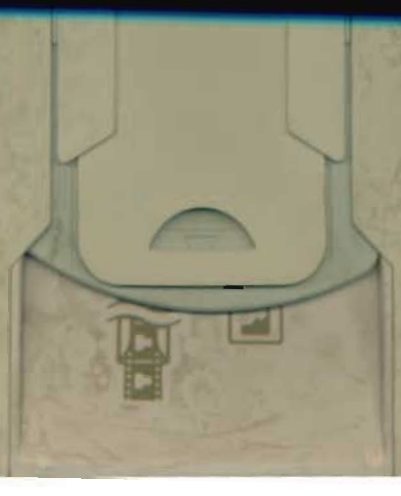
REPORT OF THE FIFTEENTH SESSION HELD IN TOKYO

From 7th to 14th January, 1974

ASIAN - AFRICAN
LEGAL CONSULTATIVE COMMITTEE



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THE SECRETARIAT OF THE COMMITTEE
20, Ring Road, Lajpat Nagar-IV,
New Delhi-110024 (India)

Published by :
THE SECRETARIAT OF THE COMMITTEE
20, Ring Road, Lajpat Nagar-IV
New Delhi-110024 (India)

Printed at :
TARA ART PRESS
B-4, Hans Bhawan
1, Bahadur Shah Zafar Marg
New Delhi-110 002

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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 governments, 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 :-

Full Members :- Arab Republic of Egypt, Bangladesh, Democratic People's Republic of Korea, The Gambia, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Sierra Leone, Singapore, Sri Lanka, Syrian Arab Republic, Tanzania, Thailand and Turkey.

Associate Members :- Botswana, and Saudi Arabia.

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 consider 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 meets once annually by rotation in the various members States. 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), thirteenth in Lagos (1972), fourteenth in New Delhi (1973) and the fifteenth in Tokyo from 7th to 14th January 1974.

Office-bearers of the Committee and its Secretariat

During the fifteenth session of the Committee held in Tokyo, the Committee elected Dr. K. Nishimura, Leader of the Delegation of Japan, and Hon'ble Lal Bahadur Khadayat, Leader of the Delegation of Nepal, respectively, as the President and Vice-President of the Committee for the year 1974-75.

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 Governments.

Co-operation with other organisations

The Committee maintains close relations with the United Nations, some of its organs, such as the International Law Commission, the International Court of Justice, the U.N. High Commissioner for Refugees (UNHCR), the U.N. Conference on Trade and Development (UNCTAD), the U.N. Commission on International Trade Law (UNCITRAL), 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), the Hague Conference on Private International Law, and the Commonwealth Secretariat. 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 Commiitee is empowered under its Statutory Rules to admit 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 U.N. Secretary-General 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 invites the Committee to be represented at all the conferences convoked by it for consideration of legal matters. The Committee was represented at the U.N. Conferences of Plenipotentiaries on Diplomatic Relations and the Law of Treaties. The Committee has been invited to be represented in the sessions of the Third Law of the Sea Conference. 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 which falls into two categories, namely, Full Members and Associate Members, 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. Associate Members do not have a voice in the management of the organisation but they can fully participate in the discussions in the Committee and are entitled to receive all documentation.

Financial obligations

Each member government contributes towards the expenses of the Secretariat, whilst a part of the expenses for holding of the sessions is borne by the country in which the session is held. The contribution of each member country at present varies between £ 1100 (sterling) and £ 3,000 (sterling) per annum depending upon the size and national income of the country. Associate members, however, pay a fixed contribution of approximately £ 550 (sterling) per annum.

Resume of work done by the Committee

During the past eighteen years of its existence the Committee has had to concern itself with all the three types of activities envisaged in clauses (a), (b) and (c) of Article 3 of its

Statutes, namely, examination of questions that are under consideration by the International Law Commission, consideration of legal problems referred by member governments, and consideration of legal matters of common concern.

The topics which the Committee has considered and on which it has been able to make recommendations include "Diplomatic Immunities and Privileges", "State Immunity in respect of Commercial Transactions", "Extradition of Fugitive Offenders", "Status of Aliens", "Dual or multiple Nationality", "Legality of Nuclear Tests", "Arbitral Procedure", "Recognition and Enforcement of Foreign Judgements in Matrimonial Cases", "Reciprocal Enforcement of Foreign Judgements, Service of Process and Recording of Evidence both in Civil and Criminal Cases", "Legal Aid", "Relief against Double Taxation", "the 1966 Judgements 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 the peaceful uses of the sea-bed and the ocean floor lying beyond the limits of national jurisdiction." The Committee at its eleventh session had decided to include the Law of the Sea and the Sea-Bed as a priority item on the agenda of its twelfth session having regard to the recent developments in the field and the proposal for convening a U.N. Conference of Plenipotentiaries to consider various aspects of this subject. In view of the paramount 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 session. Thereafter, the subject was further considered on a priority basis at the thirteenth, fourteenth and fifteenth sessions of the Committee respectively held in Lagos (1972), New Delhi (1973) and Tokyo (1974) and almost all the countries of the Asian African region were invited to join in the deliberations on the subject at those sessions. The main object underlying the Committee's taking up the subject of the Law of the Sea has been to provide a forum for mutual consultations and discussions among the Asian and African governments and to assist them in making concerted and systematic preparations for the Third Law of the Sea Conference.

The Committee at its fourteenth session also took up the question of Organisation of Legal Advisory Services in Foreign Offices and for an exchange of views and information on this subject between the participating countries.

Some of the other topics which are pending consideration of the Committee include 'Diplomatic Protection and State Responsibility', 'State Succession', 'International Commercial Arbitration', 'International Legislation on Shipping' and 'Protection and Inviolability of Diplomatic Agents and other persons entitled to special protection under International Law'. The last mentioned topic was placed on the agenda of the fourteenth session, but at the suggestion of some of the delegations this matter was deferred for consideration at some future session of the Committee.

Publications of the Committee

The full reports, including the verbatim record of discussions in the Committee and its Sub-Committees, together with the recommendations, are made available 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. The Committee has also brought out five special reports on the following subjects :-

1. The Legality of Nuclear Tests.

2. Reciprocal Enforcement of Foreign Judgements, Service of Process and Recording of Evidence.
3. The Rights of Refugees.
4. Relief against Double Taxation and Fiscal Evasion; and
5. *The South West Africa Cases.*

The Secretariat of the Committee published in 1972 a compilation of the *Constitutions of African States* with the co-imprint of Oceana Publications Inc., New York. Earlier, it had brought out a compilation of the *Constitutions of Asian States* in the year 1968. The proposed publications of the Committee include the following :-

(1) Digest of important decisions of the municipal courts of Asian and African countries on international legal questions.

(2) Digest of Treaties and Conventions registered with the U.N. Secretariat to which an Asian or African State is a party.

(3) Foreign Investment Laws and Regulations of Asian and African Countries.

(4) Laws and Regulations relating to Control of Import and Export Trade in Asian and African countries.

(5) Laws and Regulations relating to control of Industry in Asian and African countries.

II. BUREAU OF THE CONFERENCE

President	Dr. Kumao Nishimura (Japan)
Vice-President	Hon'ble Lal Bahadur Khadayat (Nepal)
Secretary-General	Mr. B. Sen
Deputy Secretary-General	Mr. Kazuo Ichihashi

Sub-Committee (of the whole) on the Law of the Sea

Chairman	Mr. J.D. Ogundere (Nigeria)
Rapporteur	Dr. S.P. Jagota (India)

Sub-Committee on Trade Law

(Egypt, India, Indonesia, Iraq, Japan, Pakistan, Sierra Leone, Sri Lanka, Tanzania)

Chairman	Mr. Mahamoud Abdel Aziz El Ghamry (Egypt)
Rapporteur	Mr. P.H. Kurukulasuriya (Sri Lanka)

LIST OF DELEGATES AND OBSERVERS

A. DELEGATIONS OF MEMBER STATES

ARAB REPUBLIC OF EGYPT

Member (Leader of Delegation)	Hon'ble Mohamoud Abdel Aziz El Ghamry President of the Court of Appeal, Cairo
Alternate Member	Mr. Mohamed Moustapha Hassan Counsellor, State Legal Council
Alternate Member	Mr. Abdel Halim Badawi Minister Plenipotentiary, Ministry of Foreign Affairs

GHANA

Member (Leader of Delegation)	Hon'ble E.N. Moore Attorney General and Commissioner for Justice
Alternate Member	Mr. W.W.K. Vanderpuye Director, Consular and Legal Department, Ministry of Foreign Affairs
Adviser	Mr. G. Nikoi State-Attorney

INDIA

Member (Leader of Delegation)	Dr. S.P. Jagota Joint Secretary & Legal Adviser, Ministry of External Affairs

Alternate Member	Mr. K.K. Chopra Assistant Legal Adviser, Ministry of External Affairs
Alternate Member	Mr. V.C. Khanna First Secretary, Embassy of India in Japan

INDONESIA

Member (Leader of Delegation)	Mr. Zahar Arifin Director of Legal Affairs, Ministry of Foreign Affairs
Alternate Member	Dr. Hasjim Djalal Minister-Counsellor, Indonesian Embassy, Singapore
Adviser	Mr. Abdul Kobir Sastradipura Minister-Counsellor, Embassy of Indonesia in Japan

IRAN

Member (Leader of Delegation)	H.E. Dr. Ezedin Kazemi Chief of Legal Department, Ministry of Foreign Affairs
Alternate Member	Mr. Mohamed Amine Kardan First Secretary, Imperial Embassy of Iran in India

IRAQ

Member (Leader of Delegation)	H.E. Mr. Mundher Al-Windawi Ambassador of the Republic of Iraq in Japan
Alternate Member	Mr. Amer Araim Second Secretary, Permanent Mission of the Republic of Iraq to the U.N., New York

Adviser	Mr. Sabah Al-Rawi Third Secretary, Embassy of Iraq in India
Adviser	Mr. Faiz Munji Attache, Embassy of the Republic of Iraq in Japan

JAPAN

Member (Leader of Delegation)	Dr. Kumao Nishimura Judge, Permanent Court of Arbitration
	Dr. Michitoshi Takahashi Director, Institute of International Affairs
Alternate Member	Mr. Shinichi Sugihara Director, Office of the Law of the Sea, Ministry of Foreign Affairs
Alternate Member	Dr. Shigeru Oda Professor, Tohoku University
Adviser	Mr. Naohiro Kumagai Head of Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs
Adviser	Mr. Akira Takakuwa Attorney, Civil Affairs Bureau, Ministry of Justice
Adviser	Mr. Akira Sugino First Secretary, Embassy of Japan in India

Adviser	Mr. Kenshiro Akimoto Officer, Office of the Law of the Sea, Ministry of Foreign Affairs
Adviser	Mr. Kenzo Oshima Officer, Office of the Law of the Sea, Ministry of Foreign Affairs
Adviser	Mr. Gotaro Ogawa Officer, Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs
Adviser	Mr. Ryuichi Ishii Officer, Office of the Law of the Sea, Ministry of Foreign Affairs

JORDAN — *Not represented*

KENYA — *Not represented*

KUWAIT

Member (Leader of Delegation)	H.E. Mr. Talat Yacoub Al-Ghusain Ambassador of Kuwait in Japan
Alternate Member	Mr. Khaled Yacoub A. Mondani First Secretary, Embassy of Kuwait in Japan

MALAYSIA

Member (Leader of Delegation)	Hon'ble Tan Sri Haji Abdul Kadir Bin Yusof Attorney General & Minister of Legal Affairs
Alternate Member	Mr. L.C. Vohrah Senior Federal Counsel

Adviser	Mr. M.T. Din Second Secretary, Malaysian Embassy in Japan

NEPAL

Member (Leader of Delegation)	Hon'ble Lal Bahadur Khadayat Minister for Law and Justice
Alternate Member	Mr. Bhubaneshwor Prasad Daibagya Under Secretary, Ministry of Law and Justice
Alternate Member	Mr. Narayan Das Shrestha Charge d'Affaires, Royal Nepalese Embassy in Japan

NIGERIA

Member (Leader of Delegation)	Mr. J.D. Ogundere Deputy Solicitor-General, Ministry of Justice
Alternate Member	Mr. T.I. Adesalu Senior State Counsel, International and Comparative Law Division, Ministry of Justice
Alternate Member	Mr. A. Jumba Second Secretary, Embassy of Nigeria, Tokyo

PAKISTAN

Member (Leader of Delegation)	Hon'ble Mr. Justice Abdul Kadir Shaikh Judge, High Court, Karachi
Alternate Member	Mr. A.G. Chaudhary Legal Adviser, Ministry of Foreign Affairs

Alternate Member	Mr. Khalid Mahmood First Secretary, Permanent Mission of Pakistan to U.N.

PHILIPPINES

Member (Leader of Delegation)	Hon'ble Estelito P. Mendoza Solicitor General of the Philippines
Alternate Member	Mr. Iluminado G. Torres Minister, Philippine Embassy, Tokyo

SIERRA LEONE

Member (Leader of Delegation)	Hon'ble Mr. L.A.M. Brewah Attorney General & Minister of Justice
Alternate Member	Mr. P.P.C. Boston Principal State Counsel, Law Officers Department
Alternate Member	Mr. A.M. Kamara State Counsel, Law Officers Department

SINGAPORE

Member (Leader of Delegation)	Mr. Glenn J. Knight State Counsel and Deputy Public Prosecutor, Attorney General's Chambers

SRI LANKA

Member (Leader of Delegation)	Hon'ble T.S. Fernando, Q.C. President of the Court of Appeal of the Republic of Sri Lanka
Alternate Member	Mr. N. Jayawickrama Secretary for Justice

Alternate Member	Mr. P.H. Kurukulasuriya Assistant Legal Adviser, Ministry of Defence and Foreign Affairs

SYRIA — *Not represented*

TANZANIA

Member (Leader of Delegation)	Mr. E.E. Mtango Assistant Secretary, Ministry of Foreign Affairs
Alternate Member	Mr. S.A. Mbenna Assistant Secretary, Ministry of Foreign Affairs

THAILAND

Member (Leader of Delegation)	H.E. Dr. Arun Panupong Director-General, Treaty and Legal Department, Ministry of Foreign Affairs
Alternate Member	Mr. Montri Jalichandra Second Secretary, Treaty and Legal Department, Ministry of Foreign Affairs
Adviser	Dr. Suchat Prachimdhit Third Secretary, Treaty and Legal Department, Ministry of Foreign Affairs

B. DELEGATIONS OF ASSOCIATE MEMBER STATES

MAURITIUS

Associate Member (Leader of Delegation)	Hon'ble J. Paul Hein Minister of Legal Affairs

	Mr. Edwin Venchard Solicitor General and Vice-Minister of Legal Affairs

REPUBLIC OF KOREA

Associate Member (Leader of Delegation)	Mr. Ha Jong Yoon Charge d'Affaires, Embassy of the Republic of Korea in Japan
Adviser	Mr. Sang Chin Lee Counsellor, Embassy of the Republic of Korea
Adviser	Mr. Yong Duc Shun Officer, Treaties Division, Ministry of Foreign Affairs

Special Invitee Under Rule 7 (5) of the Statutory Rules

Dr. Abdul Hakim Tabibi
Chairman,
A.A.L.C.C. Special Study
Group on Land-Locked States

C. OBSERVERS REPRESENTING ASIAN-AFRICAN STATES

AFGHANISTAN	Mr. Sarwar Damani Charge d' Affaires, Embassy of Afghanistan in Japan
ALGERIA	Mr. Mustupha Dadou First Secretary, Embassy of Algeria in Japan

BURUNDI	Mr. Appolinaire Ncutinamagara Director General, Ministry of Justice
CENTRAL AFRICAN REPUBLIC	Mr. Elysee L. Bayangha First Secretary, Embassy of Central African Republic in Tokyo
CYPRUS	Mr. Andreas J. Jacovides Minister Plenipotentiary, Permanent Mission to the U.N.
LAOS	Mr. Nivong Souvanheuane Embassy of Laos in Tokyo
LIBYA	H.E. Mr. H. Bukres Ambassador of Libya in Japan
	Mr. Mohmed Hameda Al-Matri Attache, Treaty Division, Legal and Treaty Bureau, Ministry of Foreign Affairs
MONGOLIA	Mr. L. Chuluunbaatar Charge d'Affaires, Mongolian Embassy in Tokyo
MOROCCO	H. E. Mr. T. Abdeslam Ambassador of Morocco in Tokyo
SAUDI ARABIA	H. E. Sheikh Aouney Wafa Dejany Ambassador of Saudi Arabia in Tokyo
TURKEY	H.E. Dr. Sukru Elekdag Ambassador of Turkey in Japan

	Mr. Selcuk Tarlan Counsellor, Turkish Embassy in Tokyo
UGANDA	Mr. S.T Bigombe, Charge d'Affaires, Embassy of Uganda in Tokyo
ZAIRE	H. E. Mr. C.M. Kasasa, Ambassadeur Rep. du Zaire, Geneve office des N.U.
	Mr. M. Kabengele, Conseiller d'Ambassade au Departement des Affaires, Etrangers et de la Cooperation Internationale a Kinshasa
	Mr. di M'Panzu Phoba Delegue, Departement des Affaires Etrangers Service Juridique

D. OBSERVERS REPRESENTING INTERNATIONAL ORGANIZATIONS

INTERNATIONAL LAW COMMISSION	H.E. Mr. Jorge Castaneda Chairman
UNCITRAL	Professor Kazuaki Sono Special Consultant to the UNCITRAL Secretariat
COMMONWEALTH SECRETARIAT	Mr. R. Lallah Special Adviser (Legal), Commonwealth Fund for Technical Co-operation
LEAGUE OF ARAB STATES	Mr. Bahie Eldin Nasr Representative in Japan and Head of Delegation
	Mr. Aly El Sawy
	Mr. M. Etman

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW	Mr. M.H. Van Hoogstraten Secretary-General
UNIDROIT	Mr. Ichiro Kawashima Director of UNIDROIT and Head of the Civil Affairs Bureau, Ministry of Justice, Japan

E. OBSERVERS REPRESENTING OTHER STATES

AUSTRALIA	Mr. H. Gilchrist Head of the Legal and Treaties Branch, Department of Foreign Affairs
	Mr. G.A. Brennan Special Adviser on International Law, Attorney-General's Department
ARGENTINA	Mr. Orlando Rebagliati Secretary, Permanent Mission of Argentina to the U.N.
AUSTRIA	Dr. Winfried Lang First Secretary, Austrian Embassy in Tokyo
CANADA	Mr. Paul A. Lapointe Co-ordinator, Law of the Sea Bureau of Legal Affairs, Department of External Affairs

CHILE	Mr. Patricio Aracena Charge d'Affaires, Embassy of Chile in Tokyo
COLOMBIA	H.E. Mr. Luis Gonzales Barros Ambassador of Colombia in Japan
	Mr. H.P. Cases First Secretary, Embassy of Colombia in Japan
CUBA	Dr. Maria Cecilia Bermudez Garcia Member of the Political Affairs Division, Ministry of Foreign Affairs
	Dr. Eduardo E. Balbin Martin First Secretary, Embassy of Cuba in Japan
ECUADOR	H.E. Dr. Francisco Urbina Ambassador of Ecuador to Japan
FEDERAL REPUBLIC OF GERMANY	Mr. Fritz Von Rottenburg First Secretary of the Embassy of the Federal Republic of Germany in Tokyo
FINLAND	Mr. Bo Adahl First Secretary, Embassy of Finland in Tokyo
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HUNGARY	Mr. Miklos Koszegi Counsellor, Embassy of Hungary in Japan
NEW ZEALAND	Mr. L.J. Wood Second Secretary, New Zealand Embassy in Tokyo
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	Mr. R.S. Gorham First Secretary, British Embassy in Tokyo

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U.S.S.R.	Mr. A.P. Movchan Expert Consultant, Ministry of Foreign Affairs, U.S.S.R.
YUGOSLAVIA	Mr. S. Glisic Counsellor, Embassy of Yugoslavia in Japan

III. AGENDA OF THE FIFTEENTH 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 Sixteenth Session of the Committee.
6. Any other business that may be brought up with the permission of the President.

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)

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

1. *International Shipping Legislation (Bills of Lading)*
(Taken up by the Committee at its Accra Session as arising out of the work of UNCITRAL).

2. *International Commercial Arbitration*
(Taken up by the Committee at its Accra Session as arising out of the work of the UNCITRAL).

IV. LAW OF THE SEA

(i) INTRODUCTORY NOTE

At the initiative of the Government of Indonesia, the subject "Law of the Sea, including questions relating to the Sea-bed and the Ocean Floor" was included in the programme of work of the Committee.

At its Accra Session held in January 1970, the Committee resolved to commence its preparatory work on the Law of the Sea. It was also decided that the Committee's 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 African States.

In the following year at the Colombo Session, the topics on which the discussion focussed included :

(i) Breadth of the Territorial Sea;

(ii) Rights of coastal States in respect of fisheries in areas beyond the territorial sea;

(iii) 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 the ocean floor beyond the limits of national jurisdiction;

(iv) Islands and the archipelago concept;

(v) International straits, and

(vi) Preservation of the marine environment.

It was decided to constitute a Sub-committee comprising of all the participating member States of the Committee and a

working group composed of the representatives of Ceylon India, Indonesia, Japan, Kenya and Malaysia. Mr. Pinto from Ceylon was appointed as Rapporteur of the Sub-committee.

The Working Group held its first meeting in New Delhi in June 1971. The discussions centered round the working paper prepared by the Rapporteur and special working papers prepared by 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 subsequently submitted to the Sub-committee on the Law of the Sea, which met in Geneva from the 15th to 17th July 1971.

The Sub-committee besides considering the report of the Working Group also discussed certain matters relating to the Summer 1971 Session of the UN Sea-bed Committee. The Sub-committee *inter alia* recommended that :

> 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.

The Committee also decided to invite non-member countries in Asia and Africa to attend the Lagos Session as observers.

The Law of the Sea Working Group of the Committee held another meeting on 26th August 1971. Its members were asked to prepare working papers on international regime for the sea-bed area beyond national jurisdiction, fisheries, archipelagos, economic zones and international straits for consideration at the Lagos Session of the Committee.

The Lagos Session was held from January 18 to 25, 1972. Deliberations on the Law of the Sea were concentrated on the seven topics, 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) position of land-locked states. The members of the Working Group on the Law of the Sea presented the following papers :

(i) Preliminary draft and outline of a Convention on the sea-bed and the ocean floor and the sub-soil thereof beyond national jurisdiction prepared by the Rapporteur of the Sub-committee on the Law of the Sea,Mr. C.W. Pinto of Sri Lanka;

(ii) "Proposed regime concerning fisheries on the High Seas" prepared by Japan; and

(iii) "The Exclusive Economic Zone Concept" prepared by Kenya. There were two working papers submitted by the delegations of Indonesia and Malaysia on '*The concept of Archipelago*' and on '*International Straits*' respectively. Another working paper on the position of land-locked states was submitted by Ambassador Tabibi of Afghanistan. After an inconclusive debate, the Sub-committee adopted its report which subsequently was submitted to its Inter-sessional Meeting held in Geneva during July 1972. At this meeting Japan's proposal on 'fisheries' and the joint proposal of Indonesia and the Philippines on '*Archipelagic States*' formed the basis for discussion. The delegate of Kenya submitted '*revised draft articles on the Exclusive Economic Zone*'. The deliberations in the Committee centered mainly on these topics and related matters.

The Fourteenth Session of the Committee was held in New Delhi in January 1973. The subject of the Law of the Sea was again taken up as a priority item. At its meeting on 10th January 1973, the Working Group on the Law of the Sea recommended that deliberations in the Committee, 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.

During the course of the meetings, the Delegation of India introduced a set of Draft Articles on Exclusive Fisheries Zone. The Rapporteur's report containing the gist of the discussion during the session and the Indian draft Articles together with the text of questions posed by the Delegation of Japan were submitted to the member governments for their comments and suggestions. It was decided that the Sub-committee should hold its next meeting in Geneva for a period of three days immediately prior to the Summer Session of the U.N. Sea-bed Committee. Further, it was decided that the Study Group on Landlocked States constituted by the Committee should meet at the earliest. The Study Group accordingly, met in NewDelhi from 22nd to 26th March, 1973.

The Study Group on Land-locked States prepared certain tentative draft propositions. The Report of the Study Group along with draft propositions were sent to the members States and other Asian-African States for their consideration and comments. Subsequently, the Report was placed before the Inter-sessional meeting of the Sub-committee on the Law of the Sea held in Geneva from 28th June to 30th June 1973. The deliberations in the Sub-committee concerned topics such as the Exclusive Economic Zone, including the Exclusive fishery zone, Rights and Interests of land-locked States as well as of the near land-locked or geographically disadvantaged States, archipelagos, straits and marine pollution. The elaborate exchange of views on these topics clarified the positions of several Asian-African States. The successful conclusion of this meeting marked another milestone in the work of the Committee on the topic of the Law of the Sea. Next in the chronological order of the Committee's work on the Law of the Sea is the deliberations in the fifteenth session held in Tokyo from January 7 to 14, 1974. At its meeting on 7th January, 1974 the Working Group on the Law of the Sea recommended that the study prepared by the Secretary-General along with the draft formulations should be taken as a reference and an aid to discussion. It was also decided

that the first set of topics for consideration should be the question of Straits used for International Navigation, Archipelagos and Rights and Interests of Land-locked States. The other topics for consideration included : Continental Shelf, Concept of Economic Zone, Patrimonial Sea, Fisheries including Fishery Zone, International Regime for the Sea-bed including International Machinery and Marine Pollution or preservation of the Marine Environment. Intensive discussions, however, were held in the Sub-Committee of the Whole on three subjects, namely (1) Rights and Interests of Land-locked States, (2) Archipelagos, and (3) Straits. The Report of the Sub-committee was subsequently circulated to the member Governments.

(ii) NOTES ON TOPICS RELATING TO THE LAW OF THE SEA TO SERVE AS AN AID TO DISCUSSION

1. The Concept of Economic Zone/Patrimonial Sea
2. Fisheries
3. Straits used for International Navigation
4. Archipelagos
5. Rights and Interests of Landlocked States
6. International Regime for the Seabed and Ocean floor beyond the Limits of National Jurisdiction.
7. Marine Pollution.

Concept of Economic Zone — Patrimonial Sea

The concept of an Economic Zone/Patrimonial Sea in essence, as would be clear from the various declarations and proposals, appears to contemplate recognition of certain rights of coastal State for the purpose of exploitation of the resources of the sea in an area adjacent to their coasts and certain other connected rights.

2. In this connection, six questions would appear to arise for consideration, namely (1) Whether such rights should be recognised in an area of the sea beyond the territorial waters of the coastal State ; (2) If such rights are recognised what should be the breadth of the area over which these rights could be exercised ; (3) What should be the nature of the rights to be exercised by the coastal State in such areas ; (4) What rights, if any, would States other than the coastal State have in this area ; (5) What rights should the adjoining landlocked States have or

be permitted to enjoy in this area, and (6) Whether the regime of economic zone/patrimonial sea, if adopted, be universal in character or could it be of differing nature depending on the particular conditions of each region.

3. There are at present ten proposals and Working Papers for consideration which have been introduced before the U.N. Sea-Bed Committee, namely : (i) Draft Articles introduced by the delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore.

(A/AC. 138/SC. II/L. 39) ; (ii) Draft Articles on Exclusive Economic Zone introduced by 14 African States (A/AC. 138/SC. II/L. 40) ; (iii) Draft Articles presented by Argentina (A/AC. 138/SC. II/L. 37) ; (iv) Working Paper submitted by Australia and Norway (A/AC. 138/SC. II/L. 36) ; (v) Working Paper submitted by the Chinese Delegation (A/AC. 138/SC. II/L. 34) ; (vi) Draft Articles jointly presented by Colombia, Mexico and Venezuela (A/AC. 138/SC. II/L 21) ; (vii) Working Papers submitted by Iceland (A/AC. 138/SC. II/L. 23) ; (viii) Proposal by Pakistan (A/AC. 138/SC. II/L. 52) ; (ix) Proposal by Uganda and Zambia (A/AC. 138/SC. II/L. 41) ; and (x) Draft Articles introduced by the United States (A/AC. 138/SC. II/SR. 40).

4. On the first question, namely, whether such rights should be recognised in an area of the sea beyond the territorial waters of the coastal State, it may be noted that the Fourth Summit Conference of the Non-aligned countries held in Algiers in September 1973 has supported "the recognition of the rights of coastal States in seas adjacent to their coasts and in the soil and sub-soil thereof within the zones of national jurisdiction not exceeeding 200 miles." (See paragraph 2 of the Resolution concerning the Law of the Sea).

The O.A.U. Declaration on the issues of the Law of the Sea adopted by the Council of Ministers in May 1973 also contains the following : "The African States recognise the right of each coastal State to establish an exclusive economic zone beyond their territorial sea whose limits shall not exceed 200 nautical miles."

The Santo Domingo Declaration approved by the meeting of Ministers of the Caribbean States dated June 7, 1972 also recognises certain rights of coastal States in an area adjacent to the territorial sea which is to be called the patrimonial sea.

The proposals submitted before the United Nations Sea-Bed Committee all proceed on the basis that the coastal States have certain rights in an area of the sea adjoining their coasts beyond the limits of the territorial sea (see Article I of the Draft Articles on Resource Jurisdiction of the Coastal States beyond the Territorial Sea proposed by the Delegations of Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore ; Articles I and II of the Draft Articles on Exclusive Economic Zone proposed by fourteen African States ; Article IV of the Draft Articles submitted by Argentina ; Article I 'A' of the Working Paper submitted by the Delegations of Australia and Norway ; Article II of the Working Paper submitted by the Chinese Delegation ; Article IV of the Draft Articles on Treaty submitted by Colombia, Mexico and Venezuela ; the Working Paper submitted by Iceland ; Article II of the Proposals submitted by Pakistan ; Article IV of the proposals submitted by Uganda and Zambia ; Article I of the United States Draft Articles for a Chapter on the Rights and Duties of States in the sea-bed economic area).

If such a right is recognised what should be the breadth of the area over which these rights could be exercised.

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

Some of the proposals introduced before the U.N. Sea-Bed Committee also adopted the maximum breadth of 200 miles (see Article III of the Draft Articles on Exclusive Economic Zone introduced by fourteen African States ; the Working Paper submitted by the Delegations of Australia and Norway ; Article II of the Working Paper submitted by the Chinese Delegation ; Article 8 of the Draft Articles introduced by

Colombia, Mexico and Venezuela ; the Working Paper submitted by Iceland and the Proposals submitted by the Delegation of Pakistan). Certain proposals, however, do not indicate any limit for the zone (see Draft Articles submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore ; Draft Articles proposed by Uganda and Zambia ; Draft Articles proposed by the United States). Some of the proposals also provide that the limits of the zone shall be fixed in accordance with certain criteria which take into account the geographical, geological, biological, ecological, economic and national security factors of the coastal States establishing the zone (see Article 5 of the Argentina Draft, Article I of the proposal submitted by 14 African States and the proposal of Iceland). The Draft Articles presented by Argentina provide for 200 miles or such greater distance coincident with the epicontinental sea.

What should be the nature of the rights to be exercised by the coastal State in such areas.

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

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

the patrimonial sea as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area."

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

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

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

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

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

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

What rights, if any would other States have in this area.

The O.A.U. Declaration of May 1973 proceeds on the basis that within the zone of economic jurisdiction there should be no interference with the legitimate uses of the sea namely, freedom of navigation, overflight and laying cables and pipelines (see paragraph 7 of the Declaration).

The Santo Domingo Declaration also contains similar provisions (see paragraph 5 of the Declaration on Patrimonial Sea).

The various proposals introduced before the U.N. Sea-Bed Committee clearly recognise the principle of freedom of navigation, right of overflight and the right to lay submarine cables *subject only* to such restrictions as may be necessitated by the exercise of the legitimate rights of the coastal State over the zone (see the Draft Articles introduced by 14 African States, Article IV ; Draft Articles introduced by Argentina—Article 13 ; Article 2 (4) of the Chinese Working Paper ; Articles 9 and 10 of

the Draft Treaty introduced by Colombia, Mexico and Venezuela ; Article 4 of the United States Draft).

The proposal introduced by Afghanistan and five other States further provides that landlocked and coastal States which cannot or do not declare a zone shall have the right to participate in the exploration and exploitation of the *living resources* of the economic zone of neighbouring coastal States on an equal and non-discriminatory basis. The proposal also contemplates certain arrangements and guidelines in this connection (see Article II). The proposal also provides for exploitation of a certain proportion of the living resources within the Zone by other States as well subject to certain payments being made. Further, the proposal contemplates making of certain contributions by the coastal State to an International Authority for sharing by all States in an equitable manner (See Article III). The Argentine proposal contains provisions for enjoyment of a preferential regime by certain states within a region or sub-region which for geographical or economic reasons do not or cannot claim jurisdiction over a zone (see paragraph 8). The Chinese Working Paper provides that other States may engage in fishing, mining and other activities pursuant to agreements reached with the coastal State (see para. 2 (5).

What should be the rights of the adjoining land-locked States in this area.

The Declaration adopted at the Fourth Summit Conference of Non-aligned countries has stressed the need to establish a preferential system for geographically handicapped developing countries including land-locked countries in the matter of exploitation of *living resources* in the zones of national jurisdiction. The O.A.U. Declaration of May 1973 also recognises that the landlocked and other disadvantaged countries are entitled to share in the exploitation of *living resources* of neighbouring economic zone on equal basis as nationals of coastal States (see paragraph 10 of the Declaration). The proposal of Afghanistan and five other countries equates landlocked countries with other geographically disadvantaged States for special treatment as provided in Article II of the proposal. The Draft Articles

introduced by 14 African States provide that nationals of developing landlocked States and other geographically disadvantaged States *shall enjoy the privilege* to fish in the exclusive economic zone of the neighbouring States. The proposal, however, leaves the modalities of such enjoyment to be determined by agreement (Article VIII). The Chinese Working Paper provides that a coastal State, shall, in principle, grant to the landlocked and shelf-locked States adjacent to its territory common enjoyment of a certain proportion of the rights of ownership in its economic zone (see Article 2 (3).

Economic Zone on a Regional Basis

The proposal introduced by Uganda and Zambia proceeds on a basically different criterion from other proposals. It would be noticed that in this proposal all the rights in the economic zone both in fishing and non-living resources are to be reserved for the exclusive use of States in the regional or sub-regional area. The regulation, supervision and management of resources are also to vest in regional Commissions.

Fisheries

There are four broad aspects relating to the subject of fisheries which need consideration. These are—

(i) the right of the coastal State to take conservation measures for protection of fishery resources in areas adjoining its territorial sea; the manner of exercise of such rights ; the norms applicable, if any, for such measures and the manner of enforcement of the measures ;

(ii) conservation measures on the high seas, participation of States in adoption of such measures, enforcement provisions, international machinery ;

(iii) the right of the coastal State, if any, to establish an exclusive fishery zone for the purposes of exploitation ; the rights of the coastal State in the fishery

resources of such a zone, if established; the rights of neighbouring landlocked States and other States, if any, in such a zone; measures for enforcement; breadth of the zone;

(iv) special rights, if any, of coastal States in the fishery resources of the sea adjoining their territorial sea; the rights of other States in the resources of the area; norms, if any, for sharing of the resources.

2. With regard to the first and second aspects, it is now fairly well-settled that a coastal State has a special interest in conservation measures in areas adjoining its territorial sea, but differing views are held on the other issues which need to be discussed.

The third aspect is closely linked with the concept of exclusive economic zone and is contemplated either as an integral part of such a zone or as a fishery zone simpliciter. The principles applicable to an exclusive economic zone or a fisheries zone appear to be the same or at any rate similar.

The fourth aspect can be and has been viewed from two different angles, namely (a) as an alternative to the concept of a fishery zone and (b) as a right complementary to but independent of the concept of a fishery zone.

3. There are altogether nine specific proposals on Fisheries which were introduced before the U.N. Sea Bed Committee. Some of the proposals concern all the aspects mentioned above whilst others deal with certain specific matters. In addition, the proposals on economic zone contain provisions on Australia and new Zealand—Principles for a Fishery Regime (A/AC.138/SC.II/L.71); Canada—Working Paper on the Management of the Living Resources of the Sea (A/AC.138/SC.II/L.8); Canada, India, Kenya, Madagascar, Senegal and Sri Lanka—Draft Articles on Fisheries (A/AC.138/SC.II/L.38); Ecuador, Panama and Peru—Draft Articles on Fisheries (A/AC.138/L.12); U.S.A.—Working Paper (A/AC.138/SC.II/L.20); U.S.A. — Revised Draft Articles (A/AC. 138/SC-II/L-9); U.S.S.R.—Draft Articles (A/AC.138/SC.II/L.6) and Zaire—Draft Articles (A/AC.138/SC.II/L.60).

Conservation Measures

The development of the law which recognises the special interest of coastal States to take conservation measures for the protection of fishery resources in waters adjoining their coasts dates back to various proclamations and national legislations which followed the failure of the Hague Codification Conference of 1930. The Truman Proclamation of 1945 (United States Presidential Proclamation No.2668) took the matter one step further by proclaiming establishment of conservation zones and by subjecting fishery activities within such zones to the regulation and control of the United States.

The Geneva Convention of 1958 on Fishing and Conservation of the Living Resources of the High Seas recognises in Article 6 the special interest of the coastal State in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea. Article 7 of this Convention recognizes the right of the coastal State to take unilateral measures of conservation for aforesaid purposes, subject to the condition that negotiations with other States concerned have not led to any agreement within a period of six months. These measures are to be binding on other States also if there is urgent need for application of the measures, if the measures adopted are based on scientific findings and if there is no discrimination in form or in fact against foreign fishermen.

The various proposals which have been introduced before the U.N. Sea Bed Committee either on Fisheries or on Exclusive Economic Zone contain provisions with regard to conservation and management of fisheries. The general trend in all these proposals is to recognise the special interest of the coastal State in this matter particularly in areas adjacent to its territorial sea or fishery zone. Some of the proposals contemplate an exclusive jurisdiction for the coastal State in the matter of conservation and regulation in the belt of the sea adjacent to the territorial sea whilst in areas outside such belt a lesser right is claimed (See,

for example, Articles II, III, IX and X of the Principles for a Fishery Regime introduced by Australia and New Zealand ; Articles 1. 8, 9 and 10 of the Draft Articles introduced by Canada, India, Kenya, Madagascar, Senegal and Sri Lanka ; Article A of the proposal submitted by Ecuador, Panama and Peru). The proposals of Japan and the Soviet Union, however, only recognise the special right of the coastal State in certain circumstances (See Article 2.4 of the Japanese proposal and Article 5 of the Soviet Draft).

Exclusive Fishery Zone

The concept of an Exclusive Fishery Zone appears to have its origin in the Canadian proposal made before the Geneva Conference in 1960 containing the *six plus six* formula i.e. a territorial sea of six miles and a further exclusive fishery zone of six miles. The position today has gone much further and the concept of an exclusive fishery zone is now linked with the concept of an Exclusive Economic Zone. The States which claim an Exclusive Economic Zone consider exclusive right in fisheries within the zone as a part of the concept of an Exclusive Economic Zone. The proposals on Exclusive Fishery Zone are also based on the same principle as the Exclusive Economic Zone, namely, the enjoyment of exclusive right in the matter of exploitation of the resources of the area. The proposals on Fisheries put forward by Australia and New Zealand (A/AC. 138/SC.II/L.71) ; the proposal of Canada, India, Kenya, Madagascar, Senegal and Sri Lanka (A/AC.138/SC.II/L.38) ; the proposal of Ecuador, Panama and Peru (A/AC.138/SC.II/ L.60) follow this basis. Moreover, all the proposals on Exclusive Zone/Patrimonial Sea contain provisions for exclusive fishing rights within the zone.

Special Rights of Coastal States in the Fishery Resources adjoining their Territorial Sea

The special rights of the coastal State in the fisheries in waters adjoining their territorial sea appear to have been recognised in Article I of the Geneva Convention 1958 on Fisheries even though in a somewhat limited way. The

proposals of Japan (A/AC.138/SC.II/L.12) and that of the Soviet Union (A/AC.138/SC.II/L.6) recognise certain preferential rights for the coastal States in the fishery resources of the area adjoining their territorial sea even though Japan and the Soviet Union do not recognise the concept of the Exclusive Economic Zone. Some of the proposals claim preferential rights in the areas adjacent to the Exclusive Fisheries Zone as an additional right to their exclusive rights in the Fisheries Zone (See the joint proposal of Canada, India, Kenya, Madagascar, Senegal and Sri Lanka ; the proposal of Ecuador, Panama and Peru as also the proposal of Argentina on Economic Zone).

Straits used for International Navigation

One of the crucial issues which has been left unresolved by the two Geneva Conferences on the Law of the Sea is the question of passage through straits used for international navigation and other related issues. This topic is closely linked with the question of the breadth of the territorial sea. Both the United States of America and the Soviet Union attach considerable importance to this matter ; it is also of special importance to the countries of Asia and Africa as there are a large number of straits in this region which are normally used for international navigation.

2. A strait, in the traditional sense for the purposes of international law, has been understood as forming a passage between two parts of the high seas. International Conventions of the type of the Lausanne Convention of 1923 and Montreux Convention of 1936 were usually concluded for the purpose of regulating the passage of ships through straits. The question of the delimitation of the territorial waters in straits as also the question of passage through straits were discussed both at the Hague Codification Conference of 1930 and the Geneva Conferences of 1958 and 1960.

3. There are six proposals on this topic namely the joint Eight Power proposal (A/AC.138/SC.II/L.18) and the proposals of Fiji (A/AC.138/SC.II/L.42), Italy (A/AC.138/SC.II/L.30), Poland (A/AC.138/SC.II/L.49), U.S.A. and U.S.S.R.

4. The main questions that arise for consideration in relation to this topic are :

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

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

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

5. On the first question, it may be stated that the Soviet proposal would appear to contemplate that straits lying off the major international routes and used by the coastal states only may well be considered to be outside the regime of straits used for international navigation. The Maltese Draft (A/AC.138/SC.II/L.28) appears to interpret the phrase "straits used for international navigation" as meaning straits which, because of their characteristics, e.g. width and depth are of such a nature that they permit the passage of ships of types and classes normally used in voyage between one state and another. No other draft proposal attempts any definition.

6. On the second question, the view which had been hitherto held is that in the absence of special treaty provisions, the character of passage through straits, which fall within the

territorial waters of a state or states, is *innocent passage*. The concept of freedom of navigation in its application to straits is new. This has been advocated having regard to the consideration that with the recognition of a 12-mile belt for the territorial sea, a large number of straits would fall within the territorial sea of a state or states. It is obvious that "freedom of passage" would be applicable in respect of those parts of straits which lie outside territorial waters, but the question is whether this concept should be applicable over the belts which fall within the territorial sea. Another question which may also require consideration is in the event of the concept of "freedom of navigation" being recognised should this also be applicable to straits which are less than six miles in width. The Italian proposal (A/AC.138/SC.II/L.30) makes the concept of "innocent passage" applicable to the straits which are not more than six miles wide, straits which lie between coasts of the same state and the straits which are near other routes of communication. The O.A.U. Declaration of May 1973 has endorsed the principle of innocent passage through straits. This basis has also been adopted in the proposals put forward by Fiji (A/AC.138/SC.II/L.42) and the eight power proposal (A/AC.138/SC.II/L.18). The concept of freedom of navigation is the basis of the proposals of U.S.A. and U.S.S.R. The Maltese proposal (A/AC 138/SC.II/L.28) follows an altogether different basis.

7. On the third question it may be stated that even the Montreux Convention of 1936 contained certain restrictions. (See Articles 2 to 7 and 8 to 22 of the Convention). The Soviet proposal also appears to suggest certain limitations.

Archipelagos

The concept of archipelago as applied to archipelagic States as also the question of establishment of a special regime concerning mid-ocean archipelagos are matters of special interest to some of the member States of the Committee. These questions were generally discussed in the Hague Codification Conference 1930, in the International Law Commission as also during the Geneva Conferences on the Law of the Sea in 1958 and 1960 but no conclusions could be reached due to wide divergence

of views and lack of available technical data — in fact no detailed consideration was given to the matter in the Geneva Conferences.

2. There are only two proposals on this topic, namely, the Draft Articles on Archipelagos introduced by Fiji, Indonesia, Mauritius and the Philippines (A/AC.138/SC.II/L. 48) and the United Kingdom Draft Articles on the Rights and Duties of Archipelagic States (A/AC. 138/SC. II/L. 44). In addition, the Draft Articles on Territorial Sea introduced by the Delegation of Uruguay (A/AC. 138/SC. II/L. 24), the draft submitted jointly by Ecuador, Panama and Peru (A/AC. 138/SC. II/L. 27) as also the Chinese Working Paper on Exclusive Economic Zone contain provisions with regard to archipelago.

3. The points which require consideration on this topic are as follows :

(i) the definition of a mid-ocean archipelago and an 'archipelagic State' ;

(ii) whether and in what circumstances a special regime can be recognised applicable to mid-ocean archipelagic States which would enable those States to draw baselines for the purpose of delimiting their territorial sea from the outermost points of the outermost islands forming part of an archipelago ;

(iii) If the special regime applicable to archipelagos is based on certain distance or other criterion as between the islands comprising the archipelagic State would it be permissible for that State to apply the special regime to different groups of islands forming part of an archipelago or the archipelagic State ;

(iv) What would be the character of the waters enclosed within the group of islands forming the archipelago and the right of navigation therein and overflights ;

(v) In the event of a special regime being accepted for the purpose of the drawing of baselines in relation to

the territorial sea, would any special provision be required in the matter of continental shelf, economic zone or exclusive fishery zone ?

4. On the first question the Four Power Draft (Fiji, Indonesia, Mauritius and the Philippines) contains a comprehensive definition of both the expressions "archipelagic State" and "archipelago" (see Article 3). The United Kingdom Draft in Article 1 fulfils the purpose of a definition by prescribing the conditions under which a State can declare itself as an archipelagic State. Article 12 of the Uruguayan Draft, Article 3 of the joint proposal of Ecuador, Panama and Peru, and Section 1 paragraph (6) of the Chinese Working Paper contain provisions to indicate as to what is to be regarded as an archipelagic State.

5. On the second question, the O.A.U. Declaration of May 1973 has endorsed the principle that the baselines of any archipelagic State may be drawn by connecting the outermost points of the outermost islands of the archipelago for the purpose of determining the territorial sea of the archipelagic State. The joint proposal of Indonesia, Fiji, Mauritius and the Philippines also proceeds on this basis (Article II of the Draft Articles). Article 12 of the Uruguayan Draft and Article 3 of the joint draft of Ecuador, Panama and Peru contain similar provisions. Section 1 paragraph 6 of the Chinese Working Paper, though not very specific on this issue, appears to proceed on the same concept. The United Kingdom Draft makes detailed provisions indicating some limitations.

6. On the third question, the United Kingdom proposal would appear to contemplate that in cases where it is not possible to treat the whole of the State as one archipelago according to the criteria suggested in the proposal a part or parts of that State which fulfil the conditions may be declared as an archipelagic State. Although in the Four Power proposal there is no such provision, such a possibility is not excluded and this may well be fitted in having regard to the flexibility in the definition of the archipelagic State (Article 1 of the Draft).

7. On the fourth question, Article III of the Four Power draft designates the waters within the baselines as "archipelagic waters" over which the archipelagic State is to enjoy sovereign rights. The Uruguay Draft as also the joint draft of Ecuador, Panama and Peru consider those waters to be internal waters. The United Kingdom draft also recognises the sovereign rights of the archipelagic States in the waters enclosed within the perimeter.

As regards the right of navigation and overflight the United Kingdom draft contemplates a dual regime of passage. Articles 7 and 8 of the draft provide that in those parts of the archipelagic waters which are being used as routes for international navigation the regime of passage would be that of 'straits', whilst in the remaining parts of the waters the principle of 'innocent passage' would apply. The Four Power Draft contains detailed provisions in this regard in Articles 4 and 5 based primarily on the concept of 'innocent passage'. Articles 8 and 9 of the Draft deals with the question of passage of warships. The Uruguayan Draft in paragraph 12 contemplates 'innocent passage' for passage of ships through archipelagic waters whereas the joint Draft of Ecuador, Panama and Peru provides for passage "in accordance with the provisions laid down by the archipelagic State."

8. On the fifth question no proposals have been put forward so far presumably because of the assumption that once a decision is taken about the delimitation of the territorial sea of the archipelagic State other matters would automatically follow. This assumption may not always be helpful and may in fact stand in the way of several States accepting the special regime for the archipelagic States. Some discussion on this question is therefore necessary.

Rights and Interests of Landlocked States

The position of landlocked States vis-a-vis the Law of the Sea is a matter of particular importance to the Asian-African community in view of the fact that out of 29 landlocked States in the world, six happen to be in Asia and 14 in Africa.

2. Two comprehensive proposals have been put forward before the U.N. Sea-Bed Committee on this topic, namely, the Seven-Power Draft Articles relating to landlocked States sponsored by Afghanistan, Bolivia, Czechoslovakia, Hungary, Mali, Nepal and Zambia (A/AC.138/93) and an independent proposal by Bolivia (A/AC.138/92). In addition, provisions regarding the rights of landlocked States are found in the various proposals on the International Sea-Bed Regime as also in the proposals concerning Economic Zones. The draft formulations prepared by a drafting Group for the A.A.L.C.C. Special Study Group on Landlocked States also contain useful material which may be considered.

3. The main questions which require consideration on this topic are :

(a) Right of access to the sea and transit through the territory of a State or States for purposes thereof — question of reciprocity ;

(b) Transit through international rivers for the purpose of access to the sea including navigational rights in such rivers ;

(c) Sharing of benefits in the resources of the sea, particularly in the Exclusive Economic Zones of neighbouring coastal States of the region ;

(d) The access to the international sea-bed area beyond the limits of national jurisdiction ; and

(e) Participation in the international regime for the sea-bed and in international machinery.

4. On the first question, the matter for consideration is whether the right of a landlocked State of access to the sea should be worked out on the basis of bilateral or multilateral agreements and secondly, whether the concept of reciprocity should find a place in the agreements with the transit state. It has been urged that since the right of transit already exists in international law, exercise of that right should not be made the

subject-matter of any agreement, bilateral or multilateral, because in so doing the very right may become precarious and might, in fact, be negatived in certain cases. It has also been stated that the right of access to the sea of the landlocked State would hardly be a right if it was to be made subject to agreement with the transit States and questions have been posed as to how the right of landlocked State could be properly protected if the negotiations with transit States failed. On the other hand, it is said that even though the right of transit and access existed, the exercise of such right had to be regulated in consultation with the transit State especially in the matter of prescribing the transit routes etc. which are to be made available for the purpose. Practical difficulties in entering into bilateral agreements in certain regions have been experienced and on that ground it has been suggested that the transit State should be under an obligation to act in good faith and the subject-matter of the agreement between the landlocked and the transit states should be confined to specifying details with regard to the exercise of such right. Articles II and III of the Seven-Power Draft (A/AC. 138/93) proceed on the basis that the right of landlocked States to free access to and from the sea forms an integral part of the principles of international law. The Bolivian proposal also contains similar provisions. Proposition II of the principles recommended by the A.A.L.C.C. Special Study Group also proceeds on the basis that each landlocked State has the right to free access to and from the sea, but Proposition III makes the transit of persons and goods of landlocked States through a transit State dependent on bilateral and multilateral agreements and on the principle of reciprocity.

On the question of reciprocity, it has been stated on the one hand that this concept was out of place because the requirement of transit of the landlocked States was based on necessity arising from the geographical disability from which a landlocked State suffers and it could not therefore be equated with any possible need for transit by a coastal State through a landlocked State. The other view is that, although the right of transit for a landlocked State is qualitatively different, the element of reciprocity may be relevant to strengthen the right of the landlocked State and to promote co-operation between the two

States. Article 16 of the Seven-Power Draft provides that since free transit of landlocked States forms part of their right of free access to and from the sea which belongs to them in view of their special geographical position, reciprocity should not be a condition of free transit of landlocked States but may be agreed upon between the parties concerned. The Bolivian Draft also incorporates substantially the same provision.

It may be stated that the O.A.U. Declaration of May 1973 has endorsed in principle the right of access to and from the sea by the landlocked African countries as also the right of landlocked and other disadvantaged countries to share in the exploitation of the living resources of neighbouring economic zones on equal basis as nationals of coastal States. The Declaration adopted by the Fourth Summit Conference of Non-aligned Nations in September 1973 has also stressed the need to establish a preferential system for geographically handicapped developing countries including landlocked countries in respect both of access to the sea and of the exploitation of living resources in zones of national jurisdiction.

5. On the second question, Article 12 of the Seven-Power Draft provides that landlocked State shall have the right of access to and from the sea through navigable rivers which pass through its territory and the territory of a transit State or forms a common boundary between those States and the landlocked State.

6. On the third question, it has already been stated that both the O.A.U. Declaration and the Declaration adopted at the Fourth Summit Conference of Non-aligned States recognise the right of landlocked States to share in the benefits of the resources of the sea and particularly in the zones of national jurisdiction or exclusive economic zones established by the neighbouring coastal States. The proposals concerning the regime of such zones also contain provisions to safeguard the rights of landlocked States. There are, however, two matters on which differing views exist, namely (1) whether the benefit of participation on an equal footing with the coastal States concerned should be restricted to exploitation of the living resources

or should they include both living and non-living resources; and (2) whether this right of participation should be confined to the nationals of landlocked States or should they have the competence to grant leases or licences in respect of such rights and to have foreign assistance in their participation. The O.A.U. Declaration seems to contemplate a share in the exploitation of the living resources only and most of the proposals on economic zones follow the same pattern. The Bolivian Draft, however, provides that developing landlocked States should have the same obligations and rights as the contiguous developing coastal States with regard to participation in the living resources of the seas adjacent to the region, the natural resources of the continental shelf and those living in the sea-bed or subsoil thereof within the limits of national jurisdiction/exclusive economic zones. Similar provisions are also found in the proposals of Uganda and Zambia on Economic Zones.

7. On the fourth question, Article 17 of the Seven-Power Draft provides that landlocked States shall have the right of free access to and from the area of the sea-bed in order to enable them to participate in the exploration and exploitation of the area and that landlocked States shall have the right to use all means and facilities for this purpose with regard to traffic in transit.

8. On the fifth question various drafts on international machinery provide for the participation of landlocked States. The Seven-Power Draft in Article 18 contemplates that in any organ of the international sea-bed machinery in which not all member States could be represented, in particularly its Council, there should be an adequate and proportionate number of landlocked States both developing and developed. Article 19 of this Draft advocates that the decisions in any organ of the machinery on questions of substance should be made with due regard to the special needs and problems of landlocked States.

International Regime for the sea-bed and ocean floor beyond the limits of National Jurisdiction

The Declaration of Principles contained in the U.N. Resolution 2749(XXV) of 17 December 1970 sets out the general

principles to govern the nature, scope and basic provisions of the international regime and the machinery. Principle 1 solemnly declares that the sea-bed and the ocean floor, and the sub-soil thereof, beyond the limits of national jurisdiction as well as the resources of the area, are the common heritage of mankind.

The Declaration of Santo-Domingo *inter alia* proclaims that the sea-bed and its resources, beyond the patrimonial sea and beyond the continental shelf not covered by the former are the common heritage of mankind.

Similarly, the Organisation of African Unity Declaration on the issue of the Law of the Sea, reaffirms the belief of African States in the Declaration of Principles, embodied in resolution 2749(XXV). These principles, as the authors of the Declaration believe, should be translated into treaty articles to govern the area. In their view, particularly the principle of common heritage of mankind should in no way be limited in its scope by restrictive interpretations.

More recently, the Resolution concerning the Law of the Sea adopted at the fourth Summit Conference of the non-aligned countries also reaffirms that the resources of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind. Further, the Resolution stresses the need to take the Declaration of Principles adopted by the United Nations as a basis for establishing an international regime.

There are as many as 26 proposals before the U.N. Sea-bed Committee on this issue. There are also a number of problems that require to be considered and these are briefly discussed below :

I. First is the problem of defining the area of the sea-bed that lies beyond the national jurisdiction on which no substantial progress could be made so far. The various proposals submitted before the U.N. Sea-bed Committee and the aforesaid Declarations are either silent or tentative. The Working Group I of

the Sub-Committee I after considering these proposals has finally adopted four alternatives which are as follows :

A

(i) The limit of the sea-bed to which these Articles apply shall be the outer limit of the continental shelf established within the 500-metre isobath.

(ii) In areas where the 500-metre isobath referred to in paragraph 1 of this draft is situated at a distance of less than 100 nautical miles measured from the base-lines from which the territorial sea of the coastal States is measured, and in areas where there is no continental shelf, the limit of the sea-bed shall be a line every point on which is at a distance of not more than 100 nautical miles from the nearest point on the said baselines.

OR (B)

The Area shall comprise the sea-bed and the sub-soil thereof seaward of the outer limit of the coastal sea-bed area in which the coastal State by virtue of Article...(of the Convention...) exercises sovereign rights for the purpose of exploring and exploiting the mineral resources of the coastal sea-bed area.

OR (C)

The Area shall comprise the sea-bed and ocean space and subsoil thereof beyond the limits of national jurisdiction.

OR (D)

The limit of the sea-bed to which these Articles apply shall be the outer lower edge of the continental margin which adjoins the abyssal plains or when that edge is at a distance of less than 200 miles from the coast, up to that distance.

II. Another problem closely related to the question of the limits of the area is whether the regime should apply only to the

sea-bed or it should apply to all ocean space beyond national jurisdiction.

Among the proposals submitted before the U.N. Sea-bed Committee, the United States, United Kingdom, U.S.S.R., and Japan's proposals affirm that the envisaged international regime should not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters. The Canadian draft recognises the intimate relationship between activities on the sea-bed and those in the superjacent waters and suggests that the proposed Convention should provide for a sort of "peaceful co-existence" between surface activities and bottom activities. In contrast, the authors of the Maltese draft take an extreme view. They consider it necessary to enlarge the scope of the regime to include ocean space as a whole and its resources beyond national jurisdiction. In their view, it would be an illusion to pretend that a future international regime would have no effect on the legal status of the superjacent waters or on the exploitation of resources other than minerals.

III. Next is the question of scope of the regime. Consideration of the scope of the regime appears to raise at least two important problems ; one relates to the resources that are to be covered by the regime. The approach adopted in various proposals reveals the divergences of view.

The United Kingdom draft reproduces the definition of the term "natural resources" as adopted in the 1958 Convention on the Continental Shelf[1], and considers that this definition could equally be applied to the sea-bed area beyond the national jurisdiction.

The Polish working paper considers that the scope of the

1. Article 2, paragraph 4 of the 1958 Geneva Convention on the Continental Shelf defines "natural resources" as "the mineral and other non-living resources of the sea-bed and the subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the seabed or the subsoil."

international regime should be confined to exploitation of the mineral resources of the sea-bed and the ocean floor and subsoil thereof beyond the limits of the Continental Shelf. It stipulates that the regime would not be concerned with any activity conducted on the surface of the seas and oceans nor in the waters thereof, unless such activity constituted part of an exploratory or exploiting activity with regard to mineral resources of the international area ; in particular the organisation would not deal with the extraction of minerals from sea-water. While supporting the concept that the regime should not apply to the living resources of the sea-bed, the Polish draft elaborates that the exclusion of matters relating to the biological resources of the sea-bed and the ocean floor from the competence of the organisation is prompted by the desire to retain homogeneity of its functions. Moreover, it considers the problem of the living resources of the sea-bed and the ocean floor beyond the limits of the Continental Shelf is one which is of small, if at all of any practical importance.

The Canadian draft considers it both premature and unnecessary at this stage to come to a definite view one way or another on the possible applicability of the international sea-bed regime to living sea-bed resources. On the other hand, the 13-Power Latin American draft stresses that the regime should cover not merely the living and non-living resources of the area but also, if it is to be consistent with the concept of common heritage of mankind, the whole of the area itself and all activities directly or indirectly related to its utilisation.

IV. Another relevant aspect for consideration in relation to the scope of the regime would appear to be the question whether the international machinery should be empowered to explore and exploit the international area of the sea-bed.

The Declaration of Santo-Domingo specifically provides that the Area should be subject to the regime to be established by international agreement, establishing an international authority empowered to undertake all activities in the area, particularly the exploration, exploitation, protection of the marine environment and scientific research, either on its own, or

through third parties, in the manner and under the conditions that may be established by common agreement.

The Declaration of the Organisation of the African Unity also affirms that the international machinery should be invested with strong and comprehensive powers, which would also include the right to explore and exploit the area.

The Resolution of the fourth Summit Conference of the Non-Aligned countries also stresses the need to set up an international authority to undertake, under its effective control either directly or by any other means on which it may decide, all activities related to exploration of the zone and exploitation of its resources.

Amongst the various drafts submitted before the U.N. Sea-bed Committee, the French proposal, the U.S.S.R. proposal, the Polish draft, the United Kingdom draft expressly oppose the view that the proposed international machinery should have direct operational powers. The Canadian draft, while suggesting slow and cautious approach, does not rule out the possibility of entrusting the proposed machinery with the power to engage in exploitation at some future stage, particularly if that would facilitate full participation by the developing countries in the exploration of the sea-bed resources by means of joint ventures with the international machinery.

The proposal submitted jointly by the delegations of Afghanistan, Austria, Belgium, Hungary, Nepal, Netherlands and Singapore suggests that the decision should be left to the Authority itself The sponsors of the proposal consider that even if the exploration and exploitation of any particular part of the international area by the authority itself might not be economically profitable, it might, however, be useful for developing countries in connection with the training of personnel and the transfer of technology and "know-how".

Under the Tanzanian draft, all activities of exploration and exploitation of the resources of the area and other related activities should be conducted by or on behalf of the

International Sea-bed Authority, or by a Contracting Party or natural or juridical persons under its or their sponsorship, all subject to the general supervision and control of the International Sea-bed Authority. Article 16 of the draft further provides that the International Sea-bed Authority would either itself explore and exploit the International Sea-bed area by means of its own facilities or would issue licences to Contracting Parties.

The proposal submitted jointly by the delegations of Chile, Colombia, Ecuador, El-Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela, does not envisage delegation of power to exploit. The sponsors of the proposal consider that since the concept of common heritage applies to both the area itself and the resources of the area, the International Authority should supervise the area itself and ensure that any activities carried out in it would not impair the heritage of which it is the trustee.

V. The next issue relates to the powers and functions of the Authority in general, as well as the powers and functions of its organs. In that connection, perhaps the most crucial problem that would require serious consideration would appear to be the composition and decision-making procedures of the executive organ of the Authority. At the same time, a cautious approach would also be necessary while defining Authority's powers concerning control of price fluctuations for certain minerals and implications of exploitation of the resources of the area, including their processing and marketing.

The Declaration of the Organisation of African Unity considers that the machinery should be invested with strong and comprehensive powers. Among others, it should deal with equitable distribution of benefits and minimize any adverse economic effects by the fluctuation of prices of raw materials resulting from activities carried out in the area. It should distribute equitably among all developing countries the proceeds from any tax (fiscal imposition) levied in connection with activities relating to the exploitation of the area. It should protect the marine environment, regulate and conduct scientific research.

In regard to the structure of the Council, the Declaration suggests that its composition should reflect the principle of equitable geographical distribution and it should exercise most of the functions of the machinery in a democratic manner.

Generally speaking, the proposals submitted before the U.N. Sea-bed Committee contemplate comprehensive powers and functions of the Authority and its organs which, for the sake of convenience, could be grouped in broad categories, namely :

(i) Constitutional ;

(ii) Administrative ;

(iii) Recommendatory ;

(iv) Approval ; and

(v) Supervision and Management.

Furthermore, some proposals also stipulate the details in regard to the powers and functions covering :

1. Promotion of international co-operation in the international area ;
2. Safeguarding the marine environment ;
3. Maintenance of the ecological balance ;
4. Preparation of guidelines and rules relating to equitable sharing of benefits derived from the area ;
5. Ensuring participation of landlocked and other geographically disadvantaged states in exploration and exploitation of the Area ;
6. Providing guidelines for appropriate agreements and arrangements between landlocked or other geographically disadvantaged states and transit states ;
7. Promotion of scientific research in the Area.

The proposals submitted by the delegations of the United States, United Kingdom, France, Italy, Japan, Tanzania contain detailed provisions regarding the system of issuing licences for the exploration and exploitation of the sea-bed resources. In that connection, some of these proposals also envisage establishment of subsidiary organs. Consideration of these issues would appear to be of immense importance.

Marine Pollution

The problem of marine pollution is one of the key issues for consideration in the forthcoming Conference on the Law of the Sea. It is envisaged that a suitable framework of law in relation to the marine environment could be formulated on the basis of general guidelines and principles for the preservation of the marine environment recommended by Governments from time to time. Some of the principles reflecting the common provisions contained in various proposals submitted before the U.N. Sea-bed Committee, and also in the Declarations of O.A.U. and Santo Domingo are discussed below :

(*1*) *It is recognised that all States have an obligation under international law to protect the marine environment and remove any danger of pollution.*

The Declaration of Santo Domingo recognises the duty of every State to refrain from performing acts which may pollute the sea and its sea-bed, either inside or outside its respective jurisdictions. Similarly, the Declaration of the Organisation of African States contains the right of every State to manage its resources pursuant to its environmental policies and an obligation towards prevention and control of pollution of the marine environment. Principle 21 of the Stockholm Declaration provides that in accordance with the Charter of the United Nations and the principles of international law, States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and also have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or the areas beyond the limits of national jurisdiction.

This cardinal principle of international law is also recognised in various draft proposals submitted before the United Nations Sea-bed Committee. Article 1 of the Canadian draft, Principle (a) of the Australian draft, Article 2, paragraph 1 (a) of the Maltese draft, Article I of the U.S. draft, Article VII of the Kenyan draft, Article III of the Norwegian draft, paragraph 2 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay contain such provisions.

(*2*) *States should take appropriate measures either individually or jointly, to preserve and protect the marine environment.*

The Declaration of the Organisation of African States provides that States should take all possible measures, individually or jointly, so that activities carried out under their jurisdiction or control do not cause pollution damage to other States and to the marine environment as a whole. Article 2, paragraph (b) of the Maltese proposal, Article 2 of the U.S.S.R. draft, Principle (a) of the Australian draft, Article III of the Norwegian draft, Article II (I) of the Canadian draft, Article VIII of the Kenyan draft and paragraph 8 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay stipulate provisions to this effect.

(*3*) *In the formulation of their national legislation, States should take into account relevant international Conventions and standards developed by competent international organisations so that there could be proper harmonisation between national and international measures.*

The Declaration of the Organisation of African States stipulates that in formulating such measures, States should take maximum account of the provisions of existing international or regional pollution control conventions and of relevant principles and recommendations proposed by competent international or regional organisations. Article II(2) of the Canadian draft, Principle (b) of the Australian proposal, Article VIII of the Kenyan draft, Article VI of the Norwegian draft and paragraph 8 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay contain such provisions

(4) *States are obliged to guard against transferring damage or hazard from one part of the environment to another.*

Article XV of the Kenyan draft, Principle (e) of the Australian draft, paragraph 24 of the draft submitted by Ecuador, El-Salvador, Peru and Uruguay and Article XIII of the Norwegian draft incorporate such provisions.

(5) *States should support and contribute effectively to international programmes drawn up for expanding scientific knowledge and research on various aspects of prevention of pollution of the marine environment. To achieve that end States should cooperate on global, regional and national basis.*

Articles 4 and 6 of the Soviet draft, Article V of the Canadian draft, and Principle (d) of the Australian draft, Article XIV of the Kenyan draft, paragraphs 11 and 13 of the draft submitted by the delegations of Ecuador, El-Salvador, Peru and Uruguay and Article V of the Norwegian draft contain such provisions.

(6) *States should cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.*

The Declaration of Santo Domingo stresses the need for recognition of international responsibility of physical or juridical persons damaging the marine environment and suggests drawing up of an international agreement, preferably of a world-wide scope. Article VII of the Canadian draft, Article 3 of the Soviet draft, Article XVIII of the Kenyan draft, Article XX of the Norwegian draft, paragraph 7 of the draft submitted by the delegation of Ecuador, El-Salvador, Peru and Uruguay and the proposal submitted by the delegations of Trinidad and Tobago also contain provisions on this aspect.

(7) *A coastal State would enjoy necessary rights and powers to exercise effective control and implement its enforcement measures.*

Some proposals envisage that a coastal State should be able to take action to prevent, mitigate or eliminate dangers to its coastlines resulting from the accidents on the high seas. The Thirteen-Power proposal (proposal submitted jointly by the delegations of Australia, Canada, Colombia, Fiji, Ghana, Iceland, Iran, Jamaica, Kenya, Mexico, New Zealand, Philippines and United Republic of Tanzania), the Four-Power proposal (proposal submitted jointly by the delegations of Ecuador, El-Salvador, Peru and Uruguay), the proposals of the delegations of Canada, France, Japan, Kenya, Malta, Netherlands, Norway and the United States contain relevant provisions on this matter.

(iii) SUMMARY RECORD OF DISCUSSIONS HELD AT THE FIFTEENTH SESSION

At its second meeting held on 8th January 1974, the Committee began its discussion on the Law of the Sea. The Rapporteur of the Working Group and the Sub-Committee on the Law of the Sea reviewed the developments which had taken place since the Fourteenth Session of the Committee held in New Delhi in January 1973. He gave an account of the progress of the work done in the First Committee of the General Assembly of the United Nations during the XXVIII Session and at the First Session of the United Nations Plenipotentiaries Conference of the Third Law of the Sea Conference held in New York in December 1973.

The Chairman of the A.A.L.C.C. Study Group on Land-locked states made a detailed statement. He felt that the land-locked states should not think about their own self interest alone, but ought to see that the interests of all nations, coastal and non-coastal, landlocked and disadvantaged as well as transit and maritime countries should be realised equally in the forthcoming conference and within the framework of equality and justice. In his view, to create problems for implementation of the right of access to and from the sea, or to ask too much in violation of other legal rights such as the right of free navigation and communication and the principle of common heritage of mankind would not be beneficial to anyone.

On the question of Economic Zone or Patrimonial Sea, he said that it should not be rejected outright. However, recognition of such regime should in no way be in conflict with freedom of navigation, over flights, laying of cables and pipelines and above all the rights and interests of the landlocked states. As regards fishery, he said that coastal states should recognize the right of landlocked states to fish on equal footing subject to

certain conditions such as the obligation not to transfer that right or lease to a third party. In regard to straits, he thought that, although it was closely related to the question of the breadth of the territorial sea, the different character of each strait and its localized or international or universal aspect, as well as the political, geographical and security aspect of each of the straits would have to be considered individually.

On the question of international regime for the sea-bed, he supported a strong and powerful international authority in which not only coastal and marine powers, but land-locked and other disadvantaged states should participate in proportion to their number, needs and geographical location. Lastly, on the question of rights and interests of land-locked countries, he stressed that right of free access to and from the sea was an established legal right just as the right of way in common law. However, it was closely linked with technical facilities such as the means of transport, sea ports and free access to territorial sea and economic zone as well as reaching to the sea-bed and ocean floor beyond the limits of national jurisdiction for the purpose of exploration and exploitation of the resources. Commenting on the formulations prepared by the Secretariat, he said that paragraph 2 of principle 2 of the formulation sought to leave the right of free access at the mercy of the coastal states. Further, principle 5, under which the routes of transit should be determined by coastal states would create obstacles in the way of free access and free transit and might destroy the whole concept of right of access for land-locked countries by introducing the element of reciprocity.

The delegate of *Iran* felt that because of the complex nature of the problems and the special geographical, economic and social factors involved in the use of the seas, it was not possible to reach agreement on each and every issue, and adopt a completely unified stand on all the subjects relating to the Law of the Sea. In his view, conservation of the living resources of the sea, fisheries management and protection of the marine environment and anti-pollution measures were amongst the various fields on which the Coastal States of a narrow sea could co-ordinate their efforts. To illustrate his point of view, the

delegate referred to the bilateral agreements reached on the continental shelf of the Persian Gulf, which he felt, had clearly vindicated the fact that the problems involved in the delimitation of the areas under national jurisdiction were by no means insurmountable in a narrow sea. Speaking about his Government's proclamation of October 30th, 1973 establishing the outer limits of Iran's exclusive fishing zone in the Gulf and the Sea of Oman, the delegate said that Iran's action was based on historic fishing rights on the Iranian Coastal inhabitants as specified in the Law of April 12, 1959 regarding the territorial Sea of Iran. Moreover, it was mainly designed to prevent foreign fishing fleets from unauthorized exploitation of the living resources of the seas adjacent to Iranian Coast. Further, in determining the outer limits of Iran's exclusive fishing zone, two criteria had been taken into account. In the Persian Gulf, the outer limits of the zone had been set at the outer limits of the superjacent waters of Iran's continental shelf. Accordingly, where the continental shelf of Iran had been delimited by agreement with other Gulf States, the outer limits of Iran's fishing zone would correspond to the continental shelf line as specified in the agreements; and where Iran's continental shelf had not been delimited under a bilateral agreement, the fishing zone would be determined by a median line equidistant from the baselines of the two countries. In the Sea of Oman where the continental shelf dropped abruptly at a short distance from the Coast, a distance criterion of 50 miles had been adopted. Lastly, the delegate considered that the establishment of a regional fisheries Commission composed of fisheries experts of all the Gulf States could be usefully conceived of as a measure to ensure the rational use of the seas adjacent to the coasts of the Gulf States.

The delegate of *Indonesia* reiterated the archipelagic principles introduced by his delegation in the UN Sea-bed Committee (Document A/AC-130/SC II/L-15). The delegate felt that the most encouraging development to the archipelagic concept was the endorsement of the archipelagic principles by the African states in the OAU Declaration of 1973. He expressed his delegation's ardent wish that the support to the concept of archipelago would continue to grow further.

On the question of passage through straits used for international navigation. the delegate referred to the UN Document A/AC-138/SC II/L-18 and said that the document attempted to strike a balance between the need of other countries to pass through national straits used for international navigation and the needs of Coastal States themselves to protect their "peace, good order and security." He explained that the aforesaid document was not at all intended to obstruct international navigation, as some powers, motivated by their own interests to maintain their global military mobility, would like the world to believe. On the contrary, it was an attempt to facilitate international navigation, including the quickest possible passage of the military vessels, yet at the same time avoiding the possible negative effects of such navigation to the "peace, good order and security" of the Coastal States, especially those poor and militarily weak coastals in the Asian-African world.

In regard to other problems for consideration in the forthcoming conference on the Law of the Sea, the delegate said that the future law of the sea must be able to ensure economic development of the developing countries, safeguard the security and political stability of developing and militarily non-powerful coastal states, and give the developing countries more chance and possibilities to participate in national development and management of the ocean resources and space beyond the limits of national jurisdiction.

Commenting on the paper prepared by the Secretariat, the delegate said that he could not accept Section C dealing with archipelagic waters. Provisions of Paragraphs 2 and 3 of Section C, he thought, was tantamount to denying the archipelagic states the possibility to control the resources in the economic zone. Another paragraph which his delegation could not accept was paragraph 3 in which some waters of the archipelago was amputated or chopped off to become straits where the regime of passage would be different. In his view, there would be a clear recognition of the innocent passage for foreign vessels through sea lanes in the archipelagic waters. and any amputation of archipelagic concept piece by piece would make it meaningless.

The delegate of *Sri Lanka* elaborated his government's position on the question of the Rules of Procedure for the forthcoming conference on the Law of the Sea. He favoured incorporation in the Rules a provision for decisions at the plenary stage to be taken by a majority of two-thirds of the states present and voting. Other proposals such as those for larger majorities, e.g., three-fourths or nine-tenths, or decision by a specified number of the participants casting positive votes, were not acceptable to his delegation. Further, he stressed that the problem of competing texts, in the absence of a single "basic proposal" such as had been provided in the past by the International Law Commission, should also be recognized and resolved in an orderly and equitable manner.

On the question of establishment of the regime and machinery to govern the sea-bed and ocean floor beyond the limits of national jurisdiction, the delegate felt that much new ground was to be covered. In his view if the envisaged international authority was asked to issue licences for exploration and exploitation, the adoption of detailed operational rules to give effect to such a licensing system could not be avoided. If, on the other hand, it was decided to adopt a system whereby the international authority could itself be solely responsible for exploration and exploitation of the area beyond national jurisdiction, but would normally contract with state or private enterprises possessing the requisite financing and technological capacity in order to carry out such exploration and exploitation, then a different set of operational rules could be required.

His delegation was inclined to favour a position whereby the international authority could have sole responsibility for the exploration and exploitation of the sea-bed beyond national jurisdiction. but would enter into contractual arrangements for the discharge of those responsibilities. The operational rules in this case, would prescribe the basic legal framework of the contractual arrangements to be entered into with the entity carrying out exploration or exploitation activities on behalf of the international authority, as well as particular rules for such activities as scientific research, general survey and exploration, feasibility study, construction, exploitation, handling of

production, recovery of project costs, marketing and in certain circumstances. transportation as well. In addition. rules would be necessary for adequate supervision and control of the contracting agency by the international authority through requiring prior consultation and submission of designs, specifications and work programmes, as well as through regular inspection and reporting.

In regard to the basic subjects of the territorial sea and the exclusive economic zone, the delegate stressed the need for securing mutual accommodation of the interests of coastal, landlocked and other geographically disadvantaged states, bearing in mind the over-riding and all-pervasive community of interests of those countries as economically deprived and technologically backward.

Lastly, as regards the question of transit of ships through straits used for international navigation that lay within the territorial sea of the coastal states, the delegate considered that it should be restricted to "innocent passage". Moreover, if it could be possible to work out objective criteria by reference to which the "innocence" or otherwise of a vessel's transit were to be assessed, the principle of "innocent passage" might well offer an acceptable basis for discussion with those major maritime powers supporting a concept of "free transit" through straits.

The delegate of *Japan* expressed the view that the Law of the Sea Conference was the ultimate manifestation of the sovereignty and sovereign equality of states and each participating state had the right to ensure that its own interests were properly reflected in the formulation of the treaty provisions in harmony with the interests of others. While sharing the view that there could be no genuine or meaningful reconciliation of interests unless the view-points of developing countries were clearly identified and fully appreciated, he felt that solutions to the problems which beset the community of nations did not lie in the imposition of the views of any section of that community. In stressing the need for mutual concessions, the delegate said that a greater and fairer chance should be reserved to those countries which had hitherto been denied under the traditional legal

regime the opportunities to participate fully in the utilization of the resources of the sea, in particular, the developing countries and the geographically disadvantaged states. To that extent, advanced maritime states, and where necessary, the geographically advantaged states would be required to make concessions so as to accommodate the developing countries and the less advantaged states.

Commenting on the proposals for the establishment of a broad coastal state resource jurisdiction, such as the proposed Exclusive Economic Zones or the Patrimonial Sea, the delegate said that unless the rights and interests of other states were duly protected and accommodated, it would accentuate rather than diminish the existing inequities due to geographical accidents and would not contribute towards promotions of peace and welfare of the mankind of tomorrow. In other words, efforts should be made in search of a new legal regime in which a greater portion of the world's oceans would be reserved for the fair and equitable utilization by all members of the international community. He sincerely hoped that the working paper on Fishery submitted by his delegation to the U.N. Sea-bed Committee in the summer of 1972, with certain modifications, could provide a useful basis for a pragmatic accommodation of the conflicting interests among states concerned in the field of the exploitation of the marine living resources.

On the question of straits used for international navigation, the delegate said that his country attached great importance to the recognition of rules which would accord international shipping an unimpeded right of passage through such international straits. This, however, did not mean that ships on passage should be free from application of any regulation by the coastal state concerned. In his view, they must comply with the coastal state's laws and regulations enacted in accordance with the accepted international rules and standards regarding, *inter alia*, preservation of the marine environment. He was convinced that, if an agreement could be reached on this newly defined right of passage through straits applicable to international shipping, it would be highly beneficial for the international

community as a whole by providing it with an efficient maritime transport.

In regard to the problem of archipelago, the delegate was prepared to give it sympathetic consideration for its recognition in international law in an appropriate form. However, he felt that the establishment of a regime of archipelago could, unless the legitimate interests of other states were accommodated, result in a substantial curtailment of the rights previously enjoyed by them respecting various uses of the sea.

Regarding the question of marine pollution, the delegate said that, it was a multi-facet problem requiring a truly comprehensive approach. In his view, two different world community interests needed to be reconciled : on the one hand, the effective preservation of the marine environment and, on the other, the protection of the rights of states to the legitimate uses of the sea, regarding in particular the right of navigation. As regards the ships, the principle of flag-state jurisdiction would have to be supplemented by an approach which would recognize a greater responsibility in the hands of the coastal state. However, a mere extension of jurisdiction of the coastal state would not be considered apppropriate, unless the interests of the international community in the maintenance of the freedom of communication were safeguarded. In that connection, he referred to the proposal submitted by his delegation to the U.N. Sea-bed Committee concerning enforcement competence of the coastal state. According to that proposal, a coastal state might, in a limited area adjacent to the territorial sea, enforce internationally accepted rules and standards for the prevention of marine pollution in cases where a violation of such rules and standards had taken place.

Finally, he thought that, to ensure effective control of marine pollution, the concept of port state jurisdiction could be given serious consideration.

The observer from *Peru* described the whole gamut of the problems relating to the Law of the Sea as a confrontation bet-

ween a minority of maritime powers, and a majority of developing countries. In his view, the former today, as ever, persisted in a conservative position intended to maintain narrow limits of national sovereignty and jurisdiction for utilizing and exploiting the seas in accordance with economic and military objectives that might secure them a shared hegemony over the world. The latter, more today than ever, had assumed a progressive position and demanded the right to dispose of the resources existing in the adjacent seas as a means to free themselves from foreign domination and to promote the development and welfare of their people. Facing that crucial controversy, an increasing number of medium powers shared the position of the third world countries and supported the recognition of extensive maritime zones, in which they might protect their national interests up to a 200-mile limit which had thus become the basic element of any international agreement and an irreplaceable symbol of the new Law of the Sea. Further, the representative of Peru outlined in detail the areas of agreement which, in his view existed among coastal countries of different degrees of development who shared the new philosophy of the Law of the Sea.

On the question of straits used for international navigation, the representative of *Peru* supported the position of the countries which maintained the concept of innocent passage as the proper regime to be applied, supplemented by more precise regulations for reconciling the rights and interests of those coastal and other states. With regard to the regime for archipelagos, he fully supported the concepts and principles proposed by the Archipelagic States. In his view, those principles represented a logical solution to various problems which arise from the particular position of those countries, while respecting at the same time the interests of international communication.

On the question of the continental shelf, he considered that the sovereign rights of coastal states must be preserved up to the continental margin, even if it extended beyond the 200-mile limit as no other country could claim a better right to the submerged part of the territories of particular state than that state itself.

Lastly, speaking about the concept of the economic zone, the representative said that, since that formula had gained ground, the Governments of the conservative powers were now directing their efforts to undermine the unitary concept of the 200-miles zone through the distinction of the regimes applicable on one hand to the Sea-bed and on the other hand, to the superjacent water. Such a division, in his view, pretended to ignore the interdependence of respective spaces and of the activities carried out in them, which required a single authority to regulate the management of the zone with regard to natural resources, pollution, scientific research, the implacement and use of installations in the sea, its soil and sub-soil.

The delegate of *Pakistan* considered that the interests of the land-locked and transit states were inter-connected and inseparable. In his view, the question of transit was essentially bilateral in character. Elaborating his point of view, the delegate observed that the access to the sea through the territory of a transit state was something which the land-locked states enjoyed only through bilateral and multi-lateral agreements among the states concerned. There was no connection between the concept of the freedom of the high seas and the question of access to and from the sea and transit through another state. He observed that the existing international law on the subject as embodied in the convention on the territorial sea and the contiguous zone of 1958 and the Convention on Transit Trade of Land-locked States of 1965 expressly supported his point of view. Also, he had strong reservations to the assertion that the right of transit was unqualified and un-encumbered, or fully established. Lastly, the delegate clarified that his observations should not be construed to mean that he did not sympathize with the special problems of land-locked states. The objective solution, as he considered, was that since the right of transit of land-locked states could be interpreted only as an encroachment on the sovereignty of the transit state, the extent to which the transit state was willing to place limitation on its sovereignty should be determined by itself and on the basis of bilateral agreements between the parties concerned.

Resuming the discussion in the meeting held on Wednesday,

the 9th January, 1974, the delegate of the *Philippines* emphasised that the archipelagic position essentially meant the very life of an archipelago as one nation, its waters, its land and its people as one indivisible whole. He stated that, especially last year, the concept has been given concrete articulation and that recognition has been given to the fact that particular and distinct rules must be applied to the waters of an archipelago.

He appreciated the recognition given to the concept of archipelago in the Organisation of African States Declaration on the issue of the Law of the Sea, adopted at Addis-Ababa in May 1973. The Declaration, as he saw it, stated succinctly and accurately the archipelagic position. It recognised that the waters within the baselines of an archipelago were distinct from the territorial sea outside the baselines and that the waters within the baselines together with the islands of the archipelago constituted integral parts of the archipelagic state itself. In his view, it was clear that the rights of archipelagos over the waters within the baselines could not possibly be less but should be greater than those which they had over the territorial sea which lay outside the baselines.

Commenting on the formulations prepared by the A.A.L.C.C. Secretariat, the delegate said that, some of the suggestions or proposals would have the effect of destroying the concept itself. He explained that like many of the issues of the Law of the Sea, the archipelagic position had basically two aspects : namely, that of navigation and that of resources exploitation both living and non-living. On navigation his delegation was prepared to grant the rights of innocent passage through designated sea lanes. He could not accept the contention of some states to grant the right of free passage through those sea lanes or the right of innocent passage through all the waters of the archipelagos. He reiterated that those waters were within the baselines and they were integral parts of the archipelagos. Any free passage through waters of the archipelago would constitute such an intrusion into the archipelago itself that the concept would become substantially meaningless.

As to resource exploitation, the suggestion that foreign

fishermen who had been fishing in the waters of the archipelago should be allowed to continue fishing there was also not acceptable to his delegation. He asked how other states could possibly have fishing rights over waters of an archipelago when such rights are not enjoyed in territorial seas. He recalled that waters of an archipelago were *within*, not outside, the baselines of the state.

He stated that although the waters of an archipelago were integral parts of its territory and subject to the state's dominion and sovereign power, his country would be prepared to grant to other states certain privileges over those waters, but not any right such as that of free passage which would render the concept meaningless and the integrity of the archipelagic state an illusion.

The observer for *Canada* said that as regards the natural resources of the continental shelves, the law and practice of states had already determined that coastal states had the exclusive sovereign right to exploit and any restrictions of whatsoever form were not acceptable to his delegation. However, exploitation of the sea-bed resources beyond the continental margin should be for the benefit of mankind as a whole and that of developing countries in particular. In his view, the success of any new Authority with the overall responsibility for sea-bed activities in the international area could be assured only by a pragmatic approach taking due account of the economic factors involved such as investments, production and marketing.

With respect to the living resources of the sea, he said that for most of the fish species it was the coastal state that would be best able to manage and conserve them. In his view, the essential consideration for any sound management system should be that the stocks should be treated as a whole. He felt that it would be a folly to exercise control to any arbitrary limit which may be totally devoid of meaning in respect of the natural habits of fish species. This, however, did not imply that the needs and practices of other fishing nations should be ignored. His country was prepared to let others acquire a just portion of the maximum sustainable yield, provided those foreign activities were

conducted with due respect for the management and catch requirements of the coastal state. Finally, he made brief comments on the question of the marine environment and the freedom of navigation.

The observer for the *United States of America* said that one of the major attributes of sovereignty was the right to communicate freely and equally on the sea with the rest of the world without any interference by any other state. However, the proposals for territorial sea broader than 12 miles, and the proposals to apply a traditional innocent passage regime to the straits used for international navigation had posed a serious problem. This, however, did not imply that accommodation of the interests of coastal states bordering straits and other routes of communication was impossible.

On the question of resource jurisdiction beyond the territorial sea, he recognised that a coastal state might have a primary interest in the management and utilisation of resources in a broad area beyond its territorial sea and should be able to protect that interest. In his view, however, the coastal states, interests were not the only relevant interests and provision would also have to be made to protect the interests of others. The salient points stressed by him were :

(i) international treaty standards in the context of coastal states' jurisdiction to prevent interference with navigation and other uses,

(ii) to prevent pollution of the marine environment,

(iii) to protect the integrity of such foreign investment as was permitted in accordance with the terms of any exploitation contracts made,

(iv) to share some of the revenues from exploitation of the vast petroleum resources of that area with the international community principally for the benefit of developing countries, both coastal and land-locked, and

(v) to ensure the peaceful and compulsory settlement of disputes.

With respect to fisheries beyond the territorial sea, he stressed, in the context of broad coastal state management, first, a duty to conserve fish stocks, second, a duty to permit full utilisation of fish stocks to the extent that coastal state fishermen could not, for the time being, fully utilise the stocks. This, of course, would be subject to reasonable coastal state regulations including reasonable coastal state license fees. Third, a reasonable formula to deal with the situation in which a particular stock of fish could not sustain both an expanding coastal state fishing capacity and foreign fishing at levels that were traditional prior to the entry into force of the treaty. Fourth, special treatment for particular kinds of fish stocks such as anadromous species and highly migratory species. Finally, in order to assure the adherence to those standards, compulsory settlement of disputes.

With respect to the deep sea-bed, where the principal resources of interest for the foreseable future consisted of manganese nodules, in his view, three major interests were involved :

(i) the interest of potential investors in reasonable, non-discriminatory and stable conditions of open access,

(ii) the interests of both immediate and ultimate consumers of the metals produced, and

(iii) the interests of the international community in assuring that the resources of the area were exploited for the benefit of mankind as a whole. Finally, the representative made detailed comments on the issue of procedures for compulsory settlement of disputes.

The observer from *Australia*, speaking about the passage through straits used for international navigation that comprised wholly of territorial waters stated that a balance must be achieved between the interests of the straits state and those of the flag state. He was inclined to support a right of free

transit — a right more restricted than the right of free passage but which would include a right for the vessels to pass through a strait without prior notification, but not to stop, except in an emergency, nor to manoeuvre, except to the minimum necessary for self defence and good navigation. Further, he thought that states bordering straits should have certain rights in respect of navigation in the straits. The rights envisaged, in addition to those now exercised in some straits in the form of traffic separation schemes, were those relating to customs, fiscal, immigration and sanitary matters and also the right to regulate scientific research and to make regulations for the prevention and control of pollution.

As regards the concept of archipelago, the representative was willing to support the concept provided that satisfactory criteria could be developed to confine the number of archipelagos that would be recognized by the new convention to those which were genuinely archipelagic in character.

On the question of economic zone, he referred to the proposal submitted by his delegation together with the delegation of Norway, which expressly recognized the right of the coastal state to establish an economic zone up to a maximum distance of 200 nautical miles from the applicable baselines for measuring the territorial sea. Also on the issue of fisheries, he considered that the coastal state should have the right to establish a zone of exclusive fishery jurisdiction extending up to a distance of 200 nautical miles.

On the question of the continental shelf, he said that there already existed an important body of international customary law as well as the 1958 Geneva Convention, which any new law on the subject must take into account. He agreed with the observer from Peru that the existing rights of the coastal state extended to the outer edge of the Continental Margin.

Lastly, he made few brief observations in relation to the envisaged machinery to govern the international sea-bed regime.

The delegate of *Tanzania* considered that the United Nations Sea-bed Declaration on Principles Governing the Sea-bed and Ocean-floor and Sub-soil thereof, beyond the limits of national jurisdiction, established a concept of common heritage of mankind which was of a legally binding nature. In his view, an important task of the forthcoming conference would be to draft the rules aimed at detailing the contents and the implications of the common heritage, and set up the appropriate machinery to ensure equitable use of the heritage. As far as the views of his delegation were concerned, he advocated that the machinery to be set up must have the power to explore and exploit the area, to regulate the activities in the area and to handle equitable distribution of benefits. The delegate felt that only through controlling the means of production that the machinery would be able to ensure equitable distribution of benefits and pay due attention to the interests of the developing countries. A licensing system, *per se*, as proposed by certain developed countries in the United Nations Sea-bed Committee would not grant the machinery complete control of exploration and exploitation. While strongly supporting the concept of Exclusive Economic Zone, the delegate referred to the proposal A/AC. 138/SC.II/L.40 and said that the concept of economic zone should not indeed worry anyone since inspite of its exclusivity, it would also accommodate the interests of land-locked states to share the living resources of the area. Similarly, the interests of neighbouring developing states would be taken care of by giving them reciprocal preferential treatment within the area. The exclusiveness would come only in so far as distant water fishing fleets were concerned. Further, the concept would envisage a wider area for proper conservation of the living resources affected by over exploitation and the increasing marine pollution. In his view, adequate conservation could not, therefore, be practically effected without greater control by Coastal States.

The delegate of *Nepal* felt that the sizeable number of developing land-locked countries of the world, owing to their geographical handicaps and inadequate physical infrastructure, were not able to reap the benefit of international trade and

commerce. In his view, if the developing land-locked countries had the right to progress and prosper along with other members of the world community on equal footing, the right of free and unrestricted access to and from the sea be guaranteed to them.

The delegate referred to the historic U.N. Sea-bed Declaration (U.N. Resolution 2749) and said that that Declaration would remain like a vague dream or a fascinating fiction if the land-locked countries would not have the right to participate in the exploration and exploitation of the sea-bed and its resources. He welcomed the proposal to establish an international regime and appropriate machinery to ensure the equitable sharing of such resources beyond the limits of national jurisdiction. For the benefit of all mankind he hoped that the land-locked countries would be represented adequately and proportionately in such machinery or organ. At the same time, he was unhappy to note the growing tendency to unilaterally extend the limits of national jurisdiction by several states. He appealed to the nations, having means to exploit sea-bed resources pending a new convention and in total disregard of the appeal of the world body and the world leaders.

In connection with exclusive economic zone or fishery zone, the delegate said that the exclusiveness should not in any way exclude the land-locked countries from the exercise of their right over such zone. He firmly asserted that, in the event of establishment of any such exclusive zone, the rights and interests of land-locked countries should not be jeopardized and the land-locked countries should not be deprived of their due share in the resources of the sea whether living or non-living.

The observer for the *U.S.S.R.* felt that new realities resulting from recent scientific developments and technological progress made it necessary to work out some new regulations, some new safeguards for interests of states and some new rules in the field of the law of the sea. In his view, there was no other way to establish rules of international law except the way of negotiations and mutually agreed solution of questions as to the content as well as precise formulations of the new rules to

govern the relations between states, their rights and obligations as well as the legal regime for sea areas and the ocean floor.

On the question of fisheries, while appreciating the special concern of the coastal states, he said, that the coastal developing countries were justified in their demand for inclusion in a future convention on the law of the sea such provisions and rules as would reflect and protect their national interests in respect of living resources near their coasts. However, at the same time, the interests of other states engaged in fishing on the high seas should be taken into account as well. In his view, the solution of the problem of the conservation and regulation of exploitation of living resources in coastal sea waters could only be found on the basis of the principle of reasonable, rational combination of legitimate interests of all countries.

On the question of regime of straits, he referred to the proposal submitted by his delegation in the U.N. Sea-bed Committee, which, in his view, contained provisions for ensuring security and other specific interests of the coastal states of the straits as also provisions confirming the principle of freedom of passage.

The observer for the *United Kingdom* said that his Government subscribed to the twin proposition recently endorsed by the General Assembly of the United Nations that the problems of ocean space needed to be considered as a whole and that it was desirable that a convention on the Law of the Sea should secure the widest possible acceptance. He was glad to note that some common ground was emerging between countries which might on the face of it appeared to be separated by geography and by other circumstances. He referred to the proposal made by the delegation of Iran concerning regional co-operation and developments. Like Iran, his country also recognised the importance of the median line as a criterion for the delimitation of continental shelves of opposite and adjacent countries. Further, on the question of regional arrangements and regional co-operation, he traced the various developments that had taken place in his region. In regard to the concept of archipelago, he reiterated the views expressed by his delegation at the U.N.

Sea-bed Committee meeting in Summer 1973. Again, he emphasised that the archipelagic principles must be enunciated in the form of objective criteria defining the rights and duties of states within the framework of an international agreement.

The observer for *France* stressed the fact that the forthcoming conference on the Law of the Sea will have to work out a convention acceptable to practically all nations. The task, in his view, was a very ambitious and difficult one. Interests at stake were many and various and they came very close to those fields which were fundamental and very sensitive. However, he felt, that those were not the difficulties which could not be overcome if everyone wished to solve them in a spirit of understanding and conciliation. He outlined his Government's position on certain issues relating to the Law of the Sea. In the first place, his Government recognised the maximum limit of 200 miles for exercise of national jurisdiction over the sea-bed. Secondly, his Government was in favour of a *de jure* recognition of the rights of the states over adjacent seas concerning fishing. However, in his view, the exercise of those rights should be determined on a regional basis.

Resuming the discussion in the meeting held on Friday, the 11th January, 1974 the observer for *Argentina* noted that his country along with other Latin American states had had an approach to matters related to national maritime sovereignty and jurisdiction of Coastal State, which was now more and more shared by many states of all regions, and remarked that this fact could be regarded as a major trend constituting the basis for the satisfactory solution, which might be agreed upon by the Third U.N. Conference on the Law of the Sea. In this connection, he recalled the most recent declarations, conclusions, and Resolutions, (Montivideo 1970, Lima 1970, Santo Domingo 1972, Yaounde 1972, O.A.U. 1973, and Non-Aligned Summit Meeting 1973), as well as proposals submitted to the U.N. Sea-bed Committee, including the Argentine draft articles contained in document A/AC. 138/S.C. II/L. 37 (Volume III of the Committee Report of 1973, A/9021). He gave an outline of the general principles incorporated in such draft, stated the scope of the sovereign right of the coastal state over the water area

which may extend up to 200 miles, according to geographical, geological and other factors involved, and mentioned among these factors, the one referred to by the delegate of Iran, namely, the criterion of the 200 meter isobath as an additional element that was taken into account. He stressed that freedom of navigation and overflight applied to the adjacent maritime area of the territorial sea which might extend up to 12 miles. He explained that other rights and interests were accommodated by the Argentine draft, and elaborated its provisions regarding land-locked countries as well as countries not extending its sovereign rights over an area beyond the 12 miles territorial sea. As to the continental shelf the observer of Argentina recalled that its government proclaimed its sovereignty over it long ago, and quoted internal laws of 1944, 1946 and 1966, the latter containing the delimitation criteria of Article 1 of the 1958 Geneva Convention. Since he also fully recognised the existence of an international sea-bed area as the common heritage of mankind, in his view, it was clear that a more precise definition of the national-international sea-bed boundary was to be established. To that end he maintained that the departure had to be present international law, which in his view recognised the coastal state's sovereignty over the whole submerged land-mass territory up to the outer edge of the continental margin. In this connection he referred to several rules of customary law and other elements supporting his opinion including their I.C.J. Judgement on the continental shelf of 1969. Further, in his view, this departure, as the draft of Argentina proposed, was to be complemented with another criterion, namely, a distance up to 200 miles, to achieve a satisfactory solution. And he mentioned as following this approach the Santo Domingo Declaration, the Declaration and Resolution of the Non-Aligned Countries approved in Algiers in 1973, and several draft articles introduced by the delegations to the Sea-bed Committee, including those of Colombia, Mexico and Venezuela ; Australia and Norway, and China. Finally, he was firmly of the view that it was not realistic to expect that coastal states would relinquish any part of their continental margin, even if this went beyond 200 miles, as it was not realistic to assume the possibility of renunciation by any State of a part of its land territory.

The delegate of *Ghana* summed up the reasons for the failure of the 1958 and 1960 Geneva Conferences on the Law of the Sea as follows : firstly, the excessive zeal of developed countries to develop international law instead of codifying existing principles by introducing for the first time the vital interests of coastal states in wide areas off their coasts and leaving superjacent waters as high seas ; secondly, the adherence of developed countries to the traditional view of narrow territorial waters and thirdly the attempt by developing countries to obtain broader jurisdiction over their adjacent waters. In his view, the various conflicting, interests, although complex in nature, could be resolved in the spirit of accommodation and goodwill. He traced the recent developments in the technology of the Sea-bed exploitation and said that scientific research in marine environment was a concomitant and necessary prerequisite to the development of advanced technology relating to the sea. In his view, national security considerations had raised the question of control of scientific research with a view to limiting their abuse.

He felt that the task of the forthcoming law of the sea conference would be to resolve the conflicts between the major maritime powers, which possessed the world's largest merchant shipping fleet, navies with global strategic interests and distant water fishing fleet and therefore demanding maximum mobility or in the other words "free transit" and the maintenance of the *status quo* on the one hand, and the developing coastal states with rapidly increasing population depending on the seas for food and raw materials and therefore interested in extending their jurisdiction over waters adjacent to their coasts. Further, he said that the extension of his country's territorial waters from 12 miles to 30 miles was considered essential not only because of the national security considerations, but also to protect the marine environment from pollution. On a regional level Ghana was an important fishing nation and therefore stressed the need for recognition of regional arrangements whether on bilateral or multilateral basis giving fishing rights to countries within the region. Lastly, he said that his government fully supported the decisions of the O.A.U. as contained in the O.A.U. Declaration on issues relating to the law of the sea.

The observer for *Spain* described the peculiar geographical characteristics of his country and stated that his country attached great importance to the issues relating to the law of the sea. He felt that the views of his Government were very close to the views of the Afro-Asian countries, and in general of the countries of the third world. Although, his country's declared territorial sea limit was six miles he recognised that establishment of a twelve mile territorial sea was entirely in accordance with the international law. Like many other delegations, he also shared the view that the normal rule of navigation through territorial seas, including the straits, was that of innocent passage. However, he was also aware of the need for a re-examination and a precision of that concept, taking into account the technological and scientific developments and the need to grant all required guarantees to peaceful international maritime navigation. He referred to the proposal submitted by his delegation together with the delegations of Indonesia, Malaysia, the Philippines, Yemen, Cyprus, Greece and Morrocco to the U.N. Sea-bed Committee (L. 18). In that connection, he said that the innocent passage principle referred only to shipping and had nothing to do with the passage of aircraft.

On the question of archipelago, he fully supported the positions of Indonesia, the Philippines, Fiji and Mauritius and stated that some principles of the archipelagic states should be applied "mutatis mutandis" to the archipelagos of "mixed states". Concerning the continental shelf, his delegation supported the principle that the breadth of the continental shelf should be measured according to the criteria of distance on the surface up to a distance of 200 miles. In his view, it was essential to find some solution to take into account the vested rights exercised by some states beyond the limit of 200 miles. On the question of economic zone, he accepted the principle that the coastal state had functional jurisdiction beyond the territorial sea for the preservation and exploitation of the resources of the zone. To that end, the coastal state enjoyed certain rights to take measures to regulate fishing and to protect the natural resources of the zone. However, at the same time, while exercising such right, the coastal state should also take

into account the interests of the third states and allow their nationals to fish under the following conditions : if the coastal states do not fish 100% of the permissible catch, fishing activities be carried out in accordance with the regulations established in the zone and there be mutual benefits to the economies of both the coastal and third states. Concerning the regime of the sea-bed, he supported the idea of a strong international machinery with broad powers, including the possibility of direct disposal of resources either by itself, or in association with others. As far as marine pollution was concerned, he advocated the principle of zonal approach and referred to the proposal submitted by his delegation together with sixteen countries to the U.N. Sea-bed Committee (L. 56). Concerning scientific research, he could also accept the zonal approach and supported the proposal tabled in the U.N. Sea-bed Committee by Pakistan and other countries, that explicit authorization was required for carrying out scientific research in areas within the jurisdiction of a coastal state. Lastly, he subscribed to the view that the rights and interests of the land-locked and other geographically disadvantaged states needed special consideration.

The observer for *Cyprus* said that the two topics of the Law of the Sea which were of direct concern to his country and also of great interest to many other Asian-African states were : firstly, the principle of the median line and secondly, the position of islands. Regarding the former, he recalled that his country was a proponent of the proposal in the Sea-bed Committee to the effect that in the case of states, the coasts of which were opposite or adjacent to each other, failing agreement between them to the contrary, neither of the states should extend their territorial waters beyond the median line, every point of which was equidistant from the nearest point of the base-lines, continental or insular. In his view, this principle firmly based upon customary international law and codified in the 1958 Geneva Convention on the territorial sea and contiguous zone was consistent with the requirements of equity. Moreover, it also protected the interests of small and weak states, since it provided for a residual rule which would apply, failing a freely negotiated agreement to the contrary, and would thus discourage

any temptation on the part of larger and stronger states to claim the lion's share in an equal negotiation conducted in legal vacuum. At the same time, it was not an unflexible or rigid rule, but fully admitted the possibility of a freely negotiated agreement modifying the median line principle. While his country's proposal before the U.N. Sea-bed Committee related specifically to the application of the median line principle with regard to territorial waters, the delegate explained that the underlying considerations and its logic made it relevant *mutatis mutandis* also to the question of the delimitation of the continental shelf and also to the new concept of the economic zone in cases of states opposite or adjacent to each other. Regarding the second topic, the position of islands, the representative said that his country's fundamental position and that of other island states, many of which were located off the coasts of Asia and Africa, was that islands were in the same position in so far as jurisdictional zones were concerned, including territorial waters, continental shelf, economic zone etc. as continental territories, and that no artificial distinction should be created at the expense of islands, whether consisting of island or archipelagic state, or of mixed, i.e., continental and insular states. However, if any such distinction was to be made, that in principle should be in favour and not at the expense of islands since the majority of cases and in the nature of things, their populations depended on the resources of the sea for their development and survival much more than the populations of continental territories which could rely on the resources of the hinterland.

The delegate of *Iraq* felt that there was an increasing realisation that the law of the sea would play a very important role in the future of the community of nations. He, therefore, sincerely hoped that the forthcoming conference on the Law of the Sea should accommodate the interests of all the states, large or small, geographically advantaged or disadvantaged. According to him, geographically disadvantaged state would include land-locked states, self-locked states, states with short coastlines, states located on semi-enclosed seas, or any other states which were not in direct contact with the international sea-bed area and were not able to derive the same benefits from the high seas

as the other coastal states did due to their peculiar geographical position. He was of the view that while extending their jurisdiction, coastal states should take into consideration and accommodate the interests of land-locked states and other geographically disadvantaged states in the same area. Since high seas were becoming more vital to the world community, the delegate thought that the realisation of the interests of all states located on the semi-locked seas was becoming more necessary. In his view, high seas should be a sphere of co-operation and such co-operation should be based on the needs of all states to benefit from the fishing and non-fishing resources of the seas. In that way only, the interests of states could be protected and respected, irrespective of the fact that certain states were with short coastlines or shelf-locked. While stressing the need for regional arrangements, the delegate said that they should be based on the principle of equity and justice and these should be embodied in the conventions to be concluded in the forthcoming conference on the law of the sea. However, these regional arrangements should neither affect the legal status of the superjacent waters nor impede the freedom of navigation of the semi-enclosed seas. As regards the international regime for the sea-bed the delegate said that the envisaged authority should undertake exploration and exploitation of the resources of the Sea-bed area under its control. Finally, in his view, the concept of common heritage of mankind could be given a meaning only when the special needs of developing countries, whether they were geographically advantaged or disadvantaged, were taken into consideration.

The delegate of the *Republic of Korea* attached great importance to the spirit of genuine co-operation between developing and developed countries for the orderly development of law in the interest of all nations regardless of their geographical situations. Regarding the problem of straits used for international navigation, he said that problem should be solved in a way that would protect the security of the Coastal State or States as well as the general interests of international trade and navigation. He considered that the interests of the Coastal State or States in respect of sanitary and pollution control, conservation of resources and fishery should equally be

guaranteed. His delegation maintained that the Coastal State enjoyed exclusive jurisdiction over the continental shelf for the preservation and exploitation of its resources. The delegate recognised the difficulties in reaching a generally acceptable standard limit of so-called economic zone and hoped that other states would be allowed by agreement with the Coastal States to engage in fishing and other mutually beneficial activities in the direction of technical and economic co-operation in fishery or other productive activities, especially among developing and developed countries.

On the question of rights and interests of the land-locked states, the delegate said that the freedom of transit and the fair rights of access to and from the sea should be assured. Further, in his view, the benefits in the resources of the sea of neighbouring coastal state should be shared in equitable way with the coastal state concerned.

The observer for the *Federal Republic of Germany* supported the principle of the freedom of the sea outside territorial waters. In his view, the interest of freedom of navigation and naval communications was the basic pre-requisite for world trade and the freedom of research in the oceans. He, therefore, considered that an extensive extension of territorial waters or unilateral extension of fishery zones were contrary to international law. His delegation advocated worldwide and regional standards for maritime environmental protection and towards that end he did not regard the idea of national control zones outside the territorial waters to preserve marine environment as the advantageous one. It was the view of his delegation that all geographically disadvantaged countries whether land-locked or shelf-locked should participate to the greatest possible extent in the exploration and exploitation of the Sea-bed resources.

The discussions on the Law of Sea were resumed on Monday, the 14th January, 1974. The Delegate of *Sierra Leone* commented upon some of the issues raised in the study prepared by the Secretary-General. While fully supporting the concept of Exclusive Economic Zone, the Delegate said that the

coastal State should have exclusive jurisdiction in that zone for the purposes of control, regulation and exploitation of the living resources of the sea, as also prevention and control of pollution. On the question of fisheries, he emphasised the importance of the protection of the rights and interests of the coastal State. In his view, the 1958 Geneva Convention on Fisheries recognised the coastal State's right to adopt measures for the conservation of the living resources of the high seas even beyond the limits of its territorial sea. He referred to a Bill, pending before his country's Parliament, in which provision was made for the exploration and exploitation of the continental shelf adjacent to the coast of his country. In order to accommodate the interests of other States, a provision was also made under which foreign fishermen could fish in the territorial waters of Sierra Leone provided the requisite licence was obtained.

On the question of archipelagos, he reaffirmed his delegation's support to the concept evolved in the OAU Declaration of May 1973. His delegation was of the view that in the determination of the nature of maritime spaces between islands which constituted archipelagos, the interests of the archipelagic State should be paramount. Furthermore, the baselines of archipelagic States should be drawn connecting the outermost islands of the archipelagos, for the purpose of determining the territorial sea of the archipelagic States.

Finally, on the subject of the rights and interests of land-locked and semi-land-locked States, his delegation subscribed to the view that all land-locked and semi-land-locked States should enjoy the right of access to and from the sea, including the right of transit through another State for that purpose. Further, he advocated that land-locked and semi-land-locked States should be allowed to participate in the benefits of the living resources of the sea of coastal States. The Delegate also suggested establishment of regional areas for the exploitation of the regional resources within the economic zone, thus accommodating the needs and interests of land-locked States.

The Observer for *Cuba* stressed that the limits of the

maritime sovereign jurisdiction should be established in accordance with social and economic needs of each and every country and taking into account the geographical realities. She reiterated her delegation's support to the proposal for extension of maritime jurisdiction upto 200 miles. However, she stressed that the new Law of the Sea should also take into consideration the variation in different regions. She did not favour the idea of representation in the forthcoming Caracas Conference of those territories which are still under colonial rule.

The Observer for *Uruguay* was of the view that the revision and reformulation of the old institution of territorial sea was one of the fundamental tasks imposed by the evolutionary process of the Law of the Sea for its indispensable and urgent adaptation to the present day international reality. In his view, a new flexible structure, based on the plurality of regimes in the Territorial Sea, should primarily take into consideration :

(1) That the seas adjacent to the coasts of different regions of the world vary in geographical, geological, biological and ecological characteristics. The recognition of this fact had the important legal consequence that the extent of the sovereignty of coastal States might vary according to those characteristics within a maximum universal limit ;

(2) That those situations, determined by nature and by political, economic, social and cultural factors, arising out of the present structure of the international community, justified or required in certain circumstances, and with due respect to the rights of other neighbouring coastal States on the same sea, the extension of the sovereignty of coastal States over their adjacent sea upto limits as broad as was reasonably necessary in order to maintain their security, to preserve the integrity of their marine environment, to explore, conserve and exploit the natural resources of that sea and to ensure the rational utilisation of those resources in order to promote the maximum development of

their economy and to raise the level of living of its peoples.

He referred to the draft articles submitted by his delegation to the U.N. Sea-bed Committee in 1973. Outlining the basic objectives underlying those articles he said that attempt had been made to reach an equitable harmonisation of the interests of coastal States with those of other States and the international community. To that end, a distinction was made between territorial seas whose breadth did not exceed 12 nautical miles and wide territorial seas belonging to the states which, in accordance with the characteristics of their adjacent coastal sea, had extended their sovereignty to distances over 12 miles upto a maximum of 200. In the first case, the legal regime of the territorial sea was unitary, maintaining the classical formula of innocent passage. In the second case, technical, legal and political reasons justified a larger protection of the interests of other States within zones exceeding the 12-mile belt, specially navigation, overflight and other means of international communication. In this case, a dual regime was envisaged. In the zone between the coast and an internal limit of 12 miles, the applicable regime would be similar to the first case, recognising within that zone the right of innocent passage ; and beyond that internal limit upto the exterior limit of the territorial sea, the freedom of navigation, overflight and laying of submarine pipelines and cables, without restrictions other than those expressed in the regulations enacted by the coastal state with regard to its security, the preservation of the environment, the exploration, conservation and exploitation of resources, scientific research and the safety of navigation and aviation adopted by it in conformity with international law.

Furthermore, the draft also took into account some special situations such as the archipelagic States, supporting the formulations submitted by the delegations of the Philippines, Indonesia, Mauritius and Fiji (A/AC. 138 SC. II/L. 48). As regards the special position of land-locked states, the Uruguyan draft ensured the exercise of the right of free access to the territorial sea through coastal States which were their neighbours or belonged to the same sub-region and preferential fishing

rights through bilateral or sub-regional agreements, in that area of their territorial sea which was not reserved exclusively for their nationals.

The observer for *Ecuador* felt that the old principle of the freedom of the sea had been replaced by the new concept of common heritage of mankind. The new concept expressly recognised the fact that the exploitation of the sea could not be concentrated in the hands of a small group of great powers. He stressed the need for making a distinction between the sea under the sovereign jurisdiction of the coastal State and the international sea where all states had the same rights and the same duties. In his view, some of the questions which required serious consideration included : protection of the rights of states whose continental platform extended beyond the limit of 200 miles ; delimitation of the boundaries of adjacent or opposite coastal states ; the regime of straits used for international navigation ; the concept of archipelago and the position of land-locked and other geographically disadvantaged states. He was satisfied with the progress made towards the creation of an international authority to govern the administration of the sea-bed area lying beyond the limits of national jurisdiction. However, he felt that the establishment of a new legal order for the use and exploitation of the ocean was far from being a simple academic exercise. On the contrary, that was a task where the political and socio-economic interests were of fundamental importance. He expressed his concern over the use of coercive measures by certain states against those which defended their maritime sovereignty. Further, he considered it unreal to assume that states which had established or exercised a right of sovereignty over the sea, the sea-bed and sub-soil upto a limit of 200 miles would renounce that right. Such renunciation would in fact be a renunciation of sovereignty which, in his view, might endanger the development and welfare of the peoples of those states.

V. TRADE LAW

(i) INTRODUCTORY NOTE

The trade law subjects taken up by the Committee at the Tokyo Session were matters arising out of the work of the United Nations Commission on International Trade Law (UNCITRAL). At this Session, the Committee considered in detail two subjects.

The Sub-Committee on Trade Law consisting of nine member States, namely, the Arab Republic of Egypt, Iraq, India, Indonesia, Japan, Pakistan, Sierra Leone, Sri Lanka and Tanzania held five meetings. Three of these meetings were devoted to discussions on Bills of Lading — one of the topics on International Shipping Legislation. Two meetings were allotted to discussions on International Commercial Arbitration.

The Sub-Committee discussed Bills of Lading with special reference to the liability of the carrier for delay and the scope of application of the Brussels Convention of 1924. Under the latter topic, two specific matters came up for consideration : the first being the question of the geographical applicability of the Convention as set out in Article 10 of the Convention and amended by Article 5 of the 1968 Protocol. The second question was the applicability of the Convention to ocean carriage under informal documents that evidenced the contract of carriage which may be regarded as documents of title and to oral contracts of carriage. Some other questions were also considered, namely :

(i) the appropriateness of the information required by Article 3(3) of the Brussels Convention to ocean carriage under informal documents, and whether the Convention should specify certain information that must be included in the Bill of Lading if it is to be considered negotiable.

(ii) the validity and effect of Letters of Guarantee given to secure a clean Bill of Lading, and

(iii) the legal effect of the Bills of Lading in protecting "Good Faith" purchasers of Bills of Lading and whether provisions additional to those contained in Article 3(4) of the Brussels Convention and Article 1(1) of the Protocol are desirable.

On International Commercial Arbitration, the discussions proceeded on the basis of the work done by the UNCITRAL with a view to formulating certain conclusions which could be presented to the UNCITRAL so that they may be taken into consideration by that body. The topics which came up for discussion were firstly, the merits of International Arbitration as against ad hoc Arbitration. Secondly, problems regarding constituting an arbitral tribunal. Thirdly, the question of the "venue"of arbitration. Fourthly, the applicable law to determine the rights and obligations of parties under the contract which is the subject matter of arbitration. Fifthly, the procedure in Arbitration. Sixthly, arbitral awards, and the seventh was the enforcement of Foreign Arbitral Awards.

(ii) SUMMARY RECORD OF DISCUSSIONS HELD DURING THE SESSION

At the fifth plenary meeting held on 11th January 1974, the Committee proceeded to hear statements from Delegates and Observers on subjects relating to international trade law.

The Observer from UNCITRAL stated that he would like briefly to describe some of the most recent developments in UNCITRAL which may be of interest to the Committee. Firstly, the General Assembly had decided to hold the United Nations Conference on Prescription (Limitations) in the International Sale of Goods at the U.N. Headquarters in New York from the 20th May to the 14th June of this year. The UNCITRAL draft convention itself and the commentary thereon prepared by the UNCITRAL Secretariat had already been circulated to Governments. An analytical compilation of comments received from Governments and interested international organisations on this draft convention would soon be issued. These documents would constitute the main documents of the Conference. The purpose of the Convention was to provide a concrete set of rules governing the limitation period within which parties to the international sale of goods must institute legal proceedings to exercise their rights or claims under the contract. He was happy to state that most of the States which had submitted observations welcomed the draft as a significant and positive step taken by UNCITRAL for the unification of the law of international trade and had indicated that the UNCITRAL draft provided a good and suitable basis for a convention on the subject. Most of these States generally agreed that it was expedient to harmonize rules on limitation in the field of international sale of goods because the existing divergencies in national rules governing limitation created difficulties in practice. In this connection, he recalled that at the New Delhi session of the Committee last year, the Sub-

Committee on International Sale of Goods had devoted a great deal of time to the examination of the provisions of the UNCITRAL draft and had generally approved its approach as a workable compromise. This view of the Committee, together with constructive comments for improvements, has been reflected in the preparation of the analytical compilation of proposals. He was convinced that the general approval of the UNCITRAL draft and the guidelines which had been provided by this Committee would provide a useful basis for the success of the United Nations Conference on the subject this year.

With regard to uniform rules governing the international sale of goods, work was directed toward the worldwide unification of the rules governing the obligations of sellers and buyers under contracts of international sale of goods. The central task was to ascertain what modifications in the rules embodied in the Uniform Law on the International Sale of Goods (ULIS) annexed to the Hague Convention of 1964 might render these rules capable of wider acceptance by countries of different legal, social and economic system. Work towards this end by a Working Group had considered the rules on the obligations of the seller, and significant simplification of the law had been achieved by the consolidation into a single unified system of the various provisions of ULIS relating to the remedies of the buyer.

With regard to the General Conditions of Sales and Standard Contracts, the Commission continued its programme for the development of a set of general conditions of sale that might voluntarily be adopted by the parties to contracts of international sale of goods with respect to various commodities. Such model contract provisions could facilitate international trade by providing a clear and balanced formulation of the obligations of the parties. On the basis of a study by the Secretary-General on the feasibility of developing such general conditions applicable to a wider range of commodities, the Commission at its Sixth Session requested the Secretary-General to continue his work on this subject and to prepare a set of uniform general conditions in co-operation with the regional economic commissions and with interested trade associations,

chambers of commerce and similar organisations from different regions.

With regard to the subject of International Payments, work was directed towards the preparation of uniform rules applicable to a special negotiable instrument for optional use in international transactions. After the Secretariat of UNCITRAL had submitted to the Fifth Session of UNCITRAL in 1972 a draft uniform law on international bills of exchange used in effecting international payments and a commentary thereon, which had been prepared in consultation with international organisations, including banking and trading institutions, the Commission had requested the Secretariat to extend the draft to include promissory notes, and established a Working Group on International Negotiable Instruments to consider this draft. The Working Group had met in January 1973 and reviewed a substantial portion of the draft uniform law.

With regard to International Commercial Arbitration, the Commission at its Sixth Session considered various proposals contained in the Report of its Special Rapportour, Dr. Ion Nestor, on this subject in the light of comments submitted by States members of the Commission and recommendations made by the Secretary-General. The Commission requested the Secretary-General to prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade, and in preparing this draft, the Secretary-General was requested to consult with regional economic commission of the United Nations, and with centres of international commercial arbitration, and to give due consideration to the ECE and ECAFE Rules. He also informed the Committee that upon a recommendation by UNCITRAL, the General Assembly had now invited States which had not ratified or acceded to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to consider the possibility of adhering thereto. The item of International Commercial Arbitration had been placed on the Agenda before the present session of this Committee accompanied by a very impressive study on the subject prepared by the Secretariat of the Committee. He felt sure that the work of the Committee in this field would contribute greatly to the

formulation of universally acceptable rules on International Commercial Arbitration by identifying the problems which arose in the Asian-African region.

In the field of International Shipping Legislation, the Commission was continuing its examination of the rules governing the responsibility of ocean carriers for cargo embodied in the 1924 Brussels Convention on Bills of Lading, and the Brussels Protocol of 1968. The Commission had established a Working Group of twenty-one members, and had requested the Working Group to take action directed towards the removal of uncertainties and ambiguities in these rules and the establishment of a more balanced allocation of risks between the cargo owner and the carrier. Substantial progress had already been made by the Working Group, including preparation of legislative provisions setting forth the basic rules governing the responsibility of the carrier. These provisions included a unified rule as to burden of proof. The Working Group had also prepared draft provisions on arbitration clauses in Bills of Lading. Decisions had also been taken with regard to the rules on limitation of the carrier's liability to follow the basic approach of the Brussels Protocol of 1968, with certain revisions to remove ambiguities and to take account of problems presented by containerized transport. The Working Group had also drafted provisions dealing with the effect of transhipment of goods on the responsibility of the contracting carrier and of the on-carrier, the effect of measures to save life or property at sea, and the period of limitation within which legal or arbitral proceeding may be brought against the carrier. The work of the Working Group was continuing efficiently, supported by a spirit of compromise which had made it possible to reach agreement on a large number of difficult issues. The problems to be considered at the next meeting of the Working Group included the liability of the carrier for delay, the scope of application of the Convention, the contents of the contract of carriage of goods by sea, the validity and effect of letters of guarantee given to receive a clean Bill of Lading from the carrier and the protection of good faith purchasers of a Bill of Lading. To assist the Working Group to solve these problems, the Legal Counsel of the United

Nations had circulated a questionnaire, to which the Secretariat of this Committee had responded promptly by submitting a detailed analysis of the problems. This reply was also being considered at this Session by the Sub-Committee on UNCITRAL subjects. He believed that any indication of general views of the Committee, which consisted of 24 important States of the Asian-African region would command serious attention by UNCITRAL.

He also referred to the UNCITRAL decision endorsed by the General Assembly to hold an international symposium of teachers and prospective teachers of international trade law. The Commission had considered means to intensify training and assistance in international trade law with special regard to the needs of developing countries. To this end, the Commission had requested the Secretary-General to organise, in connection with its eighth Session in 1975, an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law.

Lastly, he added that the General Assembly at the 28th Session had decided to increase the membership of the Commission from 29 to 36. Out of the seven additional seats, two seats each are distributed to Asian States and African States. As the result of necessary elections, conducted at that session of the General Assembly, the following States from the Asian-African region are presently represented in UNCITRAL : From Asian States : Cyprus, India, Japan, Nepal, Philippines, Singapore and Syria. From African States : Egypt, Gabon, Ghana, Kenya, Nigeria, Sierra Leone, Somalia, Tanzania and Zaire.

The observer from the *Hague Conference on Private International Law* stated that his organisation was a specialised inter-governmental organisation with limited aims dealing with the unification of conflicts rules. It had established relations with international organisations like the United Nations and this Committee.

He conceded that questions of private international law were not so important as questions relating to the law of nations.

Nevertheless, conflicts problems were irritating and had to be solved in order to further international trade and improve international relations. He remarked that his reasons for attending the Sessions of the Committee were to keep open lines of communication between the two organisations, to gain a fresh insight into problems of common interest, and to be of assistance by showing the specialised methods of thinking developed by his organisation.

In relation to the subject of the International Sale of Goods, his organisation was interested in the two topics of the choice of law and the unification of law. With regard to the first of these topics, his organisation had drafted in 1955 the Convention on the law applicable to international sales of corporeal movables. Under this Convention, the parties were free to choose the applicable law. Failing agreement, the law of the habitual residence of the seller was applicable. In 1964 the Convention on the Uniform Law on International Sales had been signed, which, *inter alia*, attempted to eliminate the need for conflicts rules in international sales. Thereafter, there had been a certain hesitancy among States in acceding to the 1955 Convention. However, the Federal Republic of Germany and the Netherlands in ratifying ULIS, had stated that it would only be applied as between Contracting States. The need for a conflicts rule in other cases had therefore revived. The revision of ULIS by UNCITRAL had also resulted in the need for a conflicts rule in certain cases.

He was therefore of the view that it was important for Asian and African States to pay attention to the 1955 Convention.

The leader of the delegation of *Sri Lanka* observed that the work of the UNCITRAL on International Shipping Law was of considerable importance. The developing countries had now been presented with another opportunity to rectify an imbalance in a field of law which often had a decisive bearing on the economic well-being of the relatively poor countries of the world. He remarked that it was a historical fact that the present shipping law and practices were the creation of the

colonial powers of the 18th, 19th and early 20th centuries. Shipowners had played a vital role in the sustenance of the empires of such countries, and it was therefore not surprising that the present system of law was designed to protect shipowners' interests while neglecting the legitimate interests of shippers and consignees. He further stated that although most of the developing countries had, in a modest way, started their own shipping business, this was no justification for perpetuating a law heavily weighted in favour of shipowners. He stated that so far as his country was concerned, it was primarily a ship-user in respect of both essential exports and imports. The Five Year Plan of his Government therefore specifically provided for the development of a national shipping fleet.

In the highly competitive world of trade, it was essential that both the financial interests of shippers and also the national interests behind them should be protected from shipowners who, between acceptance of the goods and their delivery, bore a responsibility to which hitherto a commensurate liability had not been attached. It was the view of his delegation that either the proposed new Convention or an amendment to the present one should cast upon the shipowner liability for loss caused to the shipper by delay resulting from an intentional or negligent act or omission on the part of the former, his servants and agents.

Another area in which change was desirable was that of the law relating the issue of a bill of lading. The unlimited power of freedom of contract presently existing made it possible to contract out of such an obligation. Shipowners, being in a powerful bargaining position, were able to do this, and it had already resulted in the creation of shipping practices by which shipowners undertook to carry goods on informal agreements, thus greatly increasing the vulnerability of the shipper to staggering losses, the effects of which would be felt at a national level. He therefore, felt that every assistance should be given by the developing nations to the work of UNCITRAL on international shipping legislation so that the present imbalance would be speedily remedied.

The delegate of *Japan* stated that he would first like to

thank the representative of UNCITRAL Professor Kazuaki Sono, for the lucid statement introducing the work of UNCITRAL, with special reference to the proceedings at its 6th Session relating to International Commercial Arbitration and International Shipping Legislation. His statement had given a comprehensive picture of the recent activities of the Commission and its Working Groups on all subjects. He had also listened with great interest to the clear statement made by Mr. Van Hoograten, the representative of the Hague Conference on Private International Law. He observed that since UNCITRAL was established six years ago, it had made considerable progress in the unification of international trade law. He believed that the Commission had already become one of the most productive bodies in this field, and it was also making a useful contribution to the dissemination of information on this subject. He took this opportunity of expressing the appreciation of his delegation of the work done by UNCITRAL.

He also wished to take this opportunity of saying a few words on the draft Convention on Prescription (Limitations) in the International Sale of Goods. This draft was the first concrete achievement of UNCITRAL in its first attempt to formulate a uniform law. His delegation was aware that it was not an easy task to bridge the differences existing between the prescription of rights in the civil law system and the limitation of actions in the common law system. He expressed the earnest hope that the Conference of Plenipotentiaries to be held in New York would be successful and constitute a landmark in the field of the unification of trade law.

The Working Groups of the Commission were now considering a Uniform Law on the International Sale of Goods, International Legislation on Shipping with particular reference to Bills of Lading, and a Uniform Law on Negotiable Instruments. His delegation wished to refrain from offering any substantive comments on these subjects at this stage, since the various Working Groups had not completed the tasks entrusted to them. He only wished to say, in this regard, that careful consideration should be given to customs and practices already prevailing in international business.

Resuming the discussion at the Sixth Plenary Meeting held on Monday, the 14th January, 1974, the delegate of *Nigeria* stated that it was natural that today the problems of the Law of the Sea were occupying the attention of everybody. Nevertheless, he wished to emphasize that Nigeria attached the greatest importance to the work of the United Nations Commission on International Trade Law. While the progressive development and codification of International Law were matters of yesterday and today, the progressive development and codification of International Trade Law were matters of today and tomorrow. To the developing world, trade was of the greatest importance, for improved trade brought about development and a better balance of payments position. Although questions of international law were important, the developing world was more beset by international trade problems. Matters such as the impact of multinational corporations on the economy. and matters relating to invisibles such as shipping and insurance, all affected the welfare and happiness of the people. In regard to the specific areas of work being presently covered by UNCITRAL, he observed that the revision of the Uniform Law on International Sale of Goods was of great importance, as all countries were buyers and sellers of goods. He was hopeful that the work would be brought before a Conference of Plenipotentiaries. The work of International Shipping Legislation concerning the revision of the Brussels Convention of 1924 was also of great importance. That Convention titled the balance in favour of shipowners and it was now necessary to redress the balance. The work of an International Payments was also of the greatest significance to the developing countries. The attempt in that field was to unify the law of the common law and civil law countries on the law of cheques and other bankers drafts. He, therefore, urged the Committee in the years to come to pay more attention to the questions of international trade so that the developing world may better its position and contribute to the progress and happiness of its people.

The Delegate of *Nepal* commented on the work of UNCITRAL towards development of international trade law in

general and in the field of international sales of goods in particular. He expressed particular satisfaction concerning the progress made by UNCITRAL on subjects like Prescription in the Law of International Sales, Uniform Rules on International Sales, Model Contract Provisions and International Payments.

Speaking on the subject of Bills of Lading, the delegate recognised that developing countries were mostly cargo-owners and that most of their exports were either agricultural products and other heavy or unfinished goods. He also expressed his concern over the injustices done to the developing countries under the Hague Rules. He strongly felt that any future convention or international agreement in this field should be able to rectify those injustices and remove uncertainties and ambiguities of the Hague Rules concerning liability of the shipowners in regard to loss of or damage to cargo taking into consideration the minimising of insurance costs to cargo-owners so that the interests of the developing countries could best be served.

As regard International Commercial Arbitration, the delegate did not have any objection to the creation of an 'Arbitration Institution' under the auspices of the respective commercial organisations. In his view, apart from the general questions involved in international commercial arbitration – who might be parties in the disputes subject to arbitration, form of the arbitration agreement, its content, the jurisdiction of the arbitral tribunal, the applicable rules of procedures, time limits, and the rendering, content, recognition and enforcement of the award, any future convention on that subject should properly safeguard the interests of developing countries in terms of the cost factor and foreign currency problems that would be involved in the practical implementation of any arbitration agreement.

(iii) REPORT OF THE SUB-COMMITTEE ON TRADE LAW MATTERS

The Sub-Committee on International Shipping Legislation (Bills of Lading) and International Commercial Arbitration had five meetings, three of which were devoted to discussion on International Shipping Legislation, and two to International Commercial Arbitration.

The following Delegates participated in the discussions.

Delegates

Arab Republic of Egypt :

Hon'ble Mohamoud Abdel Aziz El Ghamry (Chairman)
Mr. Mohamed Moustapha Hassan

India :

Mr. K.K. Chopra

Indonesia :

Mr. Abdul Kobir Sastradipura

Iraq :

Mr. Amer Araim
Mr. Sabah Al-Rawi

Japan :

Mr. Michitoshi Takahashi
Mr. Akira Takakuwa

Pakistan :

Mr. A.G. Chaudhary

Sierra Leone :

Mr. P.P.C. Boston

Sri Lanka :

Mr. P.H. Kurukulasuriya (Rapporteur)

Tanzania :

Mr. E.E. Mtango
Mr. S.A. Mbenna

The Sub-Committee Meetings were also attended by the following Observers from the UNCITRAL Secretariat and the Hague Conference on Private International Law.

UNCITRAL : Prof. K. Sono

Hague Conference on Private International Law — Mr. M. Van Hoogstraten.

INTERNATIONAL SHIPPING LEGISLATION

(Bills of Lading)

1. A Sub-Committee consisting of nine (9) members, namely, Arab Republic of Egypt, Iraq, India, Indonesia, Japan, Pakistan, Sierra Leone, Sri Lanka and Tanzania was set up at the first Plenary Meeting to consider the above-mentioned subjects now under review by the U.N. Commission on International Trade Law.

2. The leader of the delegation of the Arab Republic of Egypt, the Honourable Mohamoud Abdel Aziz El Ghamry was appointed Chairman, and Mr. P.H. Kurukulasuriya of the delegation of Sri Lanka was appointed Rapporteur for this Sub-Committee.

3. The Sub-Committee, at its first meeting held on 7th January, 1974, having examined in some detail the scope of the subjects before it, decided to confine its programme of work to the following specific topics :

(a) Liability of the carrier for delay.

(b) The scope of the application of the Brussels Convention (the International Convention for the unification of certain rules of law relating to Bills of Lading, signed at Brussels on 26 August, 1924).

Two specific problems were to be discussed :

(i) the question of the geographical applicability of the Convention as set out in Article 10 thereof and Article 5 of the Brussels Protocol of 1968 (Protocol to amend the International Convention for the unification of certain rules relating to Bills of Lading)

(ii) the question of the applicability of the Convention to ocean carriage under informal documents that evidence the contract of carriage but may not be regarded as documents of title, and to oral contracts of carriage.

(c) The appropriateness of the information required by Article 3(3) of the Brussels Convention to ocean carriage under informal documents, and whether the Convention should specify certain information that must be included in the Bill of Lading if it is to be considered negotiable.

(d) Validity and effect of letters of guarantee given to secure a false clean Bill of Lading.

(e) Legal effect of the Bill of Lading in protecting good faith purchasers of Bills of Lading, and whether provisions additional to those contained in Article 3(4) of the Brussels Convention and Article 1(1) of the Protocol are desirable.

4. The Sub-Committee also decided that its report be submitted to the Working Group of UNCITRAL dealing with the subject of Bills of Lading scheduled to commence sittings in February 1974.

5. At the first meeting of the Committee, the scope of the subject of International Commereial Arbitration was also discussed on the basis of a comprehensive brief prepared by the Secretariat of A.A.L.C.C. The Committee having examined in general the problems involved in International Commercial Arbitration decided to confine its deliberations to the following subjects :

(1) Institutional Arbitration and Ad Hoc Arbitration

(2) Constituting the arbitral tribunal

(3) Venue of the Arbitration

(4) The applicable law to determine the rights and obligations of the parties under the contract which is the subject matter of arbitration.

(5) Procedure in arbitration

(6) Arbitral awards

(7) Enforcement of foreign arbitral awards.

6. The Committee discussed the question whether it was advisable to draft a new convention of International Shipping Law with special reference to Bills of Lading, or whether it was sufficient to amend the present convention by a protocol embodying the necessary changes. Two delegates expressed the view that a new convention should be drafted to replace the present one, but in view of the fact that this involved discussion on the nature and scope of the amendments to the entirety of the present law, the Sub-Committee decided that it would be inadvisable to take a decision on the subject at the moment.

7. *Liability of the carrier for delay*

The Sub-Committee was of the view that an adequate and clear provision should be made in the new law governing Bills of Lading with regard to the liability of the carrier for delay. The Sub-Committee also appreciated the fact that delay

is a standard by-product in the field of shipping and that it is almost impossible for shipowners to regularly keep to strict schedules. The Sub-Committee was also of the view that there were certain circumstances which might cause delay in the performance of the contract which should be regarded as excuses. After an extensive exchange of views, the Sub-Committee came to the following conclusions :

(1) That it was essential that a specific and clear provision should be included in the convention with regard to the liability of the carrier for delay.

(2) That it was not advisable to list the circumstances that cause an excusable delay.

(3) That the excuses for delay should be set out in the convention in general terms, and

(4) That the liability of the carrier for delay should not be on the basis of strict liability but on the basis of fault.

While one delegate was of the view that there should be a definition of what constitutes delay, others were of the view that such a definiton was impracticable and unnecessary.

The Sub-Committee also decided that the following proposals should be placed before the UNCITRAL Working Group as reflecting the views of the Sub-Committee.

(1) The carrier shall be liable for all loss or damage caused by delay whether the delay consists of the late arrival of the vessel for the purpose of performing the contract of carriage, or late performance of the contract of carriage.

(2) The carrier shall be so liable to any lawful holder or transferee of a Bill of Lading or other similar document of title, or to anyone succeeding to the rights of such a person, and to all persons to whom

loss or damage could reasonably be foreseen at the time the delay occurred.

(3) (a) The carrier shall not be liable where he proves that the delay resulted from measures to save life or from reasonable measures to save property at sea. (Provided that where such measures to save life or property at sea result in financial gain to the carrier, the carrier shall pay to any person or persons who would otherwise be entitled to claim compensation from the carrier for loss or damage caused by such delay a sum not exceeding one-half of the financial gain so accruing and in any event not exceeding the loss or damage actually suffered by such person).

(b) The carrier shall not be liable where he proves that he, his servants and agents, took all measures that could reasonably be required to avoid the delay and its consequences.

(c) The carrier shall not be liable for any loss or damage which could not reasonably be foreseen at the time the delay occurred as likely to result from the delay.

(4) Where fault or negligence on the part of the carrier, his servants or agents, concurs with another cause to produce delay resulting in any loss or damage, the carrier shall be liable only for that portion of the loss or damage attributable to such fault or negligence, provided that the carrier bears the burden of proving the amount of loss or damage not attributable thereto.

(5) The burden of proof shall be on the claimant to establish :

(a) His status to maintain the action,

(b) Delay in terms of the contract of carriage, and

(c) The monetary value of the loss or damage.

8. *Scope of the Convention in regard to its geographical applicability*

It was pointed out that Article 10 of the Convention as amended by Article 5 of the Brussels Protocol of 1968 does not make the convention applicable to a Bill of Lading where the carriage is to a port in a Contracting State unless either sub-paragraphs (a) or (c) thereof apply.

The Sub-Committee decided that it was desirable that provision should be made in the proposed legislation to ensure the application of the convention to contracts of carriage covered by a Bill of Lading where the carriage is to a Contracting State.

9. *The applicability of the convention to ocean carriage under informal documents that evidence contracts of carriage but may not be regarded as documents of title*

It was pointed out that this problem appeared to arise in view of the shipping practice mainly prevalent in some Scandinavian countries of entering into contracts of ocean carriage under informal documents where no Bill of Lading is issued.

The Sub-Committee with the exception of one delegate agreed that provisions must be made to ensure that carriers do not enter into contracts of carriage which are not covered by a Bill of Lading or in other words, that the convention should ensure that a Bill of Lading covered every contract of ocean carriage. In this respect, the Sub-Committee with the exception of one delegate was of the view that the existing legislation in this connection was insufficient. One delegate, however, also adopted the position that it was not desirable to bring within the scope of the application of the convention contracts of carriage not covered by Bills of Lading and that the existing provisions in this regard were sufficient.

He supported his view with the following reasons :

(a) That maritime transport was itself slow moving and the cargo bulky, and hence delay in the issue of formal documents such as Bills of Lading was inherent.

(b) That informal receipts may not create clear legal rights and liabilities in regard to shippers and carriers. Since the value of cargo was often very high, it was essential that parties should know their rights and obligations, and therefore, a formal document such as a Bill of Lading was necessary.

He suggested, however, that since the matter was connected with recent technological developments in international trade, it required further study by member governments.

10. *Applicability of the convention to ocean carriage where no document is issued to evidence the contract*

The Sub-Committee was of the view that the applicability of the convention should not be extended to such contracts. One delegate was of the view that the issue of a standardised form of document should be made compulsory in contracts of ocean carriage, thus eliminating oral contracts of carriage.

11. *Contents of the contract of carriage of goods by sea*

The Sub-Committee agreed that provision should be made to ensure that informal documents that may not be regarded as Bills of Lading, but which are in many ways vital to the contract itself, should contain certain information required to ensure that those persons relying on such documents are not misled. The Sub-Committee agreed that the information required should include, in addition to that required by Article 3(3), the following :

(1) The date and place of execution.

(2) The destination of the goods, if known at the time.

(3) The name and address of the contracting shipper.

(4) The name and address of the consignee, if available at the time.

(5) Express notation to the effect that the document is not negotiable.

(6) The name and address of the contracting carrier.

12. *The validity and effect of letters of guarantee given to secure a false clean Bill of Lading*

It was pointed out that a practice had developed whereby a shipper obtains from the carrier a false clean Bill of Lading which is issued to him by the latter on the basis of a letter of guarantee supplied by the former. In this way, third parties receiving such a clean Bill of Lading would be misled with regard to the state of the goods covered by such Bill of Lading. The Sub-Committee was unanimous in its decision that every effort should be made to prevent this practice. The Sub-Committee agreed to submit the following proposals to the UNCITRAL Working Group for their consideration as reflecting the views of the Sub-Committee.

(1) Where a carrier makes an incorrect statement in terms of Article 3(3) that goods are shipped in apparent good order or condition, or to the like effect, the carrier, shall be liable to any person who might reasonably be contemplated as likely to rely on the correctness of such statement in respect of any loss or damage suffered by him as a result of such reliance.

(2) In any action brought in respect of an alleged incorrect statement, the burden of proof shall be on the claimant to establish.

(a) that it could have been reasonably contemplated that he would rely on the incorrect statement, and.

(b) that loss or damage has resulted to him by such reliance.

(3) In any such action, if the allegation that the statement was incorrect is denied by the carrier, the burden of proof shall be on him to prove the correctness of such statement.

(4) In any such action, the carrier shall in any event not be liable if he proves that he, his servants and agents

took all reasonable measures to ensure the correctness of such statement.

(5) Where the carrier makes such an incorrect statement in return for a promise or agreement by any person that the carrier shall be indemnified against loss resulting to the carrier from the making of such statement, such promise or agreement shall be of no force or avail in law.

13. *The legal effect of the Bill of Lading in protecting the good faith purchaser of the Bill of Lading*

The question discussed by the Sub-Committee was whether the convention should, in addition to Article 3(4) as amended by Article 1(1) of the Protocol of 1968, include additional provisions with respect to the rights of good faith purchaser of negotiable documents of title. The Sub-Committee agreed that there would, in principle, be no objection to increasing the protection given to them since this would facilitate international trade agreements.

The Sub-Committee decided to submit the following proposals for the consideration of the UNCITRAL Working Group :

(1) That, where bills are issued in a set, the one intended to be negotiated should be marked negotiable, and the others non-negotiable. This would prevent fraud on third parties, as at present each bill in the set is negotiable.

(2) That the carrier should be at liberty to deliver the goods only to the holder of the negotiable copy, and that such delivery should constitute a good discharge.

(3) That liens, rights or charges in respect of the goods claimed as existing between carrier and shipper during shipment be marked on the document of title.

(4) That the notation (such as "or order") which confers the status of negotiability should be standardised.

INTERNATIONAL COMMERCIAL ARBITRATION

1. The Sub-Committee was of the view that developing countries with their increasing trade and commercial activities now considered the question of international commercial arbitration as a matter of great importance. It was observed that in America and in Europe, institutional arbitration was well developed while in the developing countries of Asia and Africa, institutional arbitration was less developed and that effort should be made by these member states to develop institutional arbitration so that the flow of arbitration to countries in Europe and America could be reduced. It was also observed that while a regional arbitral institution had been created for the Asian region under the auspices of ECAFE, there was no parallel institution for the African region. The Sub-Committee was of the view that an effort should be made to develop such an institution to serve the African region.

2. The Sub-Committee believed that contracts entered into by developing countries either with developed countries or private foreign firms belonging to developed countries often contained provisions providing for settlement of disputes by arbitration. However, in view of the fact that developing countries were often in an inferior bargaining position, the arbitration clauses contained in these agreements often worked unfavourably to the interests of developing countries. This pattern was seen partioularly in regard to the fixation of the venue of arbitration. The venue of arbitration was important for several reasons. Thus the principles of private international law that applied to arbitration were dependent on the venue. Again, acute foreign exchange difficulties common to most developing countries made it difficult for such countries to afford proper legal representation at foreign venues. The Sub-Committee was also of the view that on balance it was

preferable that the venue should be decided by the parties to the agreement at the time that the agreement was entered into, for the reason that relations between parties at that time could be expected to be cordial. It was also agreed by the Sub-Committee that the venue of an arbitration should be decided with reference to the possible subject matter of arbitration. The availability of witnesses, the cost of arbitration, and the question of the enforceability of the award were all matters to be taken into account in determining the venue of an arbitration.

3. The Sub-Committee was of the view that the principles governing the law of arbitration should be, as far as possible, uniform and that all attempts should be made towards achieving this goal. The observation of some members of the Sub-Committee disclosed that the arbitral laws of their respective countries bore striking similarities in some respects.

4. The Sub-Committee also discussed the question as to whether it would be better to create an institution for international commercial arbitration under the auspices of the United Nations or whether it would be more effective if such an institution was created by corporation between the respective trade chambers of these countries. The Sub-Committee was of the view, that, since the matter of international commercial arbitration was one which intimately concerned the commercial community, and since those involved in it would prefer to keep their problems within the closed framework of the commercial world, it would be preferable that such an institution should be created under the auspices of their respective commercial organisations.

5. On the question of the constitution of an ad hoc arbitral tribunal, the Sub-Committee was of the view that the most desirable method was that each party to the arbitration should have a right to have his nominee as an arbitrator, and that a third person should be nominated, in the case of ad hoc arbitration, by the nominee arbitrators or by a third person, and in the case of institutional arbitration by the institution. The Sub-Committee was also of the view that it was not suitable to

perpetuate the system of having a referee whose function it was to agree with one of the two members of the tribunal in case there was disagreement between them. The Sub-Committee was of the view that the third arbitrator so appointed should have the discretion to decide the matter before him independently without reference to the views taken by the other two arbitrators.

6. With regard to the applicable law to determine the rights and obligations of the parties under the contract which was the subject matter of arbitration, the Sub-Committee was of the view that this should be left to the parties to decide for themselves at the time the contract was entered into. Failing such agreement, the applicable law should be determined by the conflicts rules prevailing at the venue of arbitration.

7. On the question of procedure in arbitration, the Sub-Committee was of the view that there should be minimum procedural standards which were essential for the fair and efficient conduct of an arbitration.

The minimum procedural standards agreed upon by the Sub-Committee were the following:

(a) A party should have adequate means and opportunity to present his case by proper legal representation before the tribunal.

(b) The arbitral tribunal should have adequate powers to enable it to make an effective investigation and adjudication.

(c) The arbitral tribunal should be under a duty to observe certain standards which tend to an impartial and equitable decision.

(d) A party should have an adequate opportunity of challenging the jurisdiction of the tribunal or challenging the arbitrators.

8. With regard to the finality of an arbitral award, the Sub-Committee was of the view that it should be subject to the

supervisory jurisdiction of the Courts of Law before which it could be challenged by a party to the arbitration dissatisfied with the award. But it was also agreed that jurisdiction should be exercised only in limited circumstances, such as where the arbitrators had acted without jurisdiction, or where the award was manifestly incorrect.

9. The Sub-Committee also considered the question of the enforcement of foreign arbitral awards. However, in view of the fact that this matter is at present dealt with by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards made in New York on 10th June, 1958, and that the General Assembly had unanimously recommended the wider acceptance of this Convention, the Sub-Committee did not feel that the matter required extensive consideration. The Sub-Committee was also of the view that States which had not yet acceded to the Convention should do so without delay.

10. The Sub-Committee expressed its appreciation of the work of UNCITRAL in the development and improvement of the various aspects of international trade law, and its indebtedness to the observer from the UNCITRAL Secretariat, Prof. K. Sono, for his assistance to the Sub-Committee. The Sub-Committee also thanked Mr. M. Van Hoogstraten, the Observer from the Hague Conference on Private International Law for his help at its deliberations.