.
- (b) *The question whether or not the international machinery should be endowed with the power to carry out exploitation of sea-bed resources by means of its own resources* was likely to become a major issue. Opposing views on the matter were genuinely and strongly held by several countries.
- (c) "Shelf-locked", "near-land-locked" and other terms used to characterise certain groups of States which believed they had a special community of interest — sometimes transcending the basic one of level of economic development — would need to be defined before the problems of those States could be resolved.

- (3) *Innocent passage* through straits used for international navigation falling within the territorial sea of