REPORT OF THE SIXTEENTH SESSION

TEHRAN

26th January to 2nd February, 1975

ASIAN - AFRICAN
LEGAL
CONSULTATIVE COMMITTEE

REPORT OF THE SIXTEENTH SESSION

Held in Tehran

From 26th January to 2nd February, 1975

THE SECRETARIAT OF THE COMMITTEE
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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, Libya, Malaysia, Mauritius, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Sierra Leone, Singapore, Somalia, Sri Lanka, Syrian Arab Republic, Tanzania, Thailand, Turkey and Yemen Arab Republic.

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

*September 1976

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), fifteenth in Tokyo (1974) and the sixteenth in Tehran from 26th January to 2nd February 1975.

Office-bearers of the Committee and its Secretariat

During the sixteenth session of the Committee held in Tehran, the Committee elected H.E. Dr. Ezzedin Kazemi, Leader of the Delegation of Iran, and Mr. S.K.O' Brien Coker, Leader of the Delegation of the Gambia, respectively as the President and Vice-President of the Committee for the year 1975-76. The Secretary-General of the Committee, Mr. B. Sen was unanimously re-elected for a further term of three years commencing April 1975.

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 Asssistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and as part of that programme it has sponsored a training scheme which may be availed of by officials of Asian and African governments.

The Committee is empowered under its Statutory Rules to 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 to 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 £ 1,100 (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 nineteen 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", "International Commercial Arbitration", 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), Tokyo (1974) and Tehran (1975) 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 so as to be able to project a common stand point at 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 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 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	H.E. Dr. Ezzedin Kazemi (Iran)
Vice-President	Mr. S.K. O'Brien Coker (The Gambia)
Secretary-General	Mr. B. Sen
Deputy Secretary-General	Mr. K. Furusawa

Sub-Committee of the Whole on the Law of the Sea

Chairman	Hon. Mr. E.N. Moore (Ghana)
Rapporteur	Dr. S.P. Jagota (India)

Sub-Committee on the Trade Law Subjects

Chairman	H.E. Mr. Hussain Mohamed Zaki (Egypt)
Rapporteur	Mr. Abdul Aziz bin Mohamed (Malaysia)

DELEGATES OF PARTICIPATING COUNTRIES AND OBSERVERS ATTENDING THE SIXTEENTH SESSION

A. DELEGATIONS OF MEMBER AND ASSOCIATE MEMBER GOVERNMENTS

THE ARAB REPUBLIC OF EGYPT

Member (Leader of Delegation)	H.E. Mr. Gamal Sadek El-Marsafawy, President of the Cour de Cassation
Alternate Member	H.E. Mr. Hussein Zaki President, Court of Appeal of Cairo
Adviser	H.E. Mr. Mohamed M. Hassan Counsellor in the State Council
Adviser	Mr. Ibrahim Youssri Counsellor, Ministry of Foreign Affairs
Adviser	Mr. Amr Mohamed Abbas Zaki First Secretary, Embassy of the Arab Republic of Egypt in Tehran

BANGLADESH

Member (Leader of Delegation)	H.E. Mr. Faqueer Shahabuddin Ahmad Attorney-General

Alternate Member	Mr. Mohammed Habib Rahman Secretary, Ministry of Law and Parliamentary Affairs
Adviser	Mr. Harunur Rashid Legal Adviser/Director General, Ministry of Foreign Affairs

DEMOCRATIC PEOPLE'S
REPUBLIC OF KOREA

Member (Leader of Delegation)	H.E. Mr. O. Man Sok Adviser, Ministry of Foreign Affairs
Alternate Member	Mr. Jo Myong Hwang Deputy Director, Ministry of Foreign Affairs
Adviser	Mr. Kim Song Mun Specialist, Ministry of Foreign Affairs
Adviser	Mr. Jang Mun Son Specialist, Ministry of Foreign Affairs
Adviser	Mr. Kim Chang Guk Specialist, Ministry of Foreign Affairs
Adviser	Mr. Song Ung Rok Specialist, Ministry of Foreign Affairs

GHANA

Member (Leader of Delegation)	The Hon. Mr. E.N. Moore Commissioner for Justice and Attorney-General

Alternate Member	Mr. W.W.K. Vanderpuye Supervising Director, Legal Department, Ministry of Foreign Affairs
Adviser	Mr. C.K.A. Anson Senior State Attorney
Adviser	Mr. G. Nikoi Senior State Attorney

INDIA

Member (Leader of Delegation)	The Hon. Mr. Niren De Attorney-General
Alternate Member	Dr. S.P. Jagota Joint Secretary & Legal Adviser, Ministry of External Affairs
Adviser	Mr. Prakash Shah Counsellor, Embassy of India in Tehran
Adviser	Mr. G.S. Raju Assistant Legal Adviser, Ministry of External Affairs

INDONESIA

Member (Leader of Delegation)	H.E. Mr. Suffri Jusuf Head of the Legal Directorate, Department of Foreign Affairs
Alternate Member	Dr. Hasjim Djalal Minister Counsellor, Embassy of Indonesia in Singapore
Adviser	Mr. Bagus Soegito Embassy of Indonesia in Tehran

Adviser	Prof. Dr. Sudargo Gautama Faculty of Law, University of Indonesia and University of Padjadjaran
Adviser	Mr. Witjakasana Soegarda Legal Directorate, Department of Foreign Affairs
Adviser	Mr. Susanto Ismodirdjo Embassy of Indonesia in Tehran

IRAN

Member (Leader of Delegation)	H.E. Dr. Ezzedin Kazemi Head of Legal Department, Ministry of Foreign Affairs
Alternate Member	Mr. Morteza Mohseni Director-General, Research and Studies Department, Ministry of Justice
Alternate Member	Mr. Mohamed-Amine Kardan Legal Department, Ministry of Foreign Affairs
Alternate Member	Mr. Hadi Sadeghi Legal Department, Ministry of Foreign Affairs
Alternate Member	Mr. Hormoz Shah-Panahi Imperial Embassy of Iran in New Delhi
Adviser	Mr. Mohammed Ali Movahad Senior Legal Adviser to the National Iranian Oil Company
Adviser	Mr. Mansoor Saghri Professor at the University of Tehran

Adviser	Mr. Jamshid Momtaz Assistant Professor, University of Tehran

IRAQ

Member (Leader of Delegation)	H.E. Mr. Madhat Ibraheem Jumah Ambassador to Iran
Alternate Member	Dr. Riad Al-Quissi Ministry of Foreign Affairs
Alternate Member	Dr. Akram Al-Witri Senior Legal Adviser, Ministry of Justice
Adviser	Mrs. Nimat Al-Nakib Legal Adviser, Iraq National Oil Co.
Adviser	Mr. Abdul Halim Abdul Hameed Jawad Legal Adviser, Iraq Ports Administration
Adviser	Dr. Thabit Bakr N. al-Farisi Legal Adviser, Ministry of Economics
Adviser	Dr. Basim al-Ani Fishery Expert, Ministry of Agriculture and Agrarian Reform

JAPAN

Member (Leader of Delegation)	H.E. Dr. Michitoshi Takahashi
Special Adviser	H.E. Mr. Motoo Ogiso Ambassador at the Foreign Office

Alternate Member	Dr. Shigeru Oda Professor, Tohoku University
Adviser	Mr. Akira Takakuwa Counsellor, Civil Affairs Bureau, Ministry of Justice
Adviser	Mr. Akira Sugino First Secretary, Embassy of Japan in New Delhi
Adviser	Mr. Tadayuki Sugimoto Officer, Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs

JORDAN

Member (Leader of Delegation)	Hon. Mr. Adel Medanat Judge
Alternate Member	Hon. Mr. Fayez Mobayezin Judge

KENYA — *Not Represented*

KUWAIT

Member (Leader of Delegation)	Mr. Mohamed Abu El-Hassan Embassy of Kuwait in Tehran

MALAYSIA

Member (Leader of Delegation)	Tan Sri Dato Haji Mohd. Salleh bin Abas Solicitor-General of Malaysia

Alternate Member	Mr. Lal Chand Vohrah Senior Federal Counsel, Attorney General's Chambers
Adviser	Mr. Abdul Aziz bin Mohamed Assistant Parliamentary Draftsman, Attorney General's Chambers

NEPAL

Member (Leader of Delegation)	Mr. Churamani Raj Sinha Malla Secretary, Ministry of Law and Justice
Alternate Member	Dr. Nidhendra Raj Sharma Acting Joint Secretary, Ministry of Commerce

NIGERIA

Member (Leader of Delegation)	Mr. Howard Fynn David-West Legal Adviser
Alternate Member	Miss Margaret Aguta Senior State Counsel
Adviser	Mr. Thompson I. Adesalu Senior State Counsel
Adviser	Mr. Mark N. Eze Nigerian High Commission in New Delhi

PAKISTAN

Member (Leader of Delegation)	Mr. A.G. Chaudhary Legal Adviser/Joint Secretary, Ministry of Foreign Affairs
Alternate Member	Mr. Shahid Rahman Second Secretary, Ministry of Foreign Affairs

PHILIPPINES

Member (Leader of Delegation)	H.E. Mr. Alejandro D. Yango Ambassador, Deputy Permanent Representative of the Philippines to the United Nations
Alternate Member	Mr. Juan A. Ona Charge d' Affaires a.i., Embassy of the Philippines in Tehran

REPUBLIC OF KOREA

Member (Leader of Delegation)	Mr. Won Ho Lee Minister, Embassy of the Republic of Korea in New Delhi
Alternate Member	Mr. Dong Yoon Lee Counsellor, Embassy of the Republic of Korea in New Delhi
Adviser	Mr. Suk Woo Kim Treaties Bureau, Ministry of Foreign Affairs

SIERRA LEONE

Member (Leader of Delegation)	The Hon. Mr. Nathaniel Abioseh Palmerston Buck Attorney General and Minister of Justice
Alternate Member	Mr. P.P.C. Boston Principal State Counsel

SINGAPORE

Member (Leader of Delegation)	Mr. Boon Kong Lawrence Ang State Counsel and Deputy Public Prosecutor

SRI LANKA

Member (Leader of Delegation)	Hon. Mr. Rajah S. Wanasundera Acting Attorney-General
Alternate Member	Mr. Priyalal H. Kurukulasuriya Assistant Legal Adviser, Ministry of Defence & Foreign Affairs

SYRIA

Member (Leader of Delegation)	H.E. Mr. Ali Mouhsen Zeifa Ambassador of Syria to Iran

TANZANIA

Member (Leader of Delegation)	Mr. Elli E.E. Mtango Embassy of Tanzania in Peking
Alternate Member	Mr. S.A. Mbenna High Commission of Tanzania in New Delhi

THAILAND

Member (Leader of Delegation)	H.E. Dr. Arun Panupong Ambassador of Thailand in U.S.S.R.
Alternate Member	Dr. Sawahd Vongsnara Treaty and Legal Department, Ministry of Foreign Affairs
Adviser	Mr. Thaitherd Kraichok Royal Thai Embassy in Tehran

THE GAMBIA

Member (Leader of Delegation)	Mr. S.K.O' Brien Coker Solicitor-General

TURKEY

Member (Leader of Delegation)	H.E. Mr. Namik Yolga Senior Adviser, Ministry of Foreign Affairs
Alternate Member	Mr. Selim Kuneralp Ministry of Foreign Affairs

ASSOCIATE MEMBERS

BOTSWANA	*Not Represented*
MAURITIUS	
Associate Member	Mr. Louis Edwin Venchard, Q.C. Solicitor-General

B. OBSERVERS REPRESENTING ASIAN-AFRICAN STATES

AFGHANISTAN	Mr. Abdul Aziz Wadan Embassy of Afghanistan in Tehran
ALGERIA	Mr. Mohamad Medjad Directeur des Affaires Juridique et Consultatives, Ministry of Foreign Affairs
BAHREIN	Mr. Essa Aljamea First Secretary, Embassy of Bahrein in Tehran
CYPRUS	Mr. Elias Ipsarides Director of Political and Legal Division, Ministry of Foreign Affairs
LESOTHO	H.E. Mr. Mooki V. Molapo, Ambassador of Lesotho in Iran

IVORY COAST	Mr. Jenry Kone Charge de Mission, Secretariat d' Etat Charge de la Marine
	Mr. Paul Ahui Director des Mines et de la Geologie, Secretariat d' Etat Charge des Mines
	Mr. Etienne Ezo Secretaire des Affaires Etrangeres, Ministere des Affaires Etrangeres
	Mrs. J Guede-Ocrisse, Chargee d' etudes Ministere du Commerce
MONGOLIA	Mr. M.G. Nyamdo Head of the Legal Department, Ministry of Foreign Affairs
OMAN	Mr. Nazar Mohamed Ali Director of the Department of International Organisations and Conferences, Ministry of Foreign Affairs
	Mr. Hamed Nasser Altoobi Third Secretary, Legal Department, Ministry of Foreign Affairs
	Mr. Peter T. de Koszmovszky (Adviser to Oman Delegation during this Session)
	Mr. Rashid Al-Khambshi Second Secretary, Oman Embassy in Tehran

QATAR	Mr. Ali Meftah First Secretary, Embassy of Qatar in Tehran
SAUDI ARABIA	Mr. Mohamed Abdul Wali Saudi Arabian Embassy in Tehran
SENEGAL	H.E. Mr. Massamba Sarre Ambassador of Senegal in Iran
	Mr. Cisse Embassy of Senegal in Iran
SOMALI DEMOCRATIC REPUBLIC	Hon. Mr. Yusuf Elmi Robleh President, Court of Appeal
	Mr. Abdirahman Sheikh Mohamed Legal Adviser to the Government
	Mr. Abdul-Qawi Ahmed Yousuf Lecturer, Faculty of Law, National University
SUDAN	Mr. Faouk Abdel Rahman Minister, Embassy of Sudan in Tehran
UNITED ARAB EMIRATES	Mr. Saeed Saqat Ministry of Foreign Affairs
ZAMBIA	Mr. C.L.C. Mubanga-Chipoya International Law Lawyer, Attorney-General's Chambers
	Mr. Eric J. Langevad Commissioner for Mines, Ministry of Mines and Industry

C. OBSERVERS REPRESENTING INTER-GOVERNMENTAL ORGANISATIONS

UNITED NATIONS	H.E. Mr. Bernardo Zuleta Under Secretary-General, Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea
INTERNATIONAL LAW COMMISSION	H.E. Dr. Endre Ustor Chairman, International Law Commission
LEAGUE OF ARAB STATES	Dr. Ibrahim Hag Mousa Director, Legal Department
UNITED NATIONS FOOD & AGRICULTURE ORGANISATION	Mr. Jean Emile Carroz Principal Legal Officer, International Fisheries Division
COMMONWEALTH SECRETARIAT	Mr. David W. Sagar Special Adviser (Legal), Commonwealth Fund for Technical Co-operation
INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANISATION (U.N.)	Mr. Thomas A. Mensah Director, Legal Division
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Mr. John P. Dietz International Trade Law Branch, United Nations Secretariat

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)	Mr. Mario Matteucci Secretary-General
UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)	Dr. Hassan O. Ahmed Legal Adviser of the UNEP

D. SPECIAL INVITEE

H.E. Mr. Necmettin Tuncel
Ambassador of Turkey in Lebanon

E. OBSERVERS REPRESENTING GOVERNMENTS OF STATES OUTSIDE THE ASIAN-AFRICAN REGION

ARGENTINA	Mr. Roberto Garcia-Moritan Charge d' Affaires, Embassy of Argentina in Tehran
AUSTRALIA	Mr. Richard J. Smith Assistant Secretary, International Legal Branch, Department of Foreign Affairs
	Mr. Gerard Brennan Special Adviser on International Law Attorney-General's Department
AUSTRIA	Dr. Wilfried Almoslechner First Secretary, Embassy of Austria in Tehran
BULGARIA	Mr. Petar Valkanov Counsellor, Embassy of Bulgaria in Tehran

CANADA	Mr. Robert Auger Legal Operations Division, Department of External Affairs
CHILE	Mr. Cesar Correa Counsellor, Embassy of Chile in Tehran
CZECHOSLOVAKIA	H.E. Dr. Vladimir Polacek Ambassador of the Czechoslovak Socialist Republic in Tehran
	Dr. Michal Ondus Counsellor, Embassy of the Czechoslovak Socialist Republic in Tehran
DENMARK	Mr. Hans Kingenberg
ECUADOR	H.E. Mr. Jose Ayala Lasso Ambassador, Director-General of National Sovereignty, Ministry of Foreign Affairs
	Capt. Marco A. Leon, Adviser, Ministry of Defence
FINLAND	Mr. Paul Gustaffson Minister-Director, Ministry of Foreign Affairs and Chairman of the Finnish Delegation to the U.N. Conference on the Law of the Sea
	Mr. Timo Lahelma Attache, Ministry of Foreign Affairs
GREECE	Mr. Kyriakos Rodoussakis Charge d' Affaires, Embassy of Greece in Tehran

FEDERAL REPUBLIC OF GERMANY	Dr. Peter Plischka Embassy of the Federal Republic of Germany in Tehran
GERMAN DEMOCRATIC REPUBLIC	H.E. Mr. Ferdinand Thun Ambassador of the German Democratic Republic in Tehran
	Mr. Roland Herbert Embassy of the German Democratic Republic in Tehran
HUNGARY	H.E. Mr. Balint Gal Ambassador of Hungary in Iran
	Mr. Istavan Venezel Embassy of Hungary in Iran
NETHERLANDS	Dr. Gerard Van Vloten Charge d' Affairs a.i., Embassy of the Netherlands in Tehran
NEW ZEALAND	Mr. Edward Richard Woods First Secretary, Embassy of the New Zealand in Tehran
NORWAY	Mr. Odvar Mosnesset Head of Division, Ministry of Foreign Affairs
	Mr. I. Selbyg Attache, Norwegian Embassy in Tehran
PERU	H.E. Dr. Rene Hooper Lopez Ambassador of Peru in India and Iran
	H.E. Mr. Alfonso Arias Schreiber Adviser for Maritime Affairs

POLAND	Dr. Andrezj Olszowka Chief of the Division of Public International Law, Ministry of Foreign Affairs
	Mr. Andrezj Makarewicz, Counsellor, Embassy of the Polish People's Republic in Tehran
ROMANIA	H.E. Mr. Boaba Alexandru Ambassador of Romania in Tehran
	Mr. P. Constantin, Embassy of Romania in Tehran
SPAIN	Mr. Juan Antonio Yanez-Barnuevo Legal Department, Ministry of Foreign Affairs
SWEDEN	Mr. Ian E. Paulsson
UNITED KINGDOM	Mr. Henry A. Dudgeon Deputy Leader of the U.K. Delegation to the United Nations Conference on the Law of the Sea
U.S.A.	Mr. Bernard H. Oxman Vice-Chairman of the International Security Council, Inter-Agency Task Force on the Law of the Sea
U.S.S.R.	Mr. Felix N. Kovalev Deputy Head of the Legal and Treaties Department
	Mr. Anatoli Chandirov
YUGOSLAVIA	Dr. Dobrivoje Dimkovsky Embassy of Yugoslavia in Tehran

III. AGENDA OF THE SIXTEENTH SESSION

I. Organisational Matters

1. Adoption of the Agenda.
2. Election of Officers.
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 Seventeenth 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

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. *Environmental Law* (for preliminary discussion)

(Taken up by the Committee at the suggestion of the Government of India).

2. *General Conditions of Sale ; Model or Standard Contracts in International Sale of Goods*

   (Taken up by the Committee at its Accra Session as arising out of the work of the UNCITRAL).

3. *International Commercial Arbitration*

   (Taken up by the Committee at its Accra Session as arising out of the work of the UNCITRAL).

4. *International Shipping Legislation* (*Bills of Lading*)

   (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

The subject "The Law of the Sea including questions relating to Sea-Bed and Ocean Floor" was referred to the Asian-African Legal Consultative Committee for consideration by the Government of Indonesia under Article 3(b) of the Committee's Statutes. Having regard to the developments in the field which had taken place by reason of technological advances and evolution of new legal norms since the two Geneva Conferences on the Law of the Sea held in 1958 and 1960 and the proposal for convening of a Third U.N. Conference on the Law of the Sea, the Committee at its Accra Session held in 1970 decided to include the subject as a priority item on the agenda of its next session. The Committee's decision was primarily motivated by the consideration of assisting member governments of the Committee to prepare themselves for the then proposed U.N. Conference and also to enable them to have an exchange of views on important issues prior to the holding of the Conference. The Committee at the same time decided that similar assistance should be offered also to non-member Asian-African Governments following upon the role it had played in connection with the preparation for the Law of Treaties Conference.

Prior to the Tehran Session (1975), the Committee had discussed in sufficient detail important issues on the subject in four of its regular sessions held in Colombo, Lagos, New Delhi and Tokyo during 1971, 1972, 1973 and 1974 respectively. In addition, a Sub-Committee of the Whole, consisting of the entire membership, had met during these sessions and also had three inter-sessional meetings in Geneva during the summer of 1971, 1972 and 1973 in order to give detailed consideration to several issues of importance to the countries in the Asian-African region. The Committee had also established a Working Group composed of seven representatives as well as a Special Study Group on Land-Locked States. These groups held meetings during inter-sessional periods and their reports were

considered by the Sub-Committee of the Whole and by the Committee at its regular sessions.

In addition to the representatives of member governments, a large number of non-member Asian-African States were represented at the Committee's sessions and Sub-Committee meetings on invitation and participated in the discussions. The representatives of States outside the region, both developed and developing, as also international organisations from all over the world were also allowed to participate in the plenary sessions of the Committee in order to enable the member governments of the Committee to have the benefit of the views of those governments reflected in the Committee's deliberations. This was considered desirable having regard to the fact that in preparing for the Third Law of the Sea Conference the member governments of the Committee and other Asian-African governments would as of necessity have to take note of the various viewpoints and interests.

The work of the Committee during the period of four years ending with the Tokyo Session (1974) had closely followed the programme of work of the U.N. Sea-Bed Committee which had been functioning as a preparatory Committee for the Third Law of the Sea Conference. In fact, several proposals introduced in the U.N. Sea-Bed Committee have their origin in the discussions in this Committee. Voluminous material and documentation had been collected and prepared by the Committee's Secretariat with a view to acquainting the member governments with the problems involved, their background and other relevant information. Apart from general exchange of views on preparatory work for the Third Law of the Sea Conference, both substantive and procedural, the Committee's work had been concentrated primarily on ten topics, namely (i) Territorial Sea ; (ii) Continental Shelf ; (iii) Straits ; (iv) Archipelagos ; (v) Fisheries ; (vi) Exclusive Economic Zone ; (vii) Rights and Interests of Land-locked States ; (viii) Marine Pollution ; (ix) International Regime for the Sea-Bed and International Machinery ; (x) Regional Arrangements. On each of these topics the Committee's Secretariat had prepared comprehensive studies containing introductory notes as also notes on the general background and development in relation to the topic, comparative analysis of the various proposals presented to the U.N. Sea-Bed Committee, summary of the views expressed by the various Delegations before the U.N. Sea-Bed Committee and the Asian-African Legal Consultative Committee, extracts from relevant proclamations, national legislations, treaties and agreements including opinions of jurists. Due note was also taken of the decisions taken and deliberations held at the various other forums, both governmental and non-governmental as they contained formulations of governmental policy at the highest level.

The first phase of the Committee's work with regard to this subject may be said to have been concluded with the preparation of documentation and the exchange of views that had taken place during the four-year period ending with the Tokyo Session held in January 1974. The next phase of the work on this subject in which this Committee has been called upon to assist is to analyse the work of the Third Law of the Sea Conference at its various sessions, to identify broad areas of agreement that have emerged at those sessions and to attempt possible solutions where differences exist.

The Tehran Session of the Committee was held after the Caracas Session of the Third Law of the Sea Conference and just on the eve of the Geneva Session of the Conference. Consequently, the main work of the Committee at this session was to evaluate the work done at the Caracas Session and to discuss issues where further clarifications and consultations were necessary preparatory to the Geneva meeting of the U.N. Conference. The topics discussed in detail at the Tehran Session were the following :

(i) Economic Zone/Patrimonial Sea ;

(ii) Continental Shelf ;

(iii) Regime of Archipelagos ;

(iv) Limits for National Jurisdictional Zones ;

(v) Special Regime for States bordering enclosed or semi-enclosed seas ; and

(vi) Regime of Islands.

(ii) SHORT NOTES AND TENTATIVE DRAFT PROPOSITIONS ON THE TOPICS RELATING TO LAW OF THE SEA TO SERVE AS AN AID TO DISCUSSIONS

(Prepared by the Secretariat of the Committee)

Exclusive Economic Zone

The discussion on this subject was originally initiated in this Committee at its Colombo Session in 1971 by the Kenyan delegate, Mr. Njenga, and thereafter continued at its Lagos Session in 1972 as also in inter-sessional meetings during 1971 and 1972. The Kenyan proposal received wide support within this Committee and a set of Draft Articles on the subject was introduced as the Kenyan proposal before the U.N. Sea-Bed Committee (A/AC.138/SC.II/L.23) in July 1972.

In the meantime an African Regional Seminar on the Law of the Sea, which met in Yaounde during June, 1972, endorsed the concept and subsequently in May 1973 the O.A.U. Declaration on the issue of the Law of the Sea, adopted by the Council of Ministers, gave official recognition to the right of each coastal State to establish an exclusive economic zone beyond its territorial sea upto a limit of 200 nautical miles. This was followed by the introduction of the Draft Articles on Exclusive Economic Zone by 14 African States before the U.N. Sea-Bed Committee (A/AC.138/SC.II/L.40). On June 7, 1972 the declaration made by the Foreign Ministers of Caribbean States, known as the Santo Domingo Declaration, recognised certain rights of coastal States in an area adjacent to the territorial sea to be called the patrimonial sea which is similar to the concept of exclusive economic zone. The Fourth Summit Conference of Non-aligned Nations, held in Algiers, also gave endorsement to the proposal of establishment of economic zones.

Ten proposals and working papers introduced before the U.N. Sea-Bed Committee contained various provisions on this subject. These are (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 Paper 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). Certain proposals were introduced at the Caracas Session of the Third Law of the Sea Conference, namely, the Draft Articles on the Exclusive Economic Zone introduced by 17 African States (A/Conf.62/C.2/L.82); the Draft Articles introduced by Nigeria (A/Conf.62/C.2/L.21/Rev. 1); the Draft Articles for a Chapter on the Economic Zone and the Continental Shelf introduced by the United States of America (A/Conf.62/C.2/L.47); Draft Articles on the Regional Economic Zones introduced by Bolivia and Paraguay (A/Conf.62C.2/L.65); the Draft Articles on the Economic Zone introduced by a group of 6 Socialist States(A/Conf.62/C.2/L.38); the Draft Articles introduced by Jamaica (A/Conf.62/C.2/L.35); by Guyana (A/Conf.62/C.2/L.5); El Salvador (A/Conf.62/C.2/L.6); and the Working document submitted by Nicaragua on National Zone (A/Conf.62/C.2/L.17). The Second Committee at the Caracas Session had drawn up an Informal Working Paper on the basis of some of these proposals.

In the course of discussions at Caracas, in the U.N. Sea-Bed Committee, in the Asian-African Legal Consultative Committee and various other forums, six main questions appear to have been discussed. These are as follows: (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 ?

On the first question there appears to be a broad general agreement in the developing countries in favour of recognition of certain rights in an area of the sea beyond the territorial waters. 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 exceeding 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 rights 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 of 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 the States in the coastal sea-bed economic area.

The proposals introduced in Caracas also proceed on the same basis. (See, for example, Article I of the proposal of the 17 African States; Article I of the Nigerian proposal; Article I of the United States Draft ; Article I of the Bolivia-Paraguay Draft ; Article I of the Draft introduced by six Socialist States ; and Article I of the Guyana Draft).

On the second question, i.e., the extent of the economic zone, 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 II 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 Argentine Draft ; Article I of the proposal submitted by 14 African States ; and the proposal of Iceland). The Draft Articles presented by Argentina provides for 200 miles or such greater distance coincident with the epicontinental sea.

In the proposals introduced at Caracas the African States' Draft Articles provide that the extent of the zone shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea (Article I). Same is the position in the Socialist States' proposal (Article 3), the United States Draft Articles (Article 2), the Nigerian proposal (Article 1), the Bolivia-Paraguay Joint proposal (Article 1), the Guyana proposal (Article 1) and the Nicaragua proposal (Article 1).

On the third question, i.e., the nature and characteristics of the zone as also the rights to be enjoyed by coastal States in such zone, the Non-aligned Declaration stipulates that the purpose of establishment of a zone is for "exploiting natural resources and protecting the other connected 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 and non-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, Bolivia, 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)) ; 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 juriadiction 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 of Patrimonial Sea).

The proposals introduced at Caracas contain specific provisions in this matter. Articles II, III and IV of the African States' proposal contemplate exercise of sovereign rights over the living and non-living resources of the zone. Articles 1, 2, 5, 7 and 9 of the Socialist States proposal, Article 1 of the U.S. proposal and Article 2 of the Nigerian proposal contain the relevant provisions on this topic.

TENTATIVE DRAFT PROPOSITIONS

(To serve as an aid to discussions)

Article 1

Coastal States have the right to establish beyond their territorial sea an exclusive economic zone for the purposes set forth in this Convention.

Commentary

This article embodies the principle which is now generally recognised in all the developing countries about the right of a coastal State to establish an economic zone.

Article 2

The outer limit of the economic zone shall not extend beyond 200 miles to be measured from appropriate baselines for measuring the territorial sea.

Provided that within the maximum limit as aforesaid the limits of the economic zone shall be fixed by each State taking into account the relevant criteria concerning the resources of the region and the rights and interests of developing landlocked and other geographically disadvantaged States.

Commentary

This article is concerned with fixation of the limits of the economic zone. It is generally recognised in most of the proposals on this issue that the extent of the economic zone/ patrimonial sea shall not extend beyond 200 miles. However, some views were held that the limit could extend upto the end of the epicontinental sea even if the same extended beyond 200 miles. Another view was that the economic zone should be measured from the outer limit of the territorial sea. At the Caracas Session the majority, however, appeared to be in favour of fixation of the zone at the maximum limit of 200 miles to be measured from appropriate baseline for the territorial sea. Some views were also expressed that within this maximum limit the limits of the zone should be fixed on certain applicable regional criteria.

Article 3

The coastal State has sovereign and exclusive rights over the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters within the exclusive economic zone.

Commentary

This article sets out the nature and characteristics of the regime of the exclusive economic zone/patrimonial sea on the basis of the generally accepted position in the various proposals

before the U.N. Sea-Bed Committee and the Caracas Session of the Third United Nations Conference on the Law of the Sea.

Article 4

For the purpose of enjoyment of its sovereign rights over the natural resources of the economic zone the coastal State shall have the following rights and competences :

(a) exclusive right to explore and exploit renewable and non-renewable living and other natural resources of the sea, sea-bed and subsoil thereof ;

(b) exclusive right for the management, protection and conservation of the living resources of the sea taking into account the recommendations of the appropriate international or regional fisheries organisations ;

(c) exclusive right to enact laws and regulations to prevent damage by pollution to the natural resources taking into account the recommendations of the appropriate international or regional organisations ;

(d) exclusive jurisdiction to take measures to ensure compliance with its laws and regulations in respect to activities which are the subject matter of its sovereign or exclusive rights ;

(e) right to promote and regulate conduct of scientific research within the zone taking into account the recommendations of appropriate international and regional organisations.

A coastal State shall have the exclusive right to authorize and regulate in the exclusive economic zone, the continental shelf, ocean bed and subsoil thereof, the construction, emplacement, operation and use of off-shore artificial islands and other installations for purposes of the exploration and exploitation of the non-renewable resources thereof.

A coastal State may establish a reasonable area of safety zones around its off-shore artificial islands and other installations

in which it may take appropriate measures to ensure the safety both of its installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and functions of the installations.

The coastal State shall have the exclusive right to authorize and regulate drilling for all purposes in the economic zone.

Commentary

The provisions of this Article has been taken from several proposals before the Sea-Bed Committee and at the Caracas Session to spell out the scope and context of the sovereign rights of the coastal State.

Article 5

No State other than the coastal State shall explore or exploit the resources therein without obtaining permission from the coastal State on such terms as may be laid down in conformity with the laws and regulations of the coastal State.

Commentary

This Article emphasises what follows from the recognition of sovereign rights of the coastal State over the economic zone.

Article 6

Each State shall ensure that any exploration or exploitation activity within its economic zone is carried out exclusively for peaceful purposes and in such a manner as not to interfere unduly with the legitimate interests of other States in the region or those of the international community.

Commentary

This Article embodies the generally accepted positions and is the same as the text of Provision IV in Informal Working Paper No. 4/Rev. 1.

Article 7

In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign power administering or occupying that territory.

Commentary

This Article is the same as Formula B of Provision II in the Informal Working Paper No. 4/Rev. 1 which is taken from the proposal of 17 African States before the Caracas meeting.

Article 8

In the economic zone, ships and aircraft of all States, whether coastal or not, shall enjoy the right of freedom of navigation and overflight and the right to lay submarine cables and pipelines with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area.

Commentary

This article recognises the principles of freedom of navigation and overflight. The provisions of this Article is the same as in Formula A of Provision XI of the Informal Working Paper No. 4/Rev. 1.

Article 9

Nationals of a developing land-locked State and other geographically disadvantaged States shall enjoy the privilege to fish in the exclusive economic zones of the adjoining neighbouring coastal States. The modalities of the enjoyment of this

privilege and the area to which they relate shall be settled by agreement between the coastal State and the land-locked State concerned. The right to prescribe and enforce management measures in the area shall be with the coastal State.

Commentary

This Article is the same as Formula A of Provision VII in Informal Working Paper No. 4/Rev. 1.

Article 10

Commentary

An appropriate provision concerning the share of non-living resources by the nationals of land-locked and other geographically disadvantaged States would need to be discussed.

Article 11

Coastal States and land-locked and other geographically disadvantaged States within a region or subregion may enter into any arrangement for the establishment of regional or subregional ... zones with a view to giving effect to the provisions of Articles ... and ... on a collective basis.

Note: These draft propositions do not in any way reflect the viewpoint of the AALCC Secretariat but have been put forward to serve as an aid to discussion.

STRAITS USED FOR INTERNATIONAL NAVIGATION

One of the crucial issues 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 and in fact some of the major powers consider a satisfactory solution of the issue of straits as fundamental to any settlement on the question of the breadth of the territorial sea.

A strait, in the traditional sense for the purposes of international law, had been understood as forming a passage between two parts of the high seas. International Conventions such as the Lausanne Convention of 1923 and Montreux Convention of 1936 were generally concluded for the purpose of regulating the passage of ships through certain straits of special importance to international navigation. Today, the problem has become far more important because if a maximum breadth of twelve miles is recognised for the territorial sea, many of the straits used for international navigation which were hitherto considered as part of the high seas would fall within the territorial sea of one or more States and according to normal rules only innocent passage could be claimed through these straits.

Six proposals had been introduced on this topic before the Sea-Bed Committee, namely, the joint eight power proposal (A/AC.138/SC.II/L.48) and the proposals of Malta (A/AC. 138/SC.II/L.28), Italy (A/AC.138/SC.II/L.30), Poland (A/AC. 138/SC.II/L.49), U.S.A. (A/AC.138/SC.II/L.4) and the U.S.S.R. Draft Articles.

In addition to these certain other proposals were introduced before the Caracas Conference. These are the United Kingdom Draft Articles on the Territorial Sea and Straits (A/Conf.62/C.2/L.3), the amendment introduced by Denmark

and Finland to the said Draft Articles (A/Conf.62/C.2/L.15); the Draft Articles introduced by Spain (A/Conf.62/C.2/L.6); the Draft Articles of Oman (A/Conf.62/C.2/L.16); the joint proposals of Bulgaria, Czechoslovakia, G.D.R., Poland, Ukraine and U.S.S.R. (A/Conf.62/C.2/L.11); the proposal of Algeria (A/Conf.62/C.2/L.20); the joint proposal of Algeria and 8 other Arab States (A/Conf.62/C.2/L.44); the proposal of the Dominican Republic (A/Conf.62/C.2/L.59); and the Canadian Proposal (A/Conf.62/C.2/L.83).

The main questions which had been discussed in the various sessions of the Asian-African Committee are the following :—

(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 for 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.

At the Tokyo Session of the Committee held in January 1974 certain broad areas of agreement had appeared to have emerged which could be stated as under :—

(a) The matter of overflights should not form the subject-matter of any Convention on the Law of the Sea

which is to be regulated within the framework of the Chicago Convention or such other separate agreements or conventions as may be necessary.

(b) The convention on the Law of the Sea should only deal with the question of passage through straits in time of peace.

(c) The legitimate interests of coastal States in regulating transit through straits must be recognised and protected.

(d) Passage through straits should conform to the peace, good order and security interests of the coastal States.

Several other questions were discussed and views expressed thereon, but discussions could not be said to be conclusive on some of those issues. These are as follows :

(a) If the regime of innocent passage is accepted, should the regulations formulated by the coastal State be in accord with international standards so as not to impede or interfere with the passage at the discretion of the coastal State ?

(b) Whether straits should be classified with reference to their width or on the basis of straits which lie between the coasts of the same States or two or more States ?

(c) Should innocent passage be defined on the basis of categories of ship ? It may be stated that the general trend of thinking among the delegates who took part in the discussions was in favour of the regime of innocent passage, but in the absence of further detailed discusaions on the concept of innocent passage, it has not been possible to make out any broad areas of agreement in this regard.

TENTATIVF DRAFT PROPOSITIONS

(To serve as an aid to discussions)

Article 1

These Articles apply to a strait which connects two parts of the high seas or the high seas with the territorial waters of one or more foreign States and is ordinarily used for international navigation.

Commentary

This Article is intended to provide the definition of the term "strait" for the purposes of the regime provided for in these articles. A strait, as understood in the geographical sense, is a natural passage between land formations which connects two parts of the sea.

The suggested definition given above is based on the proposals made by Canada, Oman, the joint proposal of Algeria and eight other Arab States and the joint proposal of Bulgaria and other Socialist States before the Caracas Session of the Third United Nations Conference on the Law of the Sea. The definition given in the Canadian proposal (A/Conf.62/C.2/L.83) provides that an international strait is *a natural passage between land formations which lies within the territorial sea of one or more States in any point in its length* and has *traditionally been used for international navigation*. The proposal made by Oman (A/Conf.62/C.2/L.16) makes the articles applicable to "any strait used for international navigation and *forms part of the territorial sea of one or more States*". The Draft Articles proposed by Algeria and the other eight Arab States (A/Conf.62/C.2/L.44) define a "strait used for international navigation" as any strait connecting two parts of the high seas and customarily used for international navigation. The Bulgarian proposal (A/Conf.62/C.2/L.11) applies the provisions relating to regime on straits to those straits lying within the territorial sea of one or more States.

Article 1.3 of Chapter III of the United Kingdom draft on territorial sea and straits (A/Conf.62/C.2/L.3) contemplates

that the regime on straits should also apply to *other stretch of water* whatever its geographical name if it is used for international navigation and connects two parts of the high seas. It is doubtful if such an extended definition should be appropriate because such a definition would include even cases where two parts of the high seas are connected by a canal or other stretch of internal water. In the joint proposal of Denmark and Finland (A/Conf.62/C.2/L.15) the definition of a strait is substantially the same as in the British proposal but a differentiation is made between straits which are more than six miles wide and those which are less for the purpose of determining the nature of the passage through the strait. In respect of the former, the proposal contemplates *transit passage* and for the latter innocent passage. This is very similar to the Italian proposal before the Sea-Bed Committee (A/AC.138/SC.II/L.30).

Article 2

1. In the case of straits which form part of the territorial sea of one or more States or straits leading from the high seas to the territorial sea of one or more foreign States the regime of innocent passage shall apply for all ships.

2. There shall be no suspension of innocent passage through such straits.

Article 3

1. Passage of foreign merchant ships through straits shall be presumed to be innocent.

2. The costal State shall not hamper the innocent passage of foreign ships through the territorial sea in straits and shall make every effort to ensure speedy and expeditious passage ; in particular, it shall not discriminate, in form or in fact, against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.

3. The coastal State shall not place in navigational channels in a strait facilities, structures or devices of any kind which would hamper or obstruct the passage of ships through

such strait. The coastal State is required to give appropriate publicity to any obstacle or danger to navigation, of which it has knowledge, within the strait.

Article 4

The provisions of an Article to deal with the question of passage through straits connecting two parts of the high seas need to be further discussed.

Commentary

There appears to be three different sets of views in so far as the nature of the passage through straits used for international navigation is concerned. The draft articles introduced by the Group of 8 major "strait" States before the Sea-Bed Committee (A/AC.138/SC.II/L.18) as also the proposal of Fiji (A/AC.138/SC.II/L.42) proceed on the basis that navigation through the territorial sea and through straits used for international navigation should be dealt with as an entity where the strait forms part of the territorial seas and that the interests of the coastal States and general interests of international maritime navigation can be best balanced by adoption of the traditional regime of innocent passage. The proposal of Oman at the Caracas Session (A/Conf.62/C.2/L.16) contemplates the regime of innocent passage in straits which form part of the territorial sea of one or more States subject to certain conditions which are the same as Article 2.2, and Article 3 herein. The second view, which is held by all the major maritime powers, is that all ships shall enjoy transit passage through the straits, or in other words, the same freedom of navigation as they have in high seas subject, however, to certain exceptions. In this connection, the Draft Articles introduced by U.S.S.R. before the Sea-Bed Committee, Article II of the Draft Articles introduced by U.S.A. (A/AC.138/SC.II/L.4) may be seen. The British proposals at Caracas (A/Conf.62/C.2/W) were also to the same effect. The third view, which has been put forward by Italy (A/AC.138/SC.II/L.) and jointly by Denmark and Finland (A/Conf.62/C.2/L.15) contemplates that in straits which are less than six miles in width the regime of innocent

passage should apply whilst in other straits which are wider transit passage should prevail. This proposal aims at a sort of status quo because even on the basis of a three mile territorial sea in straits which are no more than 6 miles in width nothing more than innocent passage is claimed.

Article 5

The right of free transit through straits connecting two parts of the high seas would continue to be recognised where the transit passage does not involve entering the territorial sea of one or more States bordering the strait.

Commentary

This Article is intended to clarify the position that in the part of a strait where the waters have the character of the high seas, the concept of freedom of navigation through such waters is not by any means impeded.

Article 6

Part–A

The provisions of these articles shall not in any way affect conventions or other international agreements relating to particular straits.

Part–B

In cases where free transit through straits is accorded the principles applicable will be the following:

x x x x x x x x x

Article 7

Ships in transit

(a) Shall proceed without delay through the strait and shall not engage in any activities other than those incidental to their normal modes of transit.

(b) Shall not cause any threat to the security of the coastal States of the straits, or to their territorial inviolability or

political independence or act in any manner whatsoever in violation of the provisions of the United Nations Charter.

(c) Shall comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for preventing collisions at Sea.

(d) Shall take all precautionary measures to avoid causing pollution of the waters and coasts of the straits, or any other kind of damage to the coastal States of the straits. Supertankers in transit through the straits shall take special precautionary measures to ensure the safety of navigation and to avoid causing pollution.

Commentary

This Article is based on Provision V of the Informal Working Paper No. 2 issued by the Second Committee at the Caracas Session. The above propositions are taken partly from Formula A and partly from Formula B which contain the United Kingdom and Eight-Power Socialist proposals respectively.

Article 8

1. In conformity with this Chapter, a strait State may designate sea-lanes and prescribe traffic separation schemes for navigation in the straits where necessary to promote the safe passage of ships.

2. A strait State may, when circumstances require and after giving due publicity to its decision, substitute other sea-lanes or traffic separation schemes for any previously designated or prescribed by it.

3. Before designating sea-lanes or prescribing traffic separation schemes, a strait State shall refer proposals to the competent international organization and shall designate such sea-lanes or prescribe such separation schemes only as approved by that organisation.

4. The strait State shall clearly indicate all sea-lanes and separation schemes designated or prescribed by it on charts to which due publicity shall be given.

5. Ships in transit shall respect applicable sea-lanes and separation schemes established in accordance with this Article.

Commentary

This Article is in identical terms with Formula 'A' of Provision VI in Informal Working Paper No. 2 of the Second Committee and is based on the United Kingdom proposals.

Article 9

A strait State shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or over-flight within or over the strait of which it has knowledge. There shall be no suspension of transit passage.

Commentary

The text of this Article is identical with the provisions of Formula 'A' of Provision VII in the Informal Working Paper and is based on the United Kingdom proposal.

Article 10

1. Subject to the provisions of this Article, a strait State may make laws and regulations :

(a) in conformity with the provisions of Article ..... above ;

(b) giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the straits.

2. Such laws and regulations shall not discriminate in form or fact among foreign ships.

3. The strait State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations of the strait State.

5. If a ship entitled to sovereign immunity does not comply with any such laws or regulations and damage to strait State results, the flag State shall in accordance with Article ..... be responsible for any such damage caused to the strait State.

Commentary

This Article is the same as Provision IX in the Informal Working Paper No. 2 based on the United Kingdom proposal.

Article 11

1. Liability for any damage which may be caused to the coastal States of the straits, their citizens or juridical persons by the ship in transit, shall rest with the owner of the ship or other person liable for the damage, and in the event that such compensation is not paid by them for such damage, with the flag State of the ship.

2. Liability for any damage which may be caused to the coastal States of the straits or their citizens or juridical persons by the aircraft overflying the straits shall rest with the owner of the aircraft or other person liable for the damage and in the event that compensation is not paid by them for such damage, with the State in which the aircraft is registered.

Commentary

This Article is the same as Formula 'B' in Provision X of the Informal Working Paper No. 2 based on Eight Power proposal.

Note : These tentative draft propositions do not in any way reflect the view point of the A.A.L.C.C. Secretariat but have been mainly put forward to serve as an aid to discussions.

RIGHTS AND INTERESTS OF LAND-LOCKED STATES

The position of land-locked 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 land-locked States in the world, six happen to be in Asia and fourteen in Africa. This Committee has consequently laid special emphasis on this subject and had constituted a Study Group under the Chairmanship of the distinguished Jurist Dr. A.H. Tabibi of Afghanistan for detailed consideration of various topics related to the subject. The deliberations in the Special Study Group resulted in formulations of certain draft propositions which were considered by the Committee and in inter-sessional meetings.

Two comprehensive proposals had been put before the U.N. Sea-Bed Committee on this subject, namely the Seven-Power Draft Articles relating to Land-Locked 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 land-locked States are found in various proposals on the international sea-bed regime as also in the proposals concerning economic zones.

At the Tokyo Session of this Committee detailed consideration was given to this subject on the basis of a note and certain tentative draft formulations prepared by the Secretary-General. The main questions which were considered were the following:

(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.

The broad areas of agreement which could be deduced from the discussions were as follows:—

(a) Transit is a necessity for land-locked States for access to the sea and its resources and also for movement of its goods and persons.

(b) Transit is an essential element of the concept of sovereign equality of States and as a sovereign State a land-locked country is fully entitled not only to reach the high seas which are public domain, but also to enjoy the rights relating thereto. If any part of the seas is converted into an exclusive economic or fishing zone, the interests of land-locked States must be accommodated therein in an appropriate manner.

(c) Most of the land-locked States in Asia and Africa are the least developed and therefore their special interests must be recognised and protected. It was also realised that their interests lay along with the developing States and consequently it was not in their interest to impede progressive development of the law which supports the legitimate interests of developing States, whether coastal or land-locked.

(d) The right of participation of land-locked States in international machinery for the sea-bed should be effectively protected and that they should have preferential share of benefits derived from sea-bed exploitation.

There were some points on which discussions were not conclusive and it was felt necessary that the process of consultation between land-locked and coastal States be continued. These points are as follows:—

(a) Is the concept of the access to the sea a natural right flowing from established principles of international law or is it a freedom to be enjoyed, protected and guaranteed?

(b) Accommodation of the interests of land-locked States and the transit States — modalities to be prescribed for the exercise of the transit, prescription of routes — bilateral and multilateral arrangements and questions of reciprocity.

(c) Definition of land-locked States — should these be so defined as to encompass other geographically disadvantaged States, namely, States with short coast lines and shelf-locked States.

(d) Participation in the exploitation of the non-living resources in the areas of the exclusive economic zone of the coastal States.

(e) Whether the land-locked States should have a right to lease out or grant licences to nationals of third States in respect of exploitation of the living resources in the economic zones of the neighbouring coastal States?

(f) Settlement of diputes between the land-locked and coastal States — appropriate machinery and a method of settlement.

After the Tokyo Session of this Committee a group of land-locked States met in Kampala (Uganda) towards the end of March 1974 and drew up a declaration on the question of the rights of land-locked States. The Kampala Declaration was introduced in the meeting of the Group of 77 held in

Nairobi in April 1974 and it was also considered by the Conference of the Foreign Ministers of O.A.U. States in their meeting in Mogadishu in June 1974.

At the Caracas meeting 17 land-locked States introduced an explanatory paper on Draft Articles relating to land-locked States (A/Conf.62/C.2/L.29). Botswana, Lesotho, Uganda, and Upper Volta introduced certain amendments to the text contained in document A/AC.138/93. Pakistan (A/Conf. 62/C.2/L.48) as also Bolivia and Paraguay (L.76) introduced certain proposals.

TENTATIVE DRAFT PROPOSITIONS

(To serve as an aid to discussions)

Article 1

For the purpose of this Convention:

"Land-locked State" means any State which has no sea coast;

The term "transit State" means any State, with or without a sea coast, situated between a land-locked State and the sea, through whose territory the land-locked State shall have access to and from the sea;

The term "traffic in transit" means persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment warehousing, breaking bulk or change in the mode of transport is only a portion of a complete journey which begins or terminates within the territory of the land-locked State.

Commentary

The text of this Article has been taken from Provision I in Informal Working Paper No. 9 of the Second Committee in Caracas.

The definition adopted here of "land-locked State" and "transit State" and of "traffic in transit" is virtually the same as given in clauses (a), (b) (i) and (c) of Article 1 of the Seven-Power Draft Articles contained in Doc. A/AC.138/93. Clauses (b) (ii) and (d) of that draft would appear to be superfluous and have, therefore, not been incorporated. The definitions of "land-locked State" and "transit State" in Asian-African Legal Consultative Committee Study Group formulations were also the same as the above text. The definition of "traffic in transit" in the Study Group draft was, however, different but the definition given in the Informal Working Paper would seem to be more appropriate.

Article 2

The existence and the nature of the rights of land-locked States to free access to the sea derive from the application of the principles of the freedom of the sea and the designation of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of that area, as the common heritage of mankind.

Commentary

The text of this Article has been taken from Provision II in Informal Working Paper No. 9. This incorporates the legal basis for the recognition of the right of land-locked States not only in the matter of access to the sea but also in respect of access to the sea-bed area. In view of the comprehensive nature of the provisions of this Article a further provision like paragraph 1 of Formula A of Provision III in the Informal Working Paper No. 9 which is based on paragraph 1 of Article II of the Seven-Power Draft would appear to be unnecessary.

Article 3

1. Each land-locked State, irrespective of the origin and characteristics of its land-locked condition, shall have the right of free access to and from the sea in order to enjoy the freedom of the seas and participate in the exploration and exploitation

of the sea-bed and its resources on equal terms with the coastal States.

2. In conformity with the aforesaid principle neighbouring transit States shall accord free transit through their territories of persons and goods of land-locked States by all possible means of transportation and communication.

The modalities of the exercise of free transit shall be settled between the land-locked State and the neighbouring transit State or States by means of bilateral or regional agreements: provided that the transit State shall not insist on any terms or conditions which may render the right of the land-locked State illusory or nugatory.

3. Land-locked States shall have the freedom to use one or more of the alternative routes or means of transport, as agreed with the transit States concerned, for purposes of access to and from the sea.

4. A transit State may request the land-locked State for certain rights of transit for its own traffic in transit through the territory of the land-locked State, and when such a request is made the land-locked State shall accord such rights to the transit State in order to ensure mutuality and better performance of the transit agreement.

Commentary

The above formulation has been attempted as a sort of compromise in the light of propositions contained in Formula A and B of Provision III in Informal Working Paper No. 9; Articles II, III, XIII and XVI of the Seven-Power proposal (A/AC.138/93); the proposals contained in A/Conf.62/C.2/L.29; and Section A of Draft Articles introduced by Pakistan (A/Conf. 62/C.2/L.48). In view of the provisions of this Article it would appear to be unnecessary to have another article corresponding to Provision VI of Informal Working Paper No. 9. The provisions of paragraph 2 of this Article would also make it unnecessary to have a specific provision on the rights of transit States like Article XIV of the Seven-Power proposal.

Article 4

The provisions of this Convention which govern the right of free access of land-locked States to and from the sea shall not abrogate existing special agreements between two or more States concerning the matters which are regulated in this Convention, nor shall they raise an obstacle as regards the conclusion of such agreements in the future.

In cases such existing agreements provide less favourable conditions than those contained in this Convention, the States concerned undertake that they shall bring them in accord with the present provisions at the earliest occasion.

The provisions contained in the preceding paragraph shall not affect existing bilateral or multilateral agreements relating to air transport.

Commentary

The text of this Article is the same as Provision IV in Informal Working Paper No. 9 which is based on Article XX of the Seven-Power Draft (A/AC.138/93) and the Explanatory Paper A/Conf. 62/C.2/L.29.

Article 5

Provisions of this Convention, as well as special agreements which regulate the exercise of the right of free access to and from the sea and the area of the sea-bed, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

Commentary

The text of this Article is the same as Provision V in Informal Working Paper No. 9 which is based on Article XXI of the Seven-Power Draft (A/AC.138/93) and the Explanatory Paper A/Conf.62/C.2/L. 29.

Article 6

Vessels flying the flag of a land-locked State shall have the right to use maritime ports.

Vessels of land-locked States shall under no circumstances receive a treatment less favourable than that accorded to vessels of coastal States as regards access to and exit from the maritime ports.

The use of these ports, facilities, installations and equipments of any kind shall be provided under the same conditions as for coastal States.

Commentary

This Article deals with the question of the rights of all land-locked States in regard to access to maritime ports for vessels flying their flags. The provisions of this Article are the same, except for certain modifications, as Formula A of Provision VII of Informal Working Paper No. 9 which is based on Article V of the Seven-Power Draft (A/AC.138/93).

Article 7

For the purposes provided for in this Convention, coastal States shall guarantee neighbouring land-locked States free passage through their territories, as well as equal treatment as regards entry into and use of ports, in accordance with internal legislation and any relevant agreements they may conclude.

Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.

If the port installations and equipment or the means of transport and communication or both existing in a transit State are primarily used by one or more land-locked States, tariffs, fees or other charges for services rendered shall be subject to agreement between the States concerned.

Means of transport in transit used by the land-locked State shall not be subject to taxes, tariffs or charges higher than those levied for the use of means of transport of the transit State.

Commentary

This Article deals with the position of traffic in transit of land-locked States, in the territories of neighbouring coastal States which serve as transit States. The first paragraph of this Article is based on Formula 'B' of Provision VII and the remaining three paragraphs are the same as Provision VIII of Informal Working Paper No. 9.

Article 8

For convenience of traffic in transit, free zones and/or other facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

Such zones shall be exempted from the customs regulations of the coastal States. They remain, however, subject to the jurisdiction of those States with regard to police and public health regulations.

Article 9

Land-locked States shall have the right to appoint customs officials of their own in the ports of transit or free zones, empowered in accordance with the practice of States, to arrange the berthing of vessels whose cargo is bound for or coming from the land-locked State and to make arrangements for and supervise loading and unloading operations for such vessels as well as documentation and other necessary services for the speedy and smooth movement of traffic in transit.

Article 10

Transit States shall provide adequate means of transport, storage and handling facilities at the points of entry and exit, and at intermediate stages, for the smooth movement of traffic in transit.

Article 11

When means of transport and communication in the transit States are insufficient to give effect to the rights of land-locked States of free access to and from the sea or when the aforesaid means of transport and communication or the port installations and equipment are inadequate or may be improved in any respect the land-locked States shall have the right to construct, modify or improve them in agreement with the transit State or States concerned.

Article 12

Except in cases of *force majeure* all measures shall be taken by transit States to avoid delays in or restrictions on traffic in transit.

Should delays or other difficulties occur in traffic in transit, the competent authorities of the transit State or States and of land-locked States shall co-operate towards their expeditious elimination.

Commentary on Articles 8 to 12

These provisions deal with details concerning the enjoyment of the right of transit by land-locked States. Articles 8 to 12 are identical with the Provisions IX to XIII of the Informal Working Paper No. 9 which are based on Articles VII, VIII, IX, X and XI respectively of the Seven-Power proposal (A/AC. 138/93).

Article 13

Land-locked 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 its resources and to derive benefits therefrom in accordance with the provisions of this Convention.

For this purpose the land-locked States shall have the right to use all means and facilities provided for in this Convention with regard to traffic in transit.

Article 14

In any organ of the international sea-bed machinery in which not all Member States will be represented, in particular in its Council, there shall be an adequate and proportionate number of land-locked States, both developing and developed.

Article 15

In any organ of the machinery, decisions on questions of substance shall be made with due regard to the special needs and problems of land-locked States.

On questions of substance which affect the interests of land-locked States, decisions shall be made with their participation.

Commentary on Articles 13, 14 and 15

These three Articles deal with the question of free access to the international sea-bed area beyond national jurisdiction, participation in the international regime including machinery and equitable sharing in the benefits of the area. The texts of these Articles are identical with the Provisions XIV, XV and XVI of Informal Working Paper No. 9 which are based on Articles XVII, XVIII and XIX of the Seven-Power Draft.

Article 16

Nationals of developing land-locked States shall enjoy the privilege of fishing and to participate in the sharing of the living resources in the area of the exclusive economic zone of the neighbouring coastal State on the basis of equality with the nationals of that State. The modalities of the enjoyment of this privilege and the area to which they relate shall be settled by agreement on a bilateral or regional basis.

Article 17

The coastal State may stipulate that the rights to be enjoyed by the nationals of the land-locked States shall not be transferable *provided* that the benefit of foreign collaboration or

assistance shall not be unreasonably denied to the nationals of the developing land-locked States where such assistance is resorted to by the nationals of the coastal State itself.

Article 18

Developing land-locked and coastal States may enter into regional arrangements with a view to equitable sharing of mineral and other non-living resources of the areas comprising exclusive economic zones of the coastal States of the region.

Commentary on Articles 16 to 18

The provisions of these Articles which deal with the question of participation of land-locked States in the exploitation and sharing of resources of the economic zones of their neighbouring coastal States would appear to be most controversial. What the majority of land-locked States would like to ensure is the equal right for their nationals both in respect of living and non-living resources. Whilst the coastal States would be prepared to give to the nationals of land-locked States a share in the living resources exclusively for their own benefit they are not prepared at present to go any further. Article VIII of the Joint Draft on Exclusive Economic Zone (A/AC.138/SC.II/L.40) and Section B of Pakistan's proposals (A/Conf.62/C. 2/L.48) may be seen in this connection. Article 9 of the Kampala Declaration of March 22, 1974, is also significant on this matter which provides that land-locked States and other geographically disadvantaged States shall have equal rights with other States and without discrimination in the exercise of jurisdiction over resources in areas adjacent to the territorial sea. The texts of Provisions XVII to XIX of the Informal Working Paper No. 9 may also be seen.

NOTE : These draft propositions do not in any way reflect the viewpoint of the A.A.L.C.C. Secretariat but have been put forward to serve as an aid to discussions.

ARCHIPELAGOS

The concept of archipelago as applied to archipelagic States as also the question of establishment of a special regime concerning midocean 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 were reached due to wide divergence of views and lack of available technical data.

The discussion on this topic was initiated within this Committee at its Colombo Session and the concept was developed during discussions at the Committee's Lagos Session as also in two inter-sessional meetings held in Geneva in June 1971 and July 1972. Thereafter the Delegates of Fiji, Indonesia, Mauritius and the Philippines introduced a proposal in the shape of Draft Articles before the U.N. Sea-Bed Committee (A/AC.138/SC.II/L.48). The United Kingdom also introduced certain 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) and 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 contained certain specific provisions with regard to archipelagos.

At the Tokyo Session of the Committee some detailed discussions took place on the basis of a note and certain draft formulations prepared by the Secretariat. In the light of the discussions the following broad areas had appeared to have emerged :

(a) There was general appreciation of the need to recognise and protect the legitimate political, economic and

security interests of archipelagic States. There was general support to the concept of political unity of land, people and the sea with respect to archipelagic States in the true sense.

(b) The term 'archipelagic State' should be so defined that it protects the interests of the State in a fair and reasonable manner.

(c) The status of waters enclosed within the archipelago, howsoever described, should be subject to the sovereignty of the archipelagic State.

(d) Legitimate interests of the international community in transit through these waters should be effectively protected.

During the Caracas meeting, Fiji, Indonesia, Mauritius and the Philippines submitted a draft (A/Conf.62/C.2/L.49) which was based largely on the proposals introduced before the U.N. Sea-Bed Committee. A joint proposal was introduced by way of amendment to the above draft by Bulgaria, G.D.R. and Poland (A/Conf.62/C.2/L.49). Another amendment to the joint draft was introduced by Malaysia (A/Conf.62/C.2/L.64) whilst certain specific proposals were put forward by Ecuador (L.51), Thailand (L.63), Bahamas (L.70) and Cuba (L.73). The Working Paper presented jointly by Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway (L.4) also contained certain provisions on archipelagos.

TENTATIVE DRAFT PROPOSITIONS

(To serve as an aid to discussion)

Article 1

(Definition)

1. An archipelagic State is a State constituted wholly or mainly by one or more archipelagos (and may include other islands).

2. For the purpose of these articles, an archipelago is a group of islands, including parts of islands, with inter-connecting waters and other natural features which are so closely inter-related that the component islands, waters and other natural features form an intrinsic geographical, economic and political entity or which historically have been regarded as such.

Commentary

This Article is based on Article 1 of the proposals of Fiji, Indonesia, Mauritius and the Philippines (A/Conf.62/C.2/L.49), Article 5 of the Working Paper (A/Conf.62/L.4), Article 1 of the Draft Articles presented by Bahamas (A/Conf.62/C.2/L.70), and Formula 'A' in provision II of the Informal Working Paper No. 8 of the Sea-Bed Committee -- Article 1-2 of the Draft presented by Bulgaria, G.D.R. and Poland (L.52) also conveys the same meaning as in the above formulations.

Formula 'B' in Provision II of the Informal Working Paper, which is wholly based on the United Kingdom Draft Articles (A/AC.138/SC.II/L.44) does not appear to have received much support within the Asian-African countries.

Article 2

(Baselines)

1. An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the base-lines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured. The same method may be followed also in the case of archipelagos forming part of any other State.

2. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

3. Baselines shall not be drawn to and from low-tide elevations unless light houses or similar installations which are

permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

4. The system of straight baselines shall not be applied by an archipelagic State in such a manner as to cut off the territorial sea of another State.

5. An archipelagic State shall clearly indicate its straight baselines on charts to which due publicity shall be given.

6. An archipelagic State may draw baselines in conformity with Articles.....(bays) and..... (river, mouths) of this Convention for the purpose of delimiting internal waters.

Commentary

The first sentence of clause (1) is the same as formula A of Provision III of Informal Working Paper No. 8, Article 2-1 of the joint proposal (L.49) and Article 6.1 of the Working Paper (L.4). The proposal in the Draft Article 2.1 introduced by Bahamas is also similar. The second sentence of this clause has been added in order to incorporate the principles embodied in formula B of Provision III of the Informal Working Paper No. 8. Article 9 of the Working Paper (L.4) and the Ecuador proposal (L.51).

Clauses 2, 3, 4, 5 and 6 of this Article are substantially the same as Provisions IV to VIII of Informal Working Paper No. 8; Articles 2.2, 2.3, 2.4 and 2.6 of the joint proposal (L.49) are similar to clauses 2, 3, 4 and 5 above.

Article 3

(Archipelagic Waters)

The waters enclosed by the baselines, which waters are referred to in these Articles as archipelagic waters, regardless of their depth or distance from the coast belong to, and are subject to the sovereignty of, the archipelagic State to which they

appertain. This sovereignty is exercised subject to the provisions of these Articles and to other rules of international law.

Commentary

The text of this Article is the same as formula B of Provision IX. The first sentence of the Article is based on Article 3.1 of the joint proposals (L.49), Article 1.3 of the Bulgarian, G.D.R. and Poland Draft (L.52), Article 3.1 of the Bahamas Draft (L.70), and Article 7.1 of the Working Paper (L.4). The second sentence of the Article is based on Article 1.5 of the Draft (L.52).

Article 4

(Sovereignty over air space etc.)

The sovereignty and rights of an archipelagic State extend to the air space over its archipelagic waters as well as to the water column and the sea-bed and sub-soil thereof, and to all of the resources contained therein.

Commentary

The text of this Article is the same as Provision X in the Informal Working Paper No. 8, Article 3.2 of the proposals contained in Doc. L.49, Article 3.1 of the proposal contained in Doc. L.52, Article 3.2 of the Bahamas proposal (Doc.L.70) and Article 7.2 of the Working Paper (L.4).

Article 5

If the drawing of the baselines in the manner provided in these Articles has the effect of enclosing a part of the sea which has traditionally been used by an (immediately) adjacent neighbouring State for direct access and communication including the laying of submarine cables and pipelines, between one part of its national territory and another part of such territory, the continued right of such access and communication shall be recognised and guaranteed by the archipelagic State.

Commentary

The text of this Article is based on Formula A of Provision XI in Informal Working Paper No. 8; Article 2.5 of the proposals contained in Doc. L.49; the Malaysian amendment contained in Doc. L.64; Article 2.2 of Bahamas draft (L.70) and Article 6.2 of the Working Paper (L.4).

Article 6

In any situation where the archipelagic waters, or territorial waters measured therefrom, of an archipelagic State include areas which previously had been considered as high seas, that archipelagic State, in the exercise of its sovereignty over such areas, shall give special consideration to the interests and needs of its neighbouring States with regard to the exploitation of living resources in these areas, and, to this effect, shall enter into an agreement with any neighbouring State, at the request of the latter, either by regional or bilateral arrangements, with a view to prescribing modalities entitling the nationals of such neighbouring State to engage and take part on an equal footing with its nationals and, where geographical circumstances so permit, on the basis of reciprocity, in the exploitation of living resources therein.

Commentary

This Article is based on the proposal of Thailand contained in Doc. L.63 and is the same as Formula B of Provision XIII.

Article 7

Subject to the provisions of Articles 8, 9 and 10, ships of all States shall enjoy the right of innocent passage through archipelagic waters.

Commentary

This Article incorporates with certain modifications the provisions of Article 4 in Doc. L.49 and Formula A of Provision XIII in Informal Working Paper No. 8.

Article 8

1. An archipelagic State may designate sealanes suitable for the safe and expeditious passage of foreign ships through its archipelagic waters, and may restrict the passage of such ships, or any types or classes of such ships, through those waters to any such sealanes.

2. An archipelagic State may, from time to time, after giving due publicity thereto, substitute other sealanes for any sealanes previously designated by it under the provisions of this Article.

3. An archipelagic State which designates sealanes under the provisions of this Article may also prescribe traffic separation schemes for the passage of such ships through those sealanes.

4. In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this Article an archipelagic State shall, *inter alia*, take into account:

(a) the recommendations or technical advice of competent international organisations;

(b) any channels customarily used for international navigation;

(c) the special characteristics of particular channels; and

(d) the special characteristics of particular ships.

5. An archipelagic State shall clearly demarcate all sealanes designated by it under the provisions of this Article and indicate them on charts to which due publicity shall be given.

Commentary

This Article is in identical terms with Article 5, paragraphs 1 to 5, of the proposals contained in Doc. L.49 and Provision XIV of the Informal Working Paper No. 8.

Article 9

All ships shall, however, enjoy equal freedom of passage in archipelagic straits, the approaches thereto, and those areas in the archipelagic waters of the archipelagic State along which normally lie the shortest sealanes used for international navigation between one part and another part of the high seas.

Commentary

This Article is based on the provisions of Article 4 of the proposals contained in Doc. L.52. This Article has been incorporated in order to provide that though the normal right of ships is only of innocent passage through the archipelagic waters, in certain areas free passage may have to be conceded especially if the right of free passage is accepted in straits used for international navigation.

Article 10

In addition to the right of passage through the sealanes designated for international navigation, an archipelagic State shall recognize, for the sole benefit of such of its neighbouring States as are enclosed or partly enclosed by its archipelagic waters for the purpose of gaining access to and from any part of the high seas by the shortest and most convenient routes.

To this effect, an archipelagic State shall enter into arrangements with any such neighbouring States at the request of the latter.

Commentary

This Article is based on Thailand's proposal contained in Doc. L.63.

Article 11

1. An archipelagic State may make laws and regulations, not inconsistent with the provisions of these Articles and having regard to other applicable rules of international law, relating to

passage through its archipelagic waters, or the sealanes designated under the provisions of this Article, which laws and regulations may be in respect of all or any of the following:

(a) the safety of navigation and the regulation of marine traffic;

(b) the installation, utilization and protection of navigational aids and facilities;

(c) the installation, utilization and protection of facilities or installations for the exploration and exploitation of the marine resources, including the resources of the sea-bed and subsoil, of the archipelagic waters;

(d) the protection of submarine or aerial cables and pipelines;

(e) the conservation of the living resources of the sea;

(f) the preservation of the environment of the archipelagic State, and the prevention of pollution thereto;

(g) research in the marine environment, and hydrographic surveys;

(h) the prevention of infringement of the fisheries regulations of the archipelagic State, including *inter alia* those relating to the stowage of gear;

(i) the prevention of infringement of the customs, fiscal, immigration, quarantine, sanitary and phytosanitary regulations of the archipelagic State; and

(j) the preservation of the peace, good order and security of the archipelagic State.

2. The archipelagic State shall give due publicity to all laws and regulations made by it under the provisions of this Article.

Commentary

The text of this Article is identical with the provisions of paragraphs 6 and 7 of Article 5 in the proposals contained in Doc. L.49 and Provision XV in Informal Working Paper No. 8.

Article 12

Foreign ships exercising the right of innocent or free passage through the archipelagic waters or the sealanes designated under the provisions of this Article shall comply with the relevant laws and regulations made by the archipelagic State under the provisions of this Article.

Commentary

This Article contains a modified version of paragraph 8 of Article 5 of the proposals contained in Doc.L.49. Provision is made for compliance of laws and regulations, both in the case of innocent and free passage. The modification is necessitated by reasons of the provisions of Article 9 wherein free passage is contemplated in certain cases.

Article 13

All ships passing through the straits and waters of archipelagic States shall not in any way endanger the security of such States, their territorial integrity or political independence. Warships passing through such straits and waters may not engage in any exercises or gunfire, use any form of weapon, launch or take on aircraft, carry out hydrographic surveys or engage in any similar activity unrelated to their passage. All ships shall inform the archipelagic State of any damage, unforeseen stoppage, or of any action rendered necessary by *force majeure*.

Commentary

This Article is identical with Formula B of Provision XVII in Informal Working Paper No. 8.

Article 14

If any foreign warship does not comply with the laws and regulations of the archipelagic State concerning its passage through the archipelagic waters or the sealanes designated under the provisions of this Article and disregards any request for compliance which is made to it, the archipelagic State may suspend the passage of such warship and require it to leave the archipelagic waters by such safe and expeditious route as may be designated by the archipelagic State.

Commentary

This Article is based on paragraph 9 of Article 5 of the proposals contained in L.49.

Article 15

Subject to the provisions of paragraph of this Article, an archipelagic State may not suspend the innocent passage of foreign ships through sealanes designated by it under the provisions of this Article, except when essential for the protection of its security, after giving due publicity thereto and substituting other sealanes for those through which innocent passage has been suspended.

An archipelagic State may not interrupt or suspend the transit of ships through the archipelagic straits or waters as contemplated by Article 9 herein except in times of war or national emergency.

Note : These draft propositions do not in any way reflect the viewpoint of the A.A.L.L.C. Secretariat but have been put forward to serve as an aid to discussions.

(iii) SUMMARY RECORD OF DISCUSSIONS HELD DURING THE SIXTEENTH SESSION

The discussion on the subject of the "Law of the Sea and the Sea-Bed" during the Tehran Session of the Asian-African Legal Consultative Committee was a continuation of the work which began in the Committee at its Colombo Session (1971) and continued through its sessions held in Lagos (1972), New Delhi (1973) and Tokyo (1974) as also in inter-sessional meetings of its Sub-Committee of the Whole and Working Groups during the past five years. During the Tehran Session, the subject was discussed in the plenary meetings held on 27th to 29th January and 1st February, 1975 as also in the meetings of the Sub-Committee of the Whole organised during the session.

The Secretary-General of the Committee initiated the discussion by making a statement on the organisation of the work during the session and the scope of discussions on the subject in the plenary meetings. He suggested that in view of the shortage of time at the disposal of the Committee, it would be desirable to limit discussion on the following specific issues:

(a) *Exclusive Economic Zone/Patrimonial Sea* —

pollution control, scientific research, the rights and interests of land-locked States to a share of the resources and the rights of other States in the zone;

(b) *Straits used for International Navigation* —

passage through straits used for international navigation which connect two parts of the high seas;

(c) *Land-locked States* —

share in the non-living/non-renewable resources of the economic zone, and collaboration with other

States or their nationals for technical assistance in the matter of enjoyment of their right in the share of the resources of the economic zone;

(d) *Archipelagos*;

(e) *Fisheries* —

the terms and conditions on which other States may be allowed to fish within the economic zone and the appropriate conservation measures that may be taken both within the economic zone and on the high seas for different species of fish;

(f) *Enclosed and semi-enclosed seas*;

(g) *Regime of Islands*;

(h) *Continental Shelf* —

The question whether the concept of the continental shelf should be absorbed in or replaced by that of the exclusive economic zone;

(i) *International Sea-Bed Authority*;

(j) *Pollution* —

Nature and extent of the rights and obligations of States in relation to preservation of marine environment.

The Secretary-General also suggested that the discussion might be held in the background of the views expressed at the Caracas meeting with a view to prepare for the Geneva meeting of the Third Law of the Sea Conference. The suggestions of the Secretary-General were accepted by the Committee.

The Rapporteur/Chairman of the Working Group on the Law of the Sea made a statement reviewing the work done at

the Caracas Session of the Third Law of the Sea Conference. He summed up the trends emerging from the deliberations of the three main committees at the Caracas Session as follows:

(i) *Territorial Sea* — There was broad agreement on a twelve-mile territorial sea as more than 80 States had supported it.

(ii) *Economic Zone* — The concept of economic zone and its extent upto 200 nautical miles had received almost universal affirmation. However, the divergence of views in that regard had centred around: (a) the content of coastal jurisdiction in the economic zone; (b) the extent of other States' interests in the said zone; (c) the interests of land-locked States in this zone; and (d) the question whether the concept of economic zone should subsume the concept of continental shelf or whether the latter as traditionally understood should subsume the concept of continental shelf or whether the latter as traditionally understood should survive the former.

(iii) *Archipelagos* — Three aspects of this question deserved consideration, namely (i) coastal archipelagos like Norway and Chile; (ii) archipelagos belonging to States like India or Ecuador; and (iii) archipelagos constituting a single State like Indonesia, Philippines etc.

(iv) *Regime of Islands* — This question had presented a ticklish problem, particularly in the case of islands which did not constitute an archipelago.

(v) *Land-locked States* — The land-locked States at the Caracas Session had laid stress on three aspects: (i) establishment of economic zones on regional or sub-regional basis; (ii) protection of their interests in regard to exploitation of living resources on a footing of equality with the coastal States concerned; and (iii) equal rights over the non-renewable resources in the economic zone.

(vi) *Enclosed and semi-enclosed States* — This question was not considered intensively at the Caracas Session and,

therefore, would have to be considered further at the Geneva Session.

(vii) *Regional Arrangements* — Regional arrangements concerning exploitation of fishery resources and for regulating pollution control within the enclosed seas would require further consideration.

(viii) *Marine Pollution and Scientific Research* — Whilst not much progress had been made on the question of scientific research, considerable progress was made on the question of marine pollution. Although a sizeable area of agreement had been reached on a number of issues relating to marine pollution, questions like whether there should be a pollution control zone wherein the concerned coastal State would exercise jurisdiction, whether this zone should coincide with economic zone or whether there could be some other zone, the question of standards to regulate marine pollution, and the question of liability for pollution damage could not be resolved.

(ix) *International Sea-Bed Area* — The Caracas Session had dealt with the question of the regime of the international sea-bed area, the conditions of exploitation of the sea-bed resources and the economic implications of sea-bed exploitation. However, the Conference could not start its work on the composition, functions and powers of the international machinery to govern the international sea-bed area.

The Rapporteur, finally, observed that many of the aforesaid issues, which were highly sensitive and complicated, would require tactful handling.

The Special Representative of the United Nations Secretary-General referred to the various issues of the Law of the Sea which the international community would have to resolve at the forthcoming Law of the Sea meeting at Geneva. In his view, those issues included the territorial sea, the continental shelf, straits used for international navigation, archipelagic States, fisheries and other living resources of the economic zone, rights and interests of land-locked States, scientific research, marine pollution and the international regime and machinery for the sea-bed. He expressed the fervent hope that it was through meeting and consultations and not by confrontation and by pursuit of the interests of international community rather than of national interests that a new legal order for the sea would evolve.

The Delegate of *Iran* advocated conclusion of regional arrangements especially in the case of countries bordering enclosed or semi-enclosed seas as, in his view, regional requirements often led to common stands on a number of issues. He laid stress on the concept of unity and oneness of the sea as activities in one part of the sea could not be conducted without affecting the other part. In his view, the ocean in its totality was a living organism which formed one ecological system and therefore the approach towards it should be global and integrated. He felt that from the deliberations of the Caracas meeting one drew the conclusion that there could be a clear-cut separation between the different functions of the sea, but he wondered how could the various jurisdictions and authorities envisaged for the different zones and areas of the sea be separated from one another, especially in regard to questions on pollution, scientific research, fishing and navigation. Although the proposed International Sea-Bed Authority would be mainly concerned with the international sea-bed and various other authorities had been envisaged for other matters, in his view, it would be most practicable to combine all these functions and competences in a single international authority. He felt that in this respect the Draft Articles proposed by Malta might provide necessary inspiration, and the terms of reference of the proposed International Sea-Bed Authority be extended to comprise the management of superjacent waters.

The Delegate of *Pakistan* concerned himself with two issues, namely territorial sea and the right of free access to and from the sea of land-locked States. Although Pakistan had proposed a 12-mile territorial sea in the U.N. Sea-Bed Committee, that was based on the understanding that the concept of economic zone as understood by his country would be accepted at the Caracas meeting. But since no agreement was reached in that regard, his country contemplated extending its territorial sea to 50 miles. However, his Government was still prepared to accept a 12-mile territorial sea if economic zone as understood by it was accepted.

As regards land-locked States, the Delegate observed that although his Government fully appreciated the aspirations of land-locked States and recognised their need for a free access to and from the sea, law, reason and pragmatism decreed that the claims of land-locked countries could not exist independently of suitable agreements with the concerned transit States. The Delegate believed that transit by land-locked States was an encroachment on the sovereignty of the transit States and therefore only the latter could determine the extent of transit rights. Further, in his view, transit States might in lieu of the transit facilities accorded to the land-locked States require them to grant similar facilities. Such arrangements, the Delegate added, would meet the legitimate needs of land-locked States and although they could be modified from time to time to reflect the changing conditions, there was no reason to change the existing equitable principles applicable in that regard. Referring to the Charter of Economic Rights and Duties of States, adopted by the U.N. General Assembly, he said that the provision contained in sub-para (O) of Chapter I of that document reflected the aforesaid position.

The Observer for *Cyprus* stated that his country supported the principle that the resources of the sea-bed beyond national jurisdiction constituted the common heritage of mankind and therefore Cyprus favoured creation of a meaningful machinery under the U.N. system for administering those resources. On the question of straits used for international navigation, the Observer stated that Cyprus supported the concept of innocent passage

subject to objective criteria which struck a right balance between the needs of the international community and the legitimate concerns of the concerned coastal State. Touching upon the principle of median line, which was affirmed by customary international law and codified in the 1958 Territorial Sea Convention, the Observer said that the said rule catered to the interests of small and weak States for it provided a residual rule which could apply in the absence of freely negotiated agreement and would thus discourage any temptation on the part of stronger States to claim the lion's share in unequal negotiations. In his view, the principle *mutatis mutandis* could also be applied to the delimitation of the continental shelf and economic zone in the case of coastal States opposite or adjacent to the other. Dealing with the regime of islands, the Observer said that islands were in the same position as continental territories in so far as jurisdictional zones like territorial sea, continental shelf, economic zone etc. were concerned, and as such no artificial distinction should be created between the two. If at all any distinction was to be created, it should be in favour of the islanders who were more dependent on the resources of the sea than the populations of continental territories which could in any case rely on the sources of their hinterland.

The Observer for *Poland* stressed that all problems of the law of the sea should be solved in a spirit of cooperation and mutual understanding and not by confrontation, and that legitimate interests of all States should be safeguarded. He pointed out that because of Poland's geographical situation which disabled it from extending its economic zone, it fell within the category of geographically disadvantaged States. On the question of straits used for international navigation, the Observer stated that Poland favoured the right of all coastal States to free and unimpeded passage through such straits. However, he added, such passage should not endanger the security of the concerned coastal States and consequently it ought to conform to international rules concerning prevention of collision and pollution of waters and shores of a coastal State. Further, the Observer pointed out that although Poland had accepted the establishment of 200-mile economic zones and recognised the right of every developing State to reserve to itself a part of the

maximum sustainable yield which it could land and the right to regulate fishing in that zone, other States should be entitled to fish for the unreserved part of the fisheries. Poland, he added, keeping in view the interests of developing coastal States was even prepared to agree to imposition of a reasonable licensing fee by the concerned coastal States for fishing in their economic zones. However, he added, at the same time Poland favoured broadest international cooperation for the proper conservation and rational utilisation of the resources of the sea. This co-operation should be manifested at both bilateral and international levels. Finally, the Observer expressed the hope that the recognition of the sea-bed and ocean floor beyond national jurisdiction as the common heritage of mankind and the principle of equitable sharing of its benefits would be realised in such a way that interests of each of the groups of States would be accommodated.

The Observer for *U.S.S.R.* expressed the hope that the new legal order of the sea would meet a situation where the world ocean would unite rather than divide peoples and where it would never again become an arena of struggle and conflict. Keeping in view its close friendly relations with developing countries, the Observer pointed out that the Soviet Union had supported in principle the establishment of 200-mile economic zones by them but it felt that such States should not allow under-exploitation within their economic zones of the living resources badly needed for mankind. He felt that if a coastal State did not take 100 percent of the allowable catch within its economic zone, it must permit fishing by other countries in its zone on reasonable terms. The Observer referred to the Draft Articles on Economic Zone proposed by U.S.S.R. at Caracas and said that they contained appropriate provisions in that regard. On the question of straits used for international navigation the Observer stated that such straits were major sea routes of global significance and most important transport arteries and therefore navigational regime in such straits must fully conform to the role which these straits played in contemporary international life. In his view, it was not the innocent passage regime which corresponds to this role but only the regime of free and unimpeded passage of all ships through such

straits. He felt, however, that the principle of free passage through such straits was inextricably linked with the reliable safeguards for the legitimate interests of a coastal State. The Observer drew attention to the proposals submitted by the U.S.S.R. and other socialist countries which, in his view, envisaged a series of measures designed to safeguard the security of strait States, their territorial inviolability or political independence.

The Delegate of *Nepal* observed that on account of the land-locked countries being poorly endowed by Nature in respect of mineral resources and on account of their situational distance from the sea, it was natural for those countries to press their right to free access to and from the sea and also their share in the sea resources. The Delegate felt that the right of free access was a right and not a privilege, and that the right could not be made subject to any bilateral agreement with the transit State laying down the modalities of the exercise of transit. Further, he felt, the right was also not dependent or subject to any reciprocity clause. On the question of sharing of sea resources, the Delegate stated that it ought to be realised that the concept of economic zone or fishing zone benefited only the coastal States and that is why it was supported even by developed States. So far as the land-locked States were concerned, the Delegate felt, they would be the real sufferers as the establishment of any such zone would contract the area of the high seas and the international sea-bed area. It would thus result in the abrogation of the existing rights of the land-locked States without *quid pro quo*. In so far as non-living resources were concerned, establishment of any such zone would seriously jeopardise the economic viability of the left-over international sea-bed area. Further, according to him, such exclusive zones would not only aggravate the already growing income disparity but also aggravate the energy and other resources disparity between nations.

The Observer for *Ecuador* drew the following inferences from the deliberations held at the Caracas meeting : (i) A great majority were in favour of a broad zone wherein the coastal State could exercise sovereignty or jurisdiction. There

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. LAW RELATING TO HUMAN ENVIRONMENT

(1) INTRODUCTORY NOTE

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

(2) A PRELIMINARY STUDY ON HUMAN ENVIRONMENT

(Prepared by the Secretariat of the Committee)

CONTENTS

I. INTRODUCTION

Man's capacity to destroy is of course dramatically manifest in his possession of the technologies of mass destruction, but the relatively recent emergence of the environmental issue has revealed the more subtle but no less dangerous risks he faces from the uncontrolled use or misuse of natural resources and the technologies of production. Every nation is affected by pollution of the planet's atmosphere and the oceans whether or not it contributes to that pollution. Some problems such as air and thermal pollution are most severe in industrialised nations; in others, waterborne parasites and desert making are often born out of poverty itself and occur most frequently among those who are least able to afford the necessary measures to cope with them. Thus, the subject of human environment is global in character and of universal concern[1].

It is important to emphasise that in using the phrase "the human environment", it is necessary to include "all elements both natural and manmade. It embraces urban and rural poverty as well as the dangers of atmospheric pollution from automobiles and factories. It includes the discovery and development of natural resources as well as the inefficient and wasteful use of presently exploited resources. It covers air, water and soil. It includes the methods by which food production can be increased as well as study of harmful agriculture and practice."[2]

A cursory examination of this definition may lead one to pose certain questions: Is the concern for human environment now a new disease of the "development-oriented civilisation" of today? Does not the technological development generate a

1. See Maurice F. Strong "The United Nations Environment"; *International Organisation*, Vol. 26, 1972, page 169.
2. *Ibid.*, page 170.

vicious circle?[3] Does it not imply that the developed nations' burden would eventually pass on to the developing ones?[4]

Understandably, the world community shares little of this negative thinking. The truth is, the increasing awareness and concern about the deteriorating environmental situation has stimulated a new concept not only among the developed but also among the developing countries. To substantiate this point of view, it may be relevant to refer to the Founex Report.[5] The Report focuses the global importance of environmental issues. It points out that "to a large extent, the current concern with environment issues has emerged out of the problems experienced by the industrially advanced countries. These problems are themselves very largely the outcome of a high level of

3. "Increasing technology implies greater energy consumption, which implies increasing industrialisation, which then generates further demands for material goods and services which in turn results in greater consumption of more readily available resources, creating greater environmental problems and dislocations." See Nazil Choucri, "Population, Resources, and Technology: Political Implications of the Environmental crisis." *International Organisation*, Vol. 26, 1972, page 200.

4. "The most important economic consequences of pollution control are likely to be the differences in cost of production between goods produced under demanding pollution controls and those produced free of such controls. These differences have been estimated to range between five *and* 20 per cent depending on the industry and process. They will affect the sales and profits of the competitors and are likely to result in off-setting taxes and subsidies that may, in turn, provoke retaliatory counter taxes and subsidies." See Humpstone Charles Cheney, "Pollution: Precedent and Prospect", *Foreign Affairs*, Volume, 50, 1972 page 337.

5. A Panel of twenty-seven senior experts in the field of both development and environment met at Founex, in Switzerland, from 4 to 12 June 1971 and prepared a Report which was later discussed in a series of regional seminars on development and environment convened by Economic Commission for Africa (Addis Ababa, 23 to 28 August 1971, the Economic Commission for Latin America (Mexico City, 6 to 11 September 1971), the Economic Commission for Asia and the Far East (Bangkok 17 to 22 August 1971) and the Economic and Social Office in Beirut (Beirut, 27 September to 20 October 1971).

economic development. The creation of large productive capacities in industry and agriculture, the growth of complex systems of transportation and communication, and the evolution of massive urban conglomerations have all been accompanied in one way or another by damage and disruption to the human environment. Such disruptions have indeed attained such major proportions that in many countries they already constitute serious hazards to human health and well-being."[6] Touching on the major environmental problems of the developing countries the Report says: "They are essentially of a different kind. They are predominantly problems that reflect the poverty and very lack of development of their societies. They are problems, in other words, of both rural and urban poverty. In both the towns and in the country-side not merely the 'quality of life', but life itself is endangered by poor water, housing, sanitation and nutrition, by sickness and disease, and by natural disasters. These are the problems, no less than those of industrial pollution. that clamour for attention in the context of the concern with human environment."[7]

Although most of the world's pollution is now caused by the developed countries, the action of the less developed countries has serious effect on the global environment. As they press forward with their own plans for development, it becomes vital to the general welfare as well as their own that they do not make all the same mistakes that the developed countries have made. Most of the developing countries recognise that successful development must take account of environmental factors.

The Founex Report also stresses that developing countries must view the relationship between development and environment in a different perspective. In their case, development becomes essentially a cure for their major environment problems.[8] However, the report makes it very clear that "each country must find its own solutions in the light of its own problems and within the framework of its own political, social, and cultural values. The formulation of environmental goals,

6. *Ibid.*, page 10
7. *Ibid.*
8. *Ibid.*, pp (10-11)

as indeed the formulation of economic and social policies in general, falls entirely and exclusively within the sovereign competence of the developing countries."[9]

The first and foremost task for the developing countries is to identify their basic environmental problems. Next, will be the formulation of an "environmental strategy" which would have to be socially acceptable and administratively feasible. In that process, few of their legislation and regulations would either have to be revised or replaced. To deal with novel environmental problems new enactments would have to be made. The experience of the developed countries and the guidance from the international organisations would be most useful in that respect.

The present study undertaken by the Secretariat is of a preliminary nature and is intended to introduce the subject and its development. The first part of the study examines the preparations for and the outcome of the 1972 United Nations Conference on the Human Environment held in Stockholm. The second part reviews the progress in the first two years of the newly born child in the United Nations organisation family — the United Nations Environment Programme. Since the Stockholm Declaration on the Human Environment is a document of great legal significance and contains a wealth of material to guide the development of environment law, the third part contains an analysis of some of the basic principles from a legal standpoint. In that connection, a survey of international agreements and conventions dealing with various environmental problems is also made.

9. *Ibid.*, page 22.

II. U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, STOCKHOLM, 1972

Background

The idea of convening an international conference on the human environment first originated in the forty-fifth session of the Economic and Social Council of the United Nations. In its Resolution 1346 (XLV) the Council stressed, *inter-alia*, the urgent need for intensified action at the national and international level, to limit and, where possible, to eliminate the impairment of the human environment. It emphasised that due attention to the problems of the human environment was essential for sound economic and social development. It recommended that the General Assembly, at its twenty-third session, consider the desirability of convening a United Nations Conference on the problems of the human environment.

The General Assembly at its twenty-third session endorsed the recommendations of the Economic and Social Council and resolved to convene a United Nations Conference on the Human Environment in 1972. This marked the beginning of the preparatory .process in which the whole United Nations system became actively engaged. At its twenty-fourth session, the General Assembly laid down further guidelines for the preparation of the Conference. It affirmed that "it should be the main purpose of the conference to serve as a practical means to encourage, and to provide guidelines for, action by governments and international organisations, designed to protect and improve the human environment and to remedy and prevent its impairment, by means of international co-operation, bearing in the mind the particular importance of enabling the developing countries to forestall the occurrence of such problems."[1]

1. Resolution 2581 (XXIV)

The General Assembly established a Preparatory Committee consisting of Argentina, Brazil, Canada, Costa Rica, Cyprus, Czechoslovakia, France, Ghana, Guyana, India, Iran, Italy, Jamaica, Japan, Mauritius, Mexico, The Netherlands, Nigeria, Singapore, Sweden, Togo, the U.S.S.R., the U.A.R. (Now Egypt), the United Kingdom, the U.S.A., Yugoslavia and Zambia.

The Preparatory Committee held four sessions. During its first session, held in New York from 10 to 20 March 1970, the Committee discussed the organisational structure of the Conference. It defined the programme contents, relevant topics for discussion and recommendations for action. The second session was held in Geneva from 8 to 19 February 1971. The Committee prepared a provisional agenda for the Conference and discussed the possible form and content of a declaration on the human environment. The Committee also held a preliminary discussion on the question of marine pollution, monitoring or surveillance, pollutant release limits, conservation, soils, training, information exchange and gene pools. The Committee recommended the establishment of intergovernmental working groups to deal respectively with marine pollution, monitoring, conservation and soils and preparation of a declaration on the human environment. At the third session, held in New York from 13 to 24 September 1971, the Committee was engaged in reviewing the progress of the substantive work of the Conference. A preliminary discussion on the draft declaration was also held. The fourth session of the Committee was held in New York from 6 to 17 March 1972. The Committee dealt primarily with the international organisational implications of recommendations for action, including the financial implications. The draft declaration on the human environment also came up for discussion.

In complying with the intent of the General Assembly,[2] the United Nations Conference on the Human Environment was convened at Stockholm from 5 to 16 June 1972.

Representatives of 113 States invited in accordance with General Assembly Resolution 2850 (XXVI) took part in the

2. (See footnote on next page)

Conference[3]. Besides, a large number of observers from the U.N. Agencies and inter-governmental and non-governmental organisations were also represented.

Agenda of the Conference

The agenda of the Conference included a wide range of subjects such as: declaration on the human environment; planning and management of human settlements for environmental quality; environmental aspects of natural resources management, identifications and control of pollutants of broad international significance; educational, informational, social and cultural aspects of environmental issues; development and environments, and international organisational implications of action proposals. These items were allocated to three main committees established by the Conference at its first plenary meeting. The First Committee dealt with human settlements and non-economic aspects; the Second Committee with natural resources and development aspects; and the Third Committee with pollutants and organisational aspects.

Brief summary of the general debate

In his opening statement to the Conference, the Secretary-General of the Conference Maurice F. Strong, stated that the

2. At its twenty sixth session, the General Assembly adopted a resolution 2849 (XXVI) in which it approved the provisional agenda and the draft rules of procedure for the Conference. It requested the Secretary-General to invite the States Members of the United Nations & members of the Specialised Agencies to participate in the Conference. It further requested the Secretary-General to circulate in advance of the Conference a draft declaration on the human environment; a draft action plan constituting a blueprint for international co-operation to protect and enhance the present and future quality of the environment for human life and well-being and draft proposals for organisational and financing arrangements needed to pursue effectively the work of the United Nations system of organisations in the environment field.

3 Although all members of the United Nations and of its specialised agencies were invited to attend, the Soviet Union and most other Eastern Countries did not participate on the ground that certain non-members, like the German Democratic Republic, were not being allowed to take part in the Conference on equal basis.

Conference was launching a new liberation movement to free men from the threat of their thraldom to environmental perils of their own making. He warned that this movement could succeed only if there was a new commitment to liberation from the destructive forces of mass poverty, racial prejudice, economic injustice and the technologies of modern warfare. He felt that the developing countries could ill-afford to put uncertain future needs ahead of their immediate needs for food, shelter, work, education and health care. In his view, environmental factors must be an integral part of the development strategy.

Looking beyond the Conference, he stressed the need for :

(a) New concepts of sovereignty, based not on the surrender of national sovereignties but on better means of exercising them collectively, and with a greater sense of responsibility for the common good;

(b) New codes of international law which the era of environmental concern required, and new means of dealing with environmental conflicts·

(c) New international means for better management of the world's common property resources;

(d) New approaches to more automatic means of financing programmes of international co-operation which could include levies and tolls on certain forms of international transport or on the consumption of certain non-renewable resources.

The general debate covered a vast range of environmental problems facing the mankind today. Several speakers from the developing countries recognised that while their priority was development, until the gap between the poor and the rich countries was substantially narrowed, little, if any, progress could be made in improving the human environment. They, however, agreed that environmental considerations would have to be incorporated into their national development strategies in order to avoid the mistakes made by developed countries in their development, to utilise human and natural resources more efficiently, and to enhance the quality of life of their peoples.

Many speakers endorsed the statement of the Secretary-General of the Conference that there need be no clash between the concern for development and the concern for the environment. However, they felt that support for environmental action must not be an excuse for reducing development, and there must be a substantial increase in development assistance with due consideration for environmental factors. Many speakers urged the relaxation of protectionist trade barriers against their products; others warned against the danger that developed countries might raise the prices of their goods to meet costs incurred on environmental reforms.

Many speakers from both developing and developed countries, agreed that the ruthless pursuit of gross national product, without consideration for other factors, produced conditions of life that were affront to the dignity of man. The requirements of clean air, water, shelter and health were undeniable needs and rights of man.

The need for regional co-operation among developing countries was mentioned by many speakers. Some said that it was only through national initiatives and work that the problems of developing countries could be solved; others added that such initiatives and work should be undertaken with regional and global co-operation.

Several speakers expressed concern at the inadequacy of existing knowledge concerning environmental problems, and stressed the urgent need to initiate international research programme the results of which would be freely available to all.

Action Plan

The Action Plan outlined in document A/Conf.48/5 was in general well received. Many speakers emphasised that the value of the preparatory process and of the Conference would be completely negated unless they resulted in positive action by individual nations, regional organisations, inter-governmental organisations, non-governmental organisations, and the United Nations.

Environment Fund

The proposed Environment Fund was supported by many speakers. Several delegations announced their intention of making contributions to the Fund. Concern was expressed by some representatives of developing countries that the Fund might be regarded by some developed countries as an alternative to development assistance. Some speakers emphasised the need to use the Fund to help developing countries meet the additional environmental costs incurred in their development programmes. Several speakers endorsed the argument that "the polluter must pay".

Population

Several speakers expressed regret that population problems took so minor a place in the agenda of the Conference. They argued that all strategies for development and environment would be fatally damaged unless the rate of population increase was reduced. Other speakers said that the population increase was not the problem; the real challenge was the fact that so large a number of people of the world had such a small expectation for a fruitful, happy and long life. In the opinion of certain delegations, there was incompatibility between population growth and preservation of the environment.

Conservation

It was emphasised by several speakers that conservation of natural resources must be an integral part of sound development and environmental programmes. Many speakers described actions taken in their countries to protect areas of land and its wild life. The preservation of all forms of life on the planet was described by many speakers as being a crucial part of the strategy to enhance and protect the human environment now and in the future.

Marine pollution

The problem of marine pollution was stressed by many speakers. Contamination of the oceans had global consequences,

affecting peoples many thousands of miles away from the source of pollution. Mention was made of natural disasters at sea, oil discharges, excessive use of pesticides and atmospheric pollution, which eventually contaminated the sea. Several speakers welcomed recent international action to curtail ocean-dumping Particular reference was also made to the problems of certain seas, which could be solved only by regional co-operation and action.

Other issues

A considerable number of important matters affecting the human environment — both immediately and in the future — were raised in the general debate[4]. Many speakers described actions which their countries or organisations had taken or proposed to take in order to solve particular national, regional and international environmental problems. The environmental effects of pesticides and fertilisers were mentioned by several speakers, some of whom urged the development of safe and cheap alternatives to those pesticides and fertilisers that had been found to be harmful. Some speakers were highly critical of the development of suspersonic aircraft, which, they claimed, could have harmful global effects. Others pointed to the ever present problems of natural disasters, and put forward suggestions for improved advance warning and for steps to limit damage. Many speakers stressed the importance of preventive action and the necessity of taking early steps to discover and prevent serious environmental hazards. To that end, the importance of the exchange of scientific and technological information and experience, through the proposed referral system, was mentioned by several representatives.

Some delegations emphasised that any discussion of the problems of the human environment could not exclude international conflicts, the supersession of human rights, apartheid, nuclear testing, and the proliferation of armaments. Other representatives argued that such matters, although of substantial importance, should be discussed in other organs of the United Nations and were not appropriate to the Conference.

4. See Document A/Conf. 48/14, pp (80-85).

Discussion on the Declaration on the Human Environment

At its 7th plenary meeting, the Conference established a Working Group on the Declaration on the Human Environment.[5] The basis for discussion in the Working Group was the Draft Declaration on the Human Environment prepared by the Inter-governmental Working Group.[6]

The Working Group held a series of meetings from 9 to 15 June 1971. A number of proposals and amendments were submitted for its consideration. Although the Working Group succeeded in achieving a general consensus, certain reservations were expressed by some delegations. South Africa expressed reservations in respect to Principle 1, Uruguay to Principle 2, Portugal and the United States to Principle 15, Turkey to Principle 21 and China to Principle 24. The Working Group could not reach any agreement on the text of Principle 20. However, it was decided, on the proposal of Uruguay. that the Working Group should recommend to the Plenary Conference the referral of the Principle to the United Nations General Assembly for consideration. With regard to another controversial Principle 21 of the text, a new formulation was referred to the Plenary Conference for action. The new text read as follows:

> "Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction.

5. The initiative to establish the Working Group came from the delegate of China. In his view, the preliminary work of the Preparatory Committee did not reflect the views of all the States participating in the Conference. Since the Declaration was considered to be the main document of the Conference, the delegate of China felt that it required much more serious and thorough discussion. He, therefore, submitted a draft resolution which *inter-alia* provided for the establishment of an *ad-hoc* Committee. The delegate of Iran proposed an amendment to the Chinese draft resolution suggesting replacement of the words "*ad-hoc committee*" at the end of the operative paragraph by the words "a Working Group open to all States participating in the Conference." The Chinese draft resolution, as amended by Iran, was approved and accordingly a Working Group on the Declaration on the Human Environment was set up.

6. See Document A/Conf. 48/4

> States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons."

The Report of the Working Group was submitted to the plenary meeting of the Conference. Several delegations again took the floor to express their views.

Views expressed by Asian-African States

The Delegate of *Algeria* expressed his concern over the environmental despoliation of colonialism and of the oppression that were still going on in the world. He, however, appreciated the considerable evolution of the concept of environment that had occurred during the Conference, especially among the developed countries. He felt that certain principles that ought to have been reflected in the Declaration were missing. One was the need to end the misuse of natural resources by certain powers. Another was the need to maintain certain necessary balance in human affairs for the sake of ecological balance. He stressed the need to ensure a balance in the use of resources and not to commit vast resources to weapons of destruction.

The Delegate of *Arab Republic of Egypt* expressed his satisfaction that the Declaration included all the ideas and principles identifying the major problems affecting man and his environment, with special emphasis on the situation of the developing countries. He stressed that the control of the production of all kinds of weapons of mass destruction and their use should be on the top of the list of activities that carried the greatest threat to the human environment. In his view, Principle 26 should make reference to the fact that man must be spared the effects of nuclear and other mass destruction weapons including, *inter-alia*, the effects of the use of such weapons.

The Delegate of *China* stressed that the Declaration was an international document of concern to people of all countries and it should be discussed fully through careful consultation. He was not satisfied with the formulation of Principle 21 of the

draft. He suggested that Principle 21 should be rewritten as follows:

> "In order to protect mankind and the human environment, it is imperative to firmly prohibit the use and thoroughly destroy the inhuman biologicial and chemical weapons which seriously pollute and damage the environment. to completely prohibit and thoroughly destroy nuclear weapons and, as the first step, to reach an agreement by the nuclear States on the non-use of nuclear weapons at no time and in no circumstances."

The Delegate of *India*, considered that the Declaration represented an important mile-stone in the history of human race. The draft declaration, as he thought, was not perfect but reflected a number of compromises and points of view.

The Delegate of *Japan* recalled his country's passionate devotion to the cause of prevention of an atomic war. He was, therefore, particularly interested in Principle 26. In his view, Principle 26 definitely implied prohibition of testing of nuclear weapons since dangers to the human environment arose particularly from atmospheric testing. Without such a principle, he warned, the declaration would be meaningless.

The Delegate of *Kenya* expressed his concern at the emphasis which the Conference had given to the physical as opposed to the social environment of man. He regretted that this latter aspect of the environment was not adequately reflected in the Declaration. He also regretted that the preamble to the Declaration made no explicit reference to the pollution of the minds of men which resulted in policies such as that of *apartheid*.

The Delegate of *Pakistan* while recognising the contribution made by the delegate of China in elaborating the new text of the Declaration, also appreciated the attitude of the developed countries, which had accepted the changes that had been introduced in the earlier draft.

According to the delegation of the *Philippines*, the three basic principles of any declaration were: (a) the primacy of

human over physical factors; (b) the needs of developing countries and the necessity for them to have resources to cope with additional environmental concerns; poverty was the worst polluter; and (c) nuclear weapons and stockpiles should be destroyed and nuclear warfare banned. The draft declaration, in his view, did not measure upto those principles. He reiterated that the Declaration constituted an adequate basis for mankind's concern not only for a clean earth but for a better life.

The representative of *Sudan* echoing the views of the African group underlined the five essential elements of the Declaration: rejection of segregation, racism, *apartheid* and expansionism; rejection of colonialism and foreign dominations having a strong adverse effect on the environment of the oppressed; emphasis on the fact that the terms of trade in primary produce had a direct connection with the management of water, soil and other natural resources; emphasis on sovereign right of every country to exploit its own natural resources; and strong condemnation of the development, testing and use of nuclear, biological and chemical weapons as the most destructive of all environmental threats.

The Delegate of *Thailand* appreciated the tremendous effort and constructive spirit shown in the drafting of the Declaration. He expressed his Government's willingness to support the Declaration.

The Delegate of *South Africa*, while agreeing with the provisions of original draft, particularly appreciated the new ideas incorporated in it regarding the need for rapid development, protection of nature, and control of marine pollution. He, however, expressed his country's reservation that the Conference was not competent to include the new draft of Principle 1 of the Declaration as that principle clearly constituted interference in the internal affairs of a member State, in direct conflict with the Charter of the United Nations.

The Delegate of *United Republic of Tanzania* explained the position of his country on Principle 21 and strongly denounced the continued use of chemical and biological weapons

in certain parts of the world. He was not satisfied with the formulation contained in the draft declaration.

The Delegate of *Zambia* regretted that no decision could be reached on Principle 20.

Views expressed by Latin American States

The representative of *Chile* stressed the great importance of the work that would have to follow in the wake of the Declaration. In his view, while the Declaration was satisfactory as a first step, it, however, failed to include a number of important ideas. He was, nevertheless, prepared to approve the Declaration so long as it was considered to be a provisional document that might be improved in the future.

The Delegate of *Peru* stressed that the Declaration must establish a clear condemnation of all weapons of mass destruction.

The representative of *Uruguay* had some reservations in respect of Principle 2. In his view, instead of safeguarding the "representative samples" of ecosystems, it was essential to preserve and maintain the balance and ensure the rational exploitation of ecosystem as a whole.

Views expressed by other States

The Delegate of *Canada* viewed the draft as a first step towards the development of international environmental law. In his opinion, Principle 21 reflected the existing international law relating to the duty of States to inform one another of the environmental effects of their activities.

The delegation of *Holy See* regretted that some basic principles such as that of "the pollutor must pay", and the concept of moral or ecological justice had not found a place in the Declaration. While agreeing that it would be rather ideal to think the Declaration as a fundamental document, a kind of Magna Carta, he was ready to support the Declaration, in a spirit of co-operation.

The Delegate of *Sweden* recognised that the Working Group had strengthened its scope. He, however, wanted a stronger condemnation of nuclear testing and of the use of means of mass destruction. The delegate attached decisive importance to the general principle that States should accept responsibility for damage caused beyond their jurisdiction and to the vital relationship between environmental protection and the economic development process. He proposed an amendment to the first sentence of paragraph 5 of the Preamble, dealing with population. The amendment read as follows:

> "The natural growth of population continuously presents problems on the preservation of the environment and adequate policies and measures should be adopted, as appropriate, to face these problems."

The Delegate of *United Kingdom* considered that certain references to highly political matters contained in the Declaration were out of place. The real task, in his view, was not to discuss strategic issues but to look for a consensus on priorities for action.

The representative of the *United States of America* submitted the following statement of interpretation on Principles 2, 12, 21 and 26:

> "*Principle 2.* The United States of America places emphasis on the word 'representative' which, in our view, ensures that the phrase means retention of a complete system with all of the complex inter-relationships intact, not a portion thereof. Moreover, the size of the sample must be sufficient to represent the size of the whole.
>
> *Principle 12.* The United States of America does not regard the text of this principle, or any other language contained in the Declaration, requiring it to change its aid policies or increase the amounts thereof. The United States of America accepts the idea that added costs in specific national projects or activities for environmental protection reasons should be taken into account.

Principle 21. The United States of America considers it obvious that nothing contained in this principle or elsewhere in the Declaration. diminishes in any way the obligation of States to prevent environmental damage or gives rise to any right on the part of the States to take actions in derogation of the rights of other States or of the community of nations. The statement on the responsibility of States for damage caused to the environment of other States or of areas beyond the limits of national jurisdiction is not in any way a limitation on the above obligation. but an affirmation of existing rules concerning liability in the event of default on the obligations.

Principle 26. The United States of America fully supports the purpose, aspirations and ultimate goals contained in this paragraph. We are constantly striving to meet such goals in all relevant fora including for example SALT, which has recently achieved such success. We regard our commitment under this principle as identical to the treaty obligation we have assumed in connection with the Treaty on the Non-proliferation of Nuclear Weapons specifically Article VI, including the requirement of 'strict and effective international control'. We believe it obvious that agreements called for in the principle must be adequately verifiable or they will not be soundly enough based to achieve the purposes of this principle."

The Delegate of *Yugoslavia* felt that the Conference and, more specifically, the Declaration was the first step in many international and bilateral consultations to define the responsibilities of the international community. The absence of Principle 21, however, made it fall short of the expectations of humanity.

The results of the two weeks of intensive work at the Conference were set out in three documents:

(i) Recommendations for an Action Plan;

(ii) A Resolution outlining a scheme for new United Nations machinery, including an Environmental Fund to meet the cost of new environmental activities; and

(iii) A Declaration on the Human Environment.

The Action Plan for the Human Environment consisted of 109 recommendations. These recommendations besides. identifying international programmes and activities. provided the broad framework for environmental action. The recommendations were grouped in three categories:

(a) The global environmental assessment programme (Earthwatch);

(b) Environmental management activities; and

(c) International measures to support the national and international actions of assessment and management.

The Conference at its plenary meeting held on 16 June 1972 commended the recommendations to the attention of the Governments for their consideration and for such action as they might deem appropriate.

The Resolution on the establishment of a new international machinery was adopted without a vote. It was recommended that the central organ of the new machinery would be a Governing Council for Environmental Programme composed of 54 members. elected every three years by the General Assembly on the basis of equitable geographical distribution. The main functions of the Governing Council would be to promote environmental co-operation among Governments; provide general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system; review the periodic reports of the Executive Director on the implementation of environmental programmes within the United Nations system so as to ensure that Governments give adequate consideration to problems of wide international significance; promote the contribution which the world's scientists can make to the collection and exchange of information on the environment; review the impact of environmental policies on the developing countries and the problem of additional costs which those countries might incur in implementing programmes; review and approve annually the programme financed by

Environment Fund and report annually to the General Assembly through the Economic and Social Council the progress of its work.

It was recommended that for the performance of day-to-day work, a small *Environment Secretariat* would be established. It would "serve as a focal point for environmental actions and co-ordination within the United Nations system in such a way as to ensure a high degree of effective management". The Secretariat would be headed by a Executive Director, elected by the General Assembly on the nomination of the United Nations Secretary-General. The functions of the Secretariat would be to give substantive support to the Council; co-ordinate environmental programmes within the United Nations system; advise inter-governmental bodies in the United Nations system on environmental programme; secure the co-operation of the world scientists; give advice on the promotion of international co-operation; submit medium and long-range plans for United Nation activities; bring to the attention of the Council any matter which he deems to require consideration by it; administer the Environment Fund; report to the Council on environment matters and perform such other functions which the Council might entrust.

In order to provide for additional financing for environmental programmes, establishment of an *Environment Fund* was also recommended. It was envisaged that Governments would contribute on a voluntary basis. The fund would meet all or part of the costs of new environmental activities undertaken by the United Nations and its agencies. Organisations outside the United Nations system could also be assisted in carrying out programmes financed by the fund. The general procedure for the operation of the fund would be determined by the Council.

Finally, it was recommended that, in order to provide for the efficient co-ordination of the United Nations environmental programmes, an *Environmental Co-ordination Board*, be established under the auspices and within the framework of the Administrative Committee on Co-ordination (the inter-Secretariat body responsible for general co-ordination of the work of the

United Nations agencies). The Board would meet periodically and report annually to the Governing Council.

The Conference adopted by acclamation the Declaration as a whole, including the new Principle 26, while noting the statements that had been made with regard to that Principle.

It referred to the General Assembly for consideration on the text of Principle 20 as contained in document A/Conf. 48/4:

> "Relevant information must be supplied by States on activities or developments within their jurisdiction or under their control whenever they believe, or have reason to believe, that such information is needed to avoid the risk of significant adverse effects on the environment in areas beyond their national jurisdiction.":

together with the following amendments:

(a) An amendment proposed by Brazil, calling for the addition of the following sentence after the existing text:

> "No State is obliged to supply information under conditions that, in its sound judgement may jeopardise its national security, economic development or its national efforts to improve environment":

(b) An amendment proposed by Algeria, Burundi, Cameroon, Congo, Egypt, Guinea, Kenya, Libya, Mauritius, Senegal, Sudan, United Republic of Tanzania and Zambia calling for the deletion of the words:

> "they believe, or have reason to believe that" and of the word "significant".

The Report of the Conference was finally submitted to the General Assembly at its twenty-seventh session.

III. ESTABLISHMENT AND THE WORK OF THE UNITED NATIONS ENVIRONMENT PROGRAMME

Establishment of the U.N.E.P.

By its resolution 2994 (XXVII) adopted at its 2112th plenary meeting, the U.N. General Assembly welcomed the success achieved by the United Nations Conference on the Human Environment in focusing the attention of the Governments and public opinion on the need for prompt action in the field of the human environment[1]. While considering the text of Principle 20 of the Declaration of the Conference, referred to it by the Stockholm Conference on Human Environment, the General Assembly emphasised that, in the exploration, exploitation and development of the natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction; further, it was recognized that co-operation between States in the field of the environment, including co-operation towards the implementation of Principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment, would be effectively achieved if official and public knowledge was provided of the technical data relating to the work to be carried out by the States within their national jurisdiction with a view to avoiding significant harm that might occur in the human environment of the adjacent area[2].

At the same meeting the Assembly adopted another resolution concerning "Institutional and financial arrangements for international environment co-operation." The Assembly decided to establish a "Governing Council of the United Nations Environment Programme" composed of fifty-eight

1. See Resolution 2994 (XXVII) adopted on 15 December, 1972.
2. See Resolution 2995 (XXVII) adopted on 15 December, 1972.

members, and defined the functions and responsibilities of the Governing Council. Also, the Assembly decided to set up an Environmental Secretariat, headed by the Executive Director of UNEP, and defined the scope of the duties of the Executive Director. In addition, by the same resolution, the Assembly outlined the provisions concerning the establishment and administration of an "Environment Fund". Lastly, the Assembly decided to establish an "Environment Co-ordination Board" under the auspices and within the framework of the Administrative Committee on Co-ordination.[3]

Another significant resolution on environmental matters related to the decision of the General Assembly to hold a conference — Exposition on Human Settlements. The underlying object of the conference was well stated in the preamble to the resolution as follows:

> "Desiring to maintain the momentum of the United Nations Conference on the Human Environment in this area through a conference — exposition on human settlements — the preparation for which should generate a review of policies and programmes for human settlement, national and international, and should result in the selection and support of a series of demonstration projects on human settlements sponsored by individual countries and the United Nations."[4]

First Session of the UNEP

With the establishment of "Environmental Machinery" by the General Assembly, a beginning was made towards the process of implementation of the Stockholm recommendations. The first session of the Governing Council of the United Nations Environment Programme was convened in Geneva from 12 to 22 June 1973. Apart from the consideration of certain organisational matters, such as, the adoption of rules of procedure, the discussion generally centred around subjects, such as, objectives of Environment Programme and the consequent

3. See Resolution 2997 (XXVII) adopted on 15 December 1972.
4. See Resolution 3001 (XXVII) of December 1972.

priorities within it, the procedure to govern the operation of the Environment Fund and the Fund Programme for 1973-74.

The Governing Council adopted a decision concerning "Action Plan for the Human Environment: programme, development and priorities." The decision spelt out general policy, objectives, particular policy objectives and programme priorities for action by UNEP. It stressed that "the quality of human life must constitute the central concern of this programme and that, therefore, the enhancement of the total human habitat and the study of environmental problems having an immediate impact on man should be given the highest priority in the over-all programme."

The suggested programme objectives (which were not listed in accordance with importance or suggested priority) were the following:

(a) *General objectives*

(i) To provide, through inter-disciplinary study of natural and man-made ecological systems, improved knowledge for an integrated and rational management of the resources of the biosphere;

(ii) To encourage and support an integrated approach to the planning and management of natural resources so as to take account of environmental consequences to achieve maximum social, economic and environmental benefits;

(iii) To assist all countries, especially developing countries, to deal with their environmental problems and to help mobilize additional financial assistance with a view to promoting the full participation of developing countries in international activities for the preservation and enhancement of the environment.

(b) *Particular objectives*

(iv) To anticipate and prevent threats of human health and well-being posed by contamination of food, air or water;

(v) To detect and prevent serious threats to the health of the oceans through controlling both ocean-based and land-based sources of pollution, and to assure the continuing vitality of marine stocks;

(vi) To improve the quality of water for human use, in order that all persons may have access to water of a quality compatible with requirements of human health;

(vii) To help governments in improving the quality of life in rural and urban settlements;

(viii) To prevent the loss of productive soil through erosion, salination or contamination; to arrest the process of desertification and to restore the productivity of desiccated soil;

(ix) To help governments in managing forest resources so as to meet present and future needs;

(x) To anticipate natural disasters and to help governments in mitigating their consequences;

(xi) To assist governments in anticipating and in preventing adverse effects of man-induced modifications of climate and weather;

(xii) To encourage and support the development of sources and uses of energy which assure future levels of energy adequate to the needs of economic and social development, while minimizing deleterious effects on the environment;

(xiii) To help to ensure that environmental measures taken by industrialized countries do not have adverse effects on international trade, especially the economic, trade or other interests of developing countries, and to help developing countries maximize opportunities which may arise from them as a result of changes in comparative advantages induced by environmental concerns;

(xiv) To preserve threatened species of plant and animal life, particularly those which are important to human life and well-being;

(xv) To help governments identify and preserve natural and cultural areas which are significant to their countries and which form part of the natural and cultural heritage of all mankind;

(xvi) To help governments take into account in development planning the relationship between population growth, density and distribution and available resources and environmental effects;

(xvii) To help governments increase public awareness through better education and knowledge of environmental concerns and facilitate wide participation in and support for environmental action.

BRIEF SUMMARY OF THE GENERAL DEBATE

Generally speaking, several representatives welcomed the report prepared by the Executive Director. Many representatives expresed their support for the general objectives laid down in the report. On the other hand, some representatives thought that the proposed Action Plan was too general and was not sufficiently action-oriented. Several representatives considered the UNEP to be the focal point in the United Nations system for co-ordinating all activities concerning environment. Some representatives suggested that a careful review of existing environmental activities within the United Nations system should be made in order to ensure co-ordination, fill gaps and avoid duplication. A number of representatives stressed that high priority should be given to the "Earthwatch" programme, comprising evaluation, research, monitoring and exchange of information on the state of environment. Several representatives recognized the need to study climatic effects and weather modifications arising from pollutants and other influences attributable to human activities. Several representatives expressed concern over the increasing pollution of the oceans by dumping of wastes and other matters. Some representatives emphasised

the importance of a global energy policy to meet the energy crisis. A few others referred to the question of natural disasters and suggested that studies should be carried out to determine possible methods of predicting and as far as possible mitigating the effects of catastrophies like droughts, storms, floods and seismic phenomena. Several representatives stressed the importance of improving the quality of life in rural and urban settlements. Some representatives suggested the establishment of an international fund or financial institutions to provide capital and technical assistance for the effective mobilization of domestic resources for housing and the environmental improvement of human settlements. Several representatives suggested that high priority should be given by UNEP to the formulation of a comprehensive programme of education and information regarding the environment. On the question of development of international law of the environment, the suggestion was made that the General Assembly should be invited to consider the codification and progressive development of environmental law and possibly to refer the topic to the International Law Commission.

At the seventeeenth meeting on 22nd June 1973, the Governing Council adopted its first decision laying down the general principles which were to govern the process of the development of the Environment Programme.

With regard to the Earthwatch Programme,[5] the Governing Council, *inter-alia* decided :

> "that a monitoring system should be developed first for pollutants liable to affect weather and climate, and persistent and widely distributed substances liable to accumulate in living organisms and move through ecological systems, particularly along path-ways leading to man; and that internationally agreed upon Primary Protection Standards,

5. During the Stockholm Conference, it was decided that "Earthwatch" would be one of the three major components of the United Nations Environment Programme, the other two being management of teh environment, and "supporting activities."

should be developed as a basis for assessing the significance of pollution levels for human health.[6]

As a first step in making arrangements for improving access to environmental information and data necessary to monitor and manage environmental resources and their use, the Governing Council authorised the Executive Director to initiate the Pilot Phase of the International Referral System drawing upon the expertise of both developed and developing countries and of international organisations concerned.[7]

Decision 2 (I) provided for the general procedures governing the operations of the Fund of the United Nations Environment Programme. Article VII clearly laid down that the Executive Director would have overall responsibility for the operations of the Fund, including direct responsibility and accountability to the Governing Council for the management and implementation of the Fund Programme in all its aspects.

Lastly, the Executive Director was requested to take note of the action taken in pursuance of the General Assembly resolutions 2998 (XXVII), 2999 (XXVII) and 3001 (XXVII) dealing with the problem of human settlements, particularly for the preparation of the proposed "United Nations Conference — Exposition on Human Settlements."[8]

The Report of the Governing Council was first submitted to the Economic and Social Council and subsequently to the General Assembly at its twenty-eighth session. The Assembly adopted the following resolutions on various environmental problems:

(i) 3128 (XXVIII) : Conference — Exposition on Human Settlements;

(ii) 3129 (XXVIII) : Co-operation in the field of the Environment concerning natural resources shared by two or more States;

6. See Decision I (1), Para 26.
7. See Decision I (1), Para 30.
8. Decision 4(1).

(iii) 3130 (XXVIII) : Criteria governing multilateral financing of housing and human settlements;

(iv) 3131 (XXVIII) : Report of the Governing Council of the United Nation Environment Programme;

(v) 3132 (XXVIII) : Environment Fund;

(vi) 3133 (XXVIII) : Protection of the marine environment.

By resolution 3133 (XXVIII), the General Assembly urged the Governing Council of the UNEP to consider and decide upon making a detailed survey of the living marine resources of the world's seas and oceans threatened with depletion, in co-operation with the Food and Agriculture Organisation of the United Nations.

In conformity with Decision I(I) of the Governing Council, an Inter-Agency Working Group on Monitoring was established to prepare a report as a background paper for discussion at the 1974 Inter-governmental Meeting on Monitoring of Pollutant Levels.[9] The Meeting was held at UNEP headquarters, Nairobi, from 11 to 20 February 1974. The meeting recommended a set of objectives and principles, programme goals and general guidelines.[10]

Programme goals provided the focus for a global environmental monitoring system covering:

(a) An expanded human health working system;

(b) An assessment of global atmospheric pollution and its impact on climate;

9. The members of the Working Group included representatives of WHO, WMO, UNESCO/IHD,IOC, FAO, IMCO, IAEA and UNEP. For the Report of the Working Group see Document UNEP/IG. I/2 of 15 November 1973.
10. See Document UNEP/GC/24 or UNEP/IG. 1/4, 21 February 1974.

(c) An assessment of the extent and distribution of containments in biological systems, particularly food chains;

(d) An assessment of critical environmental problems relating to agriculture and land and water use;

(e) An assessment of the response of terrestrial ecosystems to pressures exerted on the environment;

(f) An assessment of the state of Ocean pollution and its impact on marine ecosystems:

(g) An improved international system allowing the monitoring of the factors necessary for the understanding and forecasting of disasters and the implementation of an efficient warning system.

Another meeting of experts serving in their individual capacity but nominated by Governments was held from 4 to 6 March 1974 to discuss the status and possible future of an International Referral System.[11] The experts emphasised the importance of the IRS as the basic information exchange element on the specialised management functions of the UNEP. It was stressed that the successful implementation of action in the priority subject areas of the UNEP depended on the efficient operation of IRS activities in particular and of these specialised management facilities as a whole.[12]

Second Session of the UNEP

The second session of the Governing Council of the United Nations Environment Programme was held in Nairobi from 11 to 22 March 1974. After the consideration of the organisational matters, the discussion in the Governing Council centred around the programme activities of the UNEP.

11. The International Referral System (IRS) was instituted as a pilot project of the UNEP in conformity with the decisions at first session of the Governing Council.

12. See Document UNEP/GC/25, 11 March, 1974.

In his speech at the opening meeting on 11 March 1974, the Executive Director described the progress made in the UNEP's programme activities since the first session. He felt that it would not be feasible to work out a comprehensive programme covering the whole broad range of priority areas as outlined in the first session's report of the UNEP. He, therefore, urged the Governing Council to suggest a relatively small list of priority areas in which the UNEP could concentrate its activities. He proposed for consideration such specific activities as:

(a) Development and dissemination of environmentally sound technologies, with special emphasis on water treatment, waste disposal and re-cycling, building technologies, as well as environmentally sound techniques for pest control;

(b) Measures for preventing loss of soil through desertification, erosion and salination, and for restoring the productivity of marginal lands;

(c) Investigation of and support for pilot projects exemplifying alternative patterns of development which are environmentally sound — e.g. "eco-development;"

(d) Measures for preserving the marine environment, with special emphasis on monitoring and control of land-based sources of ocean pollution particularly river discharges;

(e) Measures for the conservation of genetic resources of plant and animal life as well as mirco organisms which are important to the well-being of man;

(f) Training and technical assistance particularly focused on helping Governments of developing countries to establish national environmental policies and machinery for integrating environmental considerations into their national development plans and programmes as well as helping them to participate in and derive full benefits from Earthwatch;

(g) Support for the development of environmental education and dissemination of environment information to various sectors of the public with particular interest and needs;

(h) Implementation of the first phase of Earthwatch, including the global environmental monitoring system and the International Referral System;

(i) Assessment to provide guidance for decision making in certain key ecological regions such as the Mediterranean sea, the Caribbean sea, South Pacific island regions, tropical rain forest regions of central Africa or South America and arid areas of the Middle East, Asia and/or Africa.

Other Subjects to which the Executive Director drew attention included following:

—the possible need for international arrangements in respect of activities which could lead to significant modification of the climate;

—the elaboration of the new rules for international law regarding the environment;

—the environmental implications of various alternative patterns of energy production and use.

A brief summary of the ensuing debate in the Governing Council is set out below under different headings:

(i) **Human settlements and habitat:**

A large number of delegations stressed the need for making the total human settlements programme more effective and adaptable to the urgent problems of today. It was generally felt that uncontrolled urban development could have serious socio-economic consequences. It would make the living conditions of the inhabitants extremely difficult and cause irreversible damage to the environment. Some delegations pointed out that the UNEP Programme did not place sufficient emphasis on

rural settlements development. It was urged that UNEP should examine the factors influencing rural-to-urban migration and remedy the imbalances that cause this dramatic exodus.

In relation to human settlements technology, the greatest emphasis was placed on environmentally sound building design, low-cost and self-aid schemes, innovative and environmentally sound methods of waste disposal, and supply of pure and quality water.

It was stressed that UNEP should consider human settlements problems from a geographical and regional standpoint, since the differences in temperate and tropical zones were such that a global approach would have less impact.

(ii) **Human health and well-being:**

Several delegates expressed concern about endemic diseases, which were caused mainly by sectors with a waterborne phase. They called for concerted efforts to develop programmes for the eradication of those diseases.

There was general agreement on the importance of the WHO Programme for the development of environmental health criteria and standards, including toxicological and epidemiological research and the identification of new and potential pollutants. It was urged that WHO and FAO should give high priority to their programmes on the establishment of food standards.

Many delegates urged the early establishment of an international register network of potentially toxic chemicals and supported the idea of convening an expert group to explore the feasibility of such a register.

With regard to the environmental effects of agricultural chemicals, several delegations stressed the need for the development of an integrated programme of the pest control. It was recognised that the problem was not lack of knowledge, but rather lack of transfer of existing knowledge to the developing countries which needed it. The suggestion was made to initiate pilot projects by groups of countries for testing new

methods of pest control by non-chemical techniques and for providing training in the application of those methods.

(iii) **Land, water and desertification**

It was suggested that UNEP should adopt a global and multi-disciplinary approach to studying ecosystems, analysing the interaction of the characteristic physical, biological and socio-economic factors in a given ecological region. It was felt that UNEP should co-ordinate and collaborate fully with Specialised Agencies, such as UNESCO and FAO, in their activities relating to arid and semi-arid lands and other biotopes. It was suggested that UNEP should closely associate with the Man and Biosphere (MAB) Programme of UNESCO in its projects relating grazing land and irrigation.

Attention was drawn to the relative impact of human activities and climatic changes on ecosystems and on the process of desertification. It was stressed that climatic factors should be fully taken into account in planning the development of arid and semi-arid lands.

It was felt that since a great deal of work was already in progress on water quality, both within and outside the United Nations family, UNEP's role should better be confined to co-ordination. However, this should not prevent UNEP in playing a more active and innovative as well as co-ordinating role in matters of water quality.

(iv) **Trade, economics, technology and transfer of technology**

It was stressed that the cost of environmental protection measures in developed countries should not be passed on to developing countries. Several delegations emphasised the important role UNEP could play within the United Nations system in relation to economic matters, technology and its transfer, eco-development and other related fields.

It was pointed out that any attempt to impose new discriminatory environmental standards on developing countries was not acceptable. The need for the definition of standards with respect to environmental consideration was expressly

recognised. However, it was pointed out that, while product standards might be internationally agreed upon, environmental standards could be established on a regional or climatic basis, and countries should be free to implement them.

(v) **Oceans**

Several delegations urged the need for UNEP to co-ordinate the activities of the numerous agencies concerned with the marine environment. It was felt that UNEP should concentrate on the protection of the marine environment, and should be extremely selective in its choice of programmes, in order to avoid duplication. There was a general view that monitoring of the marine environment was an essential component of the programme of work in this particular area. Some delegates referred in particular to the monitoring of persistent toxic pesticides. Some delegates stressed the need for more assessments on a global basis concerning the state of the oceans and suggested for a comprehensive oceanic research programme covering physical processes occurring in the oceans and the effects of marine pollution on living marine organisms. Reference was also made to study ocean dynamics as a factor in pollution transport. Some considered that the programme should include a study of behaviour of pollutants in warm waters.

There was general consensus that regional agreements or conventions for the protection from pollution of specific bodies of water, such as the Mediterranean, the Persian Gulf, the Caribbean, the South Pacific and the Malacca Straits, constituted an effective means for the control of marine pollution as well as the conservation of living resources in these areas. It was therefore stressed that UNEP should encourage and support the preparation of such conventions.

In relation to the control of land-based sources of marine pollution, emphasis was laid on the need to take account of the input of pollutants discharged from the land, rivers and estuaries. Some delegates advocated maintenance of a registry of clean rivers.

Many representatives pointed out that a number of conventions concluded for the protection of the marine environment had not yet come into force because of delays in their acceptance by States. It was felt that UNEP should urge Governments to hasten that step.

Several delegates urged the Governments to exert more control over the demand for endangered species and their products. Some delegates felt that financial compensation could be a means of reducing their trade. A few others thought that research should be undertaken to develop artificial products which could replace animal products deriving from those groups of animals.

Several delegates stressed the importance of marine national parks, where studies of marine habitats could be encouraged for the conservation of marine ecosystems. The data on marine pollution collected from these parks might serve as a background for the establishment of marine parks in other parts of the world.

Many delegates emphasised the need for the States to accept. as soon as possible, the Convention on the Protection of the World Cultural and Natural Heritage. It was felt that UNEP might work out, in co-operation with UNESCO, ways of promoting acceleration of the process of acceptance of this Convention.

(vi) **Energy**

The general view was that in order to avoid duplication of effort, the UNEP's action programme in the field of energy should be of limited scope. Accordingly, it was felt that UNEP should concentrate only on the environmental aspects of energy covering two distinct but inter-related components: (1) the environmental impact of the generation and use of energy, and (2) the availability of energy, with emphasis on the potential of alternative sources such as solar energy, wind, geothermal energy and gas production from agricultural and other organic waste-sources which might be relatively non-polluting in character. Some delegates singled out atomic energy as a great potential

source for the fulfilment of future energy needs. In their view, the expertise of International Atomic Energy Agency could be most useful in preparation of such programmes.

At the conclusion of the general debate, the Governing Council adopted several decisions concerning its programme policy and fund programme.

By its Decision 5 (II) the Governing Council approved the programmatic approach as outlined by the Executive Director. The Governing Council authorised the Executive Director to design, develop and begin to implement the global Environmental Monitoring System for monitoring priority pollutants.[13] It decided that the UNEP, in co-operation with the United Nations Scientific Committee on the Effects of Atomic Radiation and other relevant bodies of the United Nations System, should assign high priority in global Environmental Monitoring System to the monitoring of radio-nuclides resulting from nuclear tests.[14]

Without going into details of the other decisions which mainly deal with the organisational matters, it may be stated that the second session of the UNEP made some real progress. The broad and rather ambitious framework of programme activities planned in the first session were narrowed down considerably keeping in view the resources of the UNEP.

13. Decision 8(II), Para 2.
14. Decision 9(II), Para 3.

(IV) DEVELOPMENT OF INTERNATIONAL LAW OF HUMAN ENVIRONMENT

Consideration by the International Law Commission

One of the relatively recent additions to the list of "moving frontiers of international law" is the law relating to the human environment. The "Survey of International Law", a document prepared by the U. N. Secretary-General to review the International Law Commission's long-term programme of work[1], has not excluded the possibility that the International Law Commission under its programme of work might be able to take up the topic of environmental law. In Chapter XIII, on the Law relating to the Environment, the following is stated:

> "In the case of the law relating to the preservation of the environment the 'law' as such, regarded as a distinct segment of international law, is relatively less developed."[2] Further, "(It) is understood that the task confronting the international community entails the development of essentially new law, on what may eventually prove to be a considerable scale, and not merely the codification of the existing legal rules and practices. It is difficult at this stage to say what form the arrangements to be made will take and whether the relationship between the component parts will be such as to result in a coherent body of law, or whether the eventual solution will be a series of piecemeal agreements, without any underlying pattern or system, nor it is possible to define, in exhaustive terms, all the areas and aspects which may need to be borne in mind in devising the legal instruments in question."[3]

1. See Document A/CN.4/245.
2. *Ibid*, Page 173.
3. *Ibid*, Page 174.

During the twenty-fifth session of the International Law Commission, some members of the Commission singled out the topic of the development of environment law and made few preliminary remarks.

Mr. Hambro thought that "problems the world had to face in regard to protection of the human environment were likely to prove much more important in the future than other matters now in the forefront of international relations. On the protection of the environment, as on outer space, however, new law was being made all the time and it would be dangerous to try to freeze the development of the law."[4]

Mr. Reuter felt that "the Commission should not deliberately reject topics which were of unduly pressing concern, such as human rights, the environment, outer space and the sea-bed."[5] However, since "the General Assembly and the Security Council had seen fit to entrust them to other organs ..... it would be unseemly for the Commission to propose that it should deal with them."[6]

Mr. Jorge Castaneda was of the view that "the question of the environment could lend itself to useful action by the Commission."[7] In his view "the main difficulty arose from the diversity of sources and forms of pollution."[8] However, he thought that "the Commission might well endeavour to identify five or six legal principles on the protection of the environment."[9] He suggested that the Commission should recommend to the General Assembly the inclusion of four new topics in its long-term programme of work: first, the treatment of aliens; secondly, principles of law relating to the environment; thirdly, State responsibility for lawful acts; and fourthly, the law of the non-navigational uses of international water-courses.[10]

4. 1233rd Meeting, Year Book of the International Law Commission, 1973, Vol. I Summary Records. Page 160.
5. *Ibid*, Page 161.
6. *Ibid*.
7. 1234th Meeting, Page 165.
8. *Ibid*.
9. *Ibid*.
10. *Ibid*.

Mr. Calle Y-Calle stressed that the Declaration adopted by the United Nations Conference on the Human Environment at Stockholm in 1972 should be translated into legal rules determining the rights and duties of States in that field. He endorsed the suggestion of Mr. Castaneda that the General Assembly should be invited to consider the codification and progressive development of environmental law and possibly to refer the topic to the International Law Commission.[11]

Mr. Martinez Moreno observed that the law relating to the environment was a suitable topic for inclusion in the Commission's programme. In his view, "the practical and political aspects of the topic justified its consideration by the Commssion."[12] He recognised that, "it was true that the topic presented many technical problems, but they could be rendered more manageable by dealing with only one or two aspects of that very complicated branch of law to begin with."[13]

Consideration by the United Nations Environment Programme

At its first session, the United Nations Environment Programme could not pay specific attention to the legal problems concerning human environment. However, at the second session, the Executive Director drew the attention of the Governing Council to this aspect of the problem. During the course of the general debate in the Governing Council several delegations endorsed the proposition of the Executive Director that the progressive development of international environmental law should be of priority concern for UNEP.

Several representatives suggested that one of UNEP's main concern should be the preparation of an environmental code of conduct, or of a charter for the environment. This could be initiated by a comprehensive codification of minimum environmental standards, which would then serve as the basis of a new code of environmental ethics, leading eventually to a comprehensive codification of a new body of international environmental

11. 1235th Meeting, Page 169.
12. 1236th Meeting, Page 175.
13. *Ibid.*

law. It was, however, recognised that the elaboration of an international environmental law would not be an easy task, since it required a level of knowledge and experience that was still non-existent in most of the areas of environmental co-operation.

In late 1973, the Executive Director convened a meeting of a group of international jurists with particular interest in environmental problems. The general discussion in the group centred around the following topics:

(i) International responsibility of States for environmental protection;

(ii) Liability and compensation for damage to the environment;

(iii) Maritime and land-based activities adversely affecting the marine environment;

(iv) Weather modification;

(v) Access of foreign States or persons to domestic procedures;

(vi) Method of dissemination of information between interested parties in regard to national regulatory activities having an internationally significant environmental impact.

The Executive Director has planned to submit to the Governing Council at its third session concrete proposals in this respect.

In view of this still unclear picture, any discussion on the development of environmental law would necessarily have to be confined to the evaluation of legal principles incorporated in the Stockholm Declaration on the Human Environment. The Declaration which is set out in the form of Principles contains a wealth of material to guide the development of environmental law. The rights and duties of States contemplated in the Principles of the Stockholm Declaration could provide a good framework for the emerging international environment law. An analysis of some of the relevant Principles it set out below:

Principle 1 — While recapitulating the universally recognised rights of freedom and equality, adds the third "fundamental right.....(to) adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."[14] The insertion of the right to "healthy environment" in the body text of the Declaration in the very first principle, imparts added significance to this right. However, the ambit of right is subject to a co-relating duty to protect and improve the environment not only for the future generations, but for the present one as well.

Principles 2 and *3* recognise the responsibility deemed to be delegated to the States to husband their natural resources with care and caution.

Principle 4 makes a special reference to the responsibility for the preservation of the heritage of wild life and other endangered animal species. It is the duty of the States to ensure the establishment and support of a programme of action, including enactment of legislation to protect forestry and animals of rare species. There are only a few international agreements to protect wild life and other endangered species The first significant international agreement on these subjects dates back to 1935 when the African Convention relating to the Preservation of Flora and Fauna in their Natural State prohibited hunting and harassment of wild life. In 1942 Pan-American Union concluded a Convention on "Nature Protection and Wild life Preservation in the Western Hemisphere."

After nearly ten years of preparatory work, the International Union for the Conservation of Nature and Natural Resources convened an international conference at Washington from February 12 to March 2, 1973. The Conference adopted

14. Article 25(1) of the Universal Declaration of Human Rights stipulates that "each person has a fundamental right to healthful environment". Similarly Article 11(1) of the International Convention of Economic, Social and Cultural Rights (adopted by G.A. on December 16, 1966) provides for "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

a Convention on *International Trade in Endangered Species of Wild Fauna and Flora.* Endangered species are divided into three categories: Species whose survival is in a critical state (Appendix I); potentially endangered species (Appendix II); and species which a contracting State has protected in its own territory and for controlling its trade the state requires international assistance (Appendix III). Trade in species of first category is provided only in exceptional circumstances. The prior grant of import and export, and, where relevant, re-export, permit is necessary. Article III of the Convention contains other details in this regard. Trade restrictions for the second category of species are less stringent. However, it is the duty of the national authorities of exporting State to see that "the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the eco-systems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I." In the case of species of third category, trade is permissible subject to conditions similar to, but less restrictive than, those laid down for the second category of species.

Article VII of the Convention lays down a number of exemptions and other provisions relating to trade, which include: travelling circuses, the artificial propagation and breeding in captivity of species, loans of species between scientific bodies, and specimens that are personal or household effects.

The Convention obliges the signatories to maintain records of their trade in the species regulated by the Convention. It is their duty to take measures to enforce the provisions of the Convention, including measures to penalise trade in and possession of specimens in violation of the provisions of the Convention. The Convention contemplates establishment of a secretariat within the framework of the United Nations Environmental Programme (UNEP). The contracting parties would make periodic reports on their implementation and enforcement of the Convention to that secretariat.

In November, 1973, five States bordering the Arctic- Canada, Denmark, Norway, U.S.S.R. and U.S.A. signed an

Agreement on the Conservation of Polar Bears. The Agreement prohibits the hunting, killing and capturing of polar bears. However, certain exceptions are made in favour of Eskimos, who may continue their hunt, provided they use traditional methods. The use of aircraft and large motorised vessels for hunting polar bears is specially prohibited. Furthermore, signatories to the Agreement are obliged to prohibit any trade in polar bears or the products of polar bears which have been taken contrary to the provisions of the Agreement. The signatories agree to undertake appropriate action to protect the eco-system of which polar bears are a part in accordance with sound conservation practices. They agree to co-ordinate and exchange their researeh on polar bears and to hold consultations for further protection measures.

At its seventeenth session, on November 16, 1972, the UNESCO General Conference adopted a *Convention for the protection of the World Culture and Natural Heritage.* The basic theme of the Convention is that the cultural and natural heritage is the common heritage of the whole mankind. The "cultural heritage" to be protected includes monuments, buildings, sculptures, paintings and structures and sites which are of archaeological importance. The "natural heritage" includes physical and biological formations of outstanding aesthetics or scientific value, the habitats of threatened species of animals and plants, and sites outstanding for their natural beauty or scientific importance. States are supposed to identify any object or property in their territory which falls under the protected categories stipulated in the Convention. It is their duty to take necessary legal, financial, administrative and scientific measures to protect these objects.

Article 8 of the Convention envisages establishment of a World Heritage Committee. The functions of the Committee would include, preparations of a "World Heritage List" comprising a list of objects of outstanding universal value, and a "list of World Heritage in Danger" consisting of those objects for the conservation of which major operations are necessary and for which assistance has been requested under this Convention.

Article 15 provides the basis for the establishment of a "World Heritage Fund". The Fund would be raised from voluntary or compulsory contributions from the contracting States. The World Heritage Committee will decide for what purpose the Fund is to be used.

Principle 5 lends support to the idea of utilization of non-renewable resources for the benefit of the whole mankind. To quote Professor Sohn: "...the idea of sharing of benefits by all mankind provides a link between the Stockholm Declaration and other United Nations Declarations which with increasing frequency put stress on the new social character of international law, which no longer protects the lucky few, but instead provides for more distributive justice."[15] More specifically he said, "while the sea-bed declaration was limited to the resources of the sea-bed, the Stockholm Declaration applies the principle of equitable sharing more boldly to all non-renewable resources, wherever they may be situated.[16]

Since the discharge of toxic substances, or of other substances in excessive quantity poses great danger to the eco-system, *Principle 6* obligates the States to take all practical steps to prevent any serious damage to the eco-system.

Principle 7 is a specific application of Principle 6 in the sense that the obligation of the States contemplated in Principle 7 is only concerned with the marine environment. Principle 7 stipulates that States should take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Principle 7 does not stipulate any new obligation. Many States have taken steps to prevent the pollution of the marine environment. However, these steps are either un-coordinated or

15. See his Article "The Stockholm Declaration on the Human Environment," *Harvard Journal of International Law*, Vol. 14 Number 2, page 461.
16. *Ibid.*

ineffective. The magnitude of the problem has increased to such an extent that unless immediate steps are taken the problem may become uncontrollable.

The existing framework of the law relating to prevention of marine pollution provides a good basis for a discussion of the obligations of the State envisaged in Principle 7 of the Stockholm Declaration [17] The historic 'Declaration of Principles Governing the Sea-bed and the Ocean floor, and the Sub-soil thereof, beyond the limits of National Jurisdiction'[18] could be a starting point for the discussion. Regarding protection of the marine environment, the Declaration states that:

"With respect to activities in the area and acting in conformity with the international regime to be established, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures, for *inter-alia*:

(a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;

(b) The protection and conservation of the natural resources of the area and prevention of damage to the flora and fauna of the marine environment.

The Declaration, thus, did not give any definition of the term 'marine pollution'. It laid down the guidelines of the basic obligations of the States. However, a widely accepted definition of marine pollution is given by the United Nations Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). Marine pollution, according to this definition, is

17. There are numerous international conventions and agreements which deal with the regulation of marine environment. However, the discussions have provided only a broad survey of those international agreements and conventions which touch upon the problem of pollution in one or another form.

18. See General Assembly Resolution 2749(XXV) adopted on 17 December, 1970.

"the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including, fishing, impairment of quality or use of sea-water, and reduction of amenities." Commenting on this definition, James Barros and Johnston observe, "..... this definition is limited to pollution by man, but it is sufficiently inclusive, in its reference to causes, to embrace thermal pollution arising from the increase in temperature caused by hydro-electric works. It is also sufficiently inclusive, in its reference to effects, to embrace pollution resulting in the "reduction of amenities.....".[19]

Another relevant definition is of the phrase "hazardous polluting substances." Article 1 of the 1972 U.S. - Canadian Agreement on Great Lakes Water Quality defines these substances "as any element or compound identified by the parties which, when discharged in any quantity into or upon receiving waters or adjoining shorelines, present an imminent and substantial danger to public health or welfare."[20]

The four international conventions on the law of the sea, adopted by the 1958 United Nations Conference on the Law of the Sea contain certain provisions relevant to the subject under consideration.

Article 24 of the Convention on High Seas obliges States to "draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the sea-bed and its sub-soil."

Article 24 of the Convention on the Territorial Sea and the Contiguous Zone accords States the right to exercise preventive or protective control for the infringement of their customs, fiscal,

19. See James Barrows and Douglas M. Johnston. *The International Law of Pollution*, 1974, page 6.

20. At it is elaborated, "Public health or welfare" encompasses all factors affecting the health and welfare of man including but not limited to human health and the conservation and protection of fish, shell-fish, wild life, public and private property, shorelines and beaches, *Ibid.* pp 6-7.

immigration or sanitary regulations within their territory or territorial sea. However, this right would not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

Article 6 of the "Convention on Fishing and Conservation of the Living Resources of the High Seas" recognises coastal States special interest in the maintenance of the productivity of the living resources of the high seas, adjacent to the territorial sea. Paragraph (2) of the same article incorporates the right of the coastal State to take part in any system of research and regulation for purposes of conservation of living resources of the high seas in that area. even though its nationals do not carry on fishing there.

Article 5, paragraph 1 of the Convention on the Continental Shelf lays down that the exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or conservation of the living resources of the sea. It also prohibits any interference with fundamental oceanographic or other research carried out with intention of open publication. Further, article 5(7) obligates coastal States to undertake, in safety zones established around devices on the shelf, ' all appropriate measures" for the protection of the living resources of the sea from harmful agents.

International Convention for Prevention of Pollution of the Sea by Oil, 1954

In 1954, a 32-nation conference convened in London, adopted an "International Convention for the Prevention of Pollution of the Sea by Oil." The Convention prohibited the discharge of persistent oils, defined as crude oil, fuel oil. heavy diesel oil and lubricating oil, or a mixture containing 100 parts per million of such oil, within designated areas known as prohibited zones. The prohibited zones extended generally up to fifty miles from land, with wider zones in specifically sensitive areas such as the North Sea and the Atlantic Ocean. The Convention made certain exceptions such as accidental discharge or leakage or discharge necessary to save a ship or human life. It

required ships to maintain "oil record books" to help port inspectors keep track of oil discharges. It obliged contracting States to provide port facilities to receive oily ballast and tank clearing residues.

The Inter-governmental Maritime Consultative Organization, established in 1958 as a specialised agency of the U.N., convened a second London Conference in 1962 to strengthen the provisions of the aforesaid Convention. The limit of prohibited zones was extended upto 100 miles along many coasts. The scope of the Convention was further extended to cover all tankers down to 150 tons gross tonnage. Further amendments to the Convention were introduced in 1969. These new provisions tightened the discharge limitations and prohibited all tanker discharges within 50 miles of land. For ships other than tankers, which were not subject to total ban within the prohibited zone of fifty miles, it was agreed that discharges must have an oil content of less than 1/15000 of the total cargo carrying capacity of the vessel, as well as meeting the 60 litres per mile criterion.

Again in 1971, further two amendments were adopted. The first one aimed at minimizing the amount of oil which would escape as a result of maritime accidents. particularly those involving very large tankers. The second amendment made special provisions for the protection of the Great Barrier Reef.

International Convention for the Prevention of Pollution from Ships, 1973

The Inter-governmental Maritime Consultative Organisation convened an international conference in 1973 with the object of preparing a suitable international Convention, for placing restraints on the contamination of the sea, land and air by ships, vessels and other equipment operating in the marine environment. The Convention. as approved in 1973, replaced the 1954/62 Oil Pollution Convention. The application of the Convention, however, was not extended to pollution directly arising out of the exploration and exploitation of sea-bed mineral resources.

The Convention contains 20 articles, two protocols dealing respectively with reports on incidents involving harmful substances and details regarding arbitration, and five annexures containing regulations for the prevention of :

(a) pollution by oil;

(b) pollution by noxious liquid substances carried in the bulk;

(c) pollution by harmful substances other than those carried in bulk;

(d) pollution by sewage from ships; and

(e) pollution by garbage from ships.

(a) *Pollution by oil*

The Convention does not make any change in the oil discharge criteria prescribed in the 1969 amendments to the 1954 Convention, except that the maximum quantity of oil which is permitted to be discharged in a ballast voyage of new oil tankers has been reduced from 1/15,000 to 1/30,000 of the amount of cargo carried. However, the 1973 Convention introduces a new concept of "specified areas", within which oil discharges have been completely prohibited to some minor and well defined exceptions. The Convention designates the Mediterranean Sea Area, the Black Sea Area, the Baltic Sea Area, the Red Sea Area and the 'Gulfs' Area as special areas. The Convention specifies that all new and existing oil tankers and other ships will, with certain exceptions, be required to be fitted with appropriate equipment, which will include an oil discharge monitoring and control system, oily water separating equipment or filtering system, slop tanks, sludge tanks, piping and pumping arrangements.

(b) *Control of pollution by noxious liquid substances (Annexure II)*

The Convention lays down detailed requirements for the discharge criteria and measures for control of pollution by noxious liquid substances carried in bulk. These substances are

divided into four categories depending upon their hazard to marine resources, human health, amenities and other legitimate uses of the sea. The Convention prohibits any discharge of residues containing noxious substances within 12 miles from the land. The Baltic Sea Area and the Black Sea Area are the two special areas where any discharge of noxious liquid substances is prohibited.

(c) *Prevention of pollution by harmful substances carried in packaged forms, or in freight containers or portable tanks or road and rail tank wagons (Annexure III).*

The Convention sets out general requirements relating to the prevention of pollution by harmful substances carried by sea in packaged form or in freight containers, portable tanks or road and rail tank wagons. Detailed requirements on packaging, marking and labelling, documentation, stowage, quantity limitations and other aspects aimed at preventing or minimising pollution from such substances will be formulated in the future within the framework of the International Maritime Dangerous Goods Code or in other appropriate form.

(d) *Prevention of pollution by sewage and garbage (Annexures IV & V)*

The Convention prohibits ships to discharge sewage within 4 miles from the nearest land unless they have in operation an approved treatment plant. Further, between 4 and 12 miles from land, sewage must be comminuted and disinfected before discharge. Similarly, for garbage, specific minimum distances from land have been set for the disposal of all the principal kinds of garbage. The disposal of all plastics is prohibited.

According to Article 4 of the Convention, any violation of the Convention, such as the unlawful discharge of harmful substances or non-compliance with the Convention requirements in respect of the construction and equipment of a ship, wherever such violation occurs, will be punishable under the law of the flag State. Any violation of the Convention within the jurisdiction of any party to the Convention shall be punishable either under the law of that party or under the law of the flag State.

Article 5 provides that, with the exception of very small ships, ships engaged on international voyages are required to carry on board valid international certificates. Such certificates may be accepted at foreign ports as a *prima facie* evidence that the ship complies with the requirements of the Convention. If, however, there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially to the particulars of the certificate, or if the ship does not carry a valid certificate, the authority carrying out the inspection may detain the ship until they satisfy themselves that the ship can proceed to sea without presenting unreasonable threat of harm to marine environment.

International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969

The Convention recognises the right of a coastal State to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following upon a maritime casualty. However, such action should be taken only when it is necessary and should be proportionate in the light of the pollution or threat thereof, and after due consultations with appropriate interests, including, in particular, the flag State or States of the ship or ships involved, the owners of the ships or cargoes in question and, where circumstances permit, independent experts appointed for this purpose.

The 1969 Convention's scope was limited to casualties involving pollution by oil only. The 1973 IMCO Conference adopted a Protocol which extends the scope of the convention to those substances other than oil which are either annexed to the Protocol or which have characteristics substantially similar to those substances.

Dumping of wastes and other matters

World-wide concern over dumping of wastes and other matters is a relatively recent phenomenon. The 1958 Geneva Convention on the High Seas at that time considered dumping of only radioactive wastes as a matter of real concern. Article

25 of the Convention accordingly stated that every State should take measures to prevent pollution of the seas resulting from dumping of radioactive wastes. The authors of the Convention recognised the intricacies of any proposal providing for complete ban of dumping of radioactive waste, hence they merely stated the obligation of the State to co-operate with the competent international organisations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities or experiments with radioactive materials.

A multilateral conference of 11 members of North-East Atlantic Fisheries Commission and Finland was convened in Oslo from October 19 to 22, 1971 to discuss pollution of the sea other than by oil.[21] The outcome of the conference was a "*Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft.*" The area to which the Convention is applicable extends to the high seas and the territorial seas of the North-East Atlantic and North Sea. The scope of the Convention covers ships and aircraft of three types:

(i) those registered in a contracting State;

(ii) those loading in the territory of a contracting State the substances which are to be dumped; and

(iii) those ships and aircraft which are believed to be engaged in dumping within the territorial sea of a contracting State.

The Convention divides dumping into three categories. Article 5 lists out the substances dumping of which is absolutely prohibited. Article 6 deals with those substances which can be dumped subject to a permit. Article 7 describes the substances which may only be dumped with the approval of national authorities. However, exceptions are made in the case of dumping resulting from *force majeure* due to stress of weather or any other cause where safety of human life or of a ship or aircraft is threatened.

21. The Convention was opened for signature in Oslo on February 15, 1972.

It is the duty of the States parties to the Convention to issue permits and approval, keep records of the permits and report to the Commission contemplated in the Convention.

The other obligations of the contracting parties include:

(i) co-operation in scientific research concerning pollution and in monitoring the distribution and effects of pollutants;

(ii) assist one another in dealing with pollution incidents at sea;

(iii) co-operate in promoting within the relevant international bodies measures to deal with pollution caused by oil, radioactive material and other noxious substances.

A global *Convention on the Dumping of Wastes at Sea* was adopted by a conference under the United Nations auspices in London on 30 October 1972. Representatives from more than 78 countries, including the major maritime nations, participated in the conference.

The text of the Convention contains 22 articles. Article I obliges the contracting parties to "individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practical steps to prevent the pollution of the sea by the dumping of wastes and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea".

Like the Oslo Convention, this Convention also divides wastes into three categories. Annexure I specifies harmful materials whose dumping is prohibited except in an emergency arising for the safety of human life or of vessel. Annexure II includes materials dumping of which is permitted under a prior special permit issued by the appropriate authority. The third category consists of all other wastes, dumping of which may take place after obtaining a prior general permit.

It is the duty of the contracting States to issue permit after careful consideration of all the relevant factors including the characteristics and composition of the matter, the characteristics of the dumping site and the method of deposit. Each contracting state would designate their appropriate authority responsible for issuing special and general permits. Maintenance of records of all permitted dumping is also an obligatory function. It is the duty of the contracting States to co-operate in monitoring the conditions of the seas.

Belgium, Denmark, France, Federal Republic of Germany, the Netherlands, Norway, Sweden and the United Kingdom have concluded an *Agreement concerning pollution of the North Sea by oil*. The contracting parties undertake to co-operate actively to prevent the pollution of the North Sea. They have undertaken the obligation to inform the other parties about:

(a) their national organisation for dealing with oil pollution;

(b) the competent authority responsible for receiving reports of oil pollution and for dealing with questions concerning measures of mutual assistance between contracting parties;

(c) new ways in which oil pollution may be avoided and about new effective measures to deal with oil pollution.

Agreement between Denmark, Finland, Norway and Sweden concerning co-operation to ensure compliance with the regulations for preventing the pollution of the sea by oil, obliges contracting parties to forthwith inform the competent authority of another contracting State of the sighting of any considerable amount of oil on the sea which may drift towards the territory of the latter State. One contracting State would also inform the competent authority of another contracting State of any case where a vessel registered in the latter State has been observed committing an offence, within the territorial or adjacent waters of the contracting States against the regulations concerning pollution by oil. The contracting parties would furnish

assistance to each other in the investigation of the offences. which may include, inspection of the oil record book; the ships official log-book and the engine-room log-book.

The Paris Convention for the Prevention of Marine pollution from Land-based Sources. concluded in December 1973, obligates the twelve Western European nations to prevent and control pollution of the North-East Atlantic from land-based sources situated in their territories through direct discharges and watercourses. By the terms of the Convention. the parties undertake to enact specific regulations governing the quality of the environment, discharges into the seas and watercourses flowing into these seas.

The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, 22 March 1974

A Diplomatic Conference on the Protection of the Marine Environment of the Baltic Sea Area was held in Helsinki from 18 to 22 March 1974. The delegates from seven Baltic States, namely Denmark, Finland, the German Democratic Republic. the Federal Republic of Germany. Poland Sweden and the U.S.S.R. participated in the Conference. On 22 March. 1974. the Conference adopted a "Convention on the Protection of the Marine Environment of the Baltic Sea Area."

Article 3 of the Convention obligates the Contracting Parties to take individually or jointly all appropriate legislative, administrative or other relevant measures in order to prevent and abate pollution and to protect and enhance the marine environment of the Baltic Sea Area.

Another important obligation of the Contracting States is stipulated in Article 6 of the Convention. It contemplates that the Contracting Parties would take all appropriate measures to control and minimise land-based pollution of the marine environment of the Baltic Sea Area. In particular, they would take all appropriate measures to control and strictly limit pollution by noxious substances and materials in accordance with the provisions of Annex II of the Convention.

Article 7 of the Convention prohibits any pollution by deliberate, negligent or accidental release of oil, harmful substances other than oil, and by the discharge of sewage and garbage from ships.

Article 9 stipulates provisions to regulate dumping in the Baltic Sea Area.

Article 12 envisages establishment of "the Baltic Marine Environment Protection Commission." Article 13 defines the duties of the Commission. Article 17 obliges the Contracting Parties, jointly to develop and accept rules concerning responsibility for damage resulting from acts or omissions in contravention of the Convention, including, *inter-alia*, limits of responsibility, criteria and procedures for the determination of liability and available remedies.

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. The co-relating duty of the States is incorporated in the text of the same Principle. It stipulates that "(States have) the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

Principle 22 is a corollary of Principle 21. While Principle 21 stipulates the obligation of States to control the matters within their jurisdiction, Principle 22 broadens that obligation. Principle 22 clearly lays down that States must co-operate 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 responsibility not to damage the environment of other States is a universally recognised principle. However, the international law on this issue is still in the embroynic stage of development. The most frequently quoted award in the

Trail Smelter Arbitration[22] stated that, ".....no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence." However, as observed: "The famous Trail Smelter decision has been interpreted in many ways. Some, for example, have argued that it introduced the concept of strict (or absolute) liability into international law. Some maintain that it merely invokes the rudimentary principle of *sic utere tuo*. Others have suggested that it hints at an acceptance of the doctrine of equitable utilisation. As this decision was an arbitral award, the controversy will never be authoritatively resolved."[23] Nevertheless, "the Trail Smelter heritage has now been appropriate, by the international community in the Stockholm Declaration on the Human Environment, whether the language of the Declaration is wholly faithful to the Trail Smelter doctrine is now academic : it has transcended it."[24]

The "Helsinki Rules" adopted by the International Law Association at its fifty-second Conference in 1966, propound "the doctrine of equitable utilisation." It states that "each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin." Article X, dealing with the pollution aspect provides that, "consistent with the principle of equitable utilisation" a State

(a) must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State, and

22. The question in issue was determination of Canada's liability for the damage done to the United States as a result of the emission of sulphur dioxide fumes by a Smelter located in Trail (Canada).

23. See James Barros and Doughlas M. Johnston. *The International Law of Pollution* 1974, Page 75.

24. *Ibid.*, Page 76.

(b) should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

The vast literature on the subject of radioactive contamination of human environment resulting from nuclear testing, disposal of radioactive wastes and accidental dispersion of radioactivity may also provide some useful guidance. However, the most relevant treaty on the subject under consideration is the "Treaty banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and under Water" concluded on 5 August 1963. The objective of the Treaty is "to achieve the discontinuation of all test explosions of nuclear weapons for all time and.....to put an end to the contamination of man's environment by radioactive substances." Each of the contracting party undertakes the obligation: "to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control :

(a) in the atmosphere; beyond its limits, including outer space; or underwater including territorial waters or high seas; or

(b) in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted."

Several multilateral conventions deal specifically with the problem of determination of liability for damages. The following part of the discussion includes a survey of these conventions. The survey covers the developments in the field of:

(i) Civil Aviation;

(ii) Maritime Activities;

(iii) Space Activities; and

(iv) Nuclear Activities.

(i) *Civil Aviation:*

Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface, concluded at Rome in October 1952

Article 1 of the Convention provides:

"Any person who suffers damage on the surface shall upon proof only that the damage was caused by an aircraft in flight or by any person or things falling therefrom be entitled to compensation."

Article 2 channelizes responsibility upon the operator of the aircraft, i.e. the one who utilizes the aircraft, or authorises his servants or agents to use the aircraft. Article 11 limits the operator's liability in accordance with the weight of the aircraft. Further, Article 5 lays down certain exceptions. It states that "any person who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance, or if such person has been deprived of the use of the aircraft by an act of public authority." Finally, Article 26 provides that operators of military, customs or police aircraft would not come within the purview of the Convention.

(ii) *Maritime Activities:*

International Convention on Civil Liability for Oil Pollution Damage, 1969

Under this Convention, liability for oil pollution damage is placed on the owner of the ship transporting the oil. Although the ship-owner's liability is strict, he is relieved of the liability if he can prove that the escape of oil was due to one of the exceptional causes listed in the Convention. The liability of the shipowner is limited in respect of each incident. The Convention contains provisions to determine the jurisdiction of courts to deal with cases where pollution damage occurs in more than one

State. The Convention obliges shipowners of contracting States to carry insurance or other acceptable guarantee to cover their liability under the Convention.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

The 1969 Liability Convention was inadequate for two reasons: (i) the regime established was based on the strict liability of the shipowner for the damage which he could not foresee, thus making a clear departure from the traditional maritime law on liability; and (ii) system of liability limitation as contemplated in the Convention was inadequate to meet cases of oil pollution damage involving large oil carrying ships and tankers. In order to remedy this situation, IMCO convened another international conference in Brussels from November 29 to December 18, 1971. The conference adopted a Convention supplementary to the 1969 Convention. Under the 1971 Convention, an International Oil Pollution Fund is established to ensure adequate compensation for victims of pollution damage who are unable to obtain any or adequate compensation under the 1969 Convention. It will also provide some relief to shipowners in respect of part of additional financial burden imposed on them by the 1969 Convention. Under the Convention, a shipowner can claim compensation only when his ship complies with certain international conventions establishing safety and anti-pollution standards. In certain circumstances, it may also apply to the guarantor or insurer of the shipowner. However, the Convention would not protect any claim where the damage results from the wilful misconduct of the owner.

The contracting parties recognise the legal personality of the Fund. For the administration of the Fund, the Convention envisages establishment of three bodies — an Assembly, an Executive Committee and a Secretariat headed by a Director. The source of income of the Fund will be the initial and annual contributions from companies importing oil by sea into a contracting State. The amount of contribution will be fixed by the Assembly.

(iii) *Space Activities:*

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer-Space, including the Moon and other Celestial Bodies

Under Article VII, the Convention stipulates broad principles of liability for damage. It states :

> "Each state party to the Treaty that launches or procures the launching of an object into outer-space, including the moon and the other celestial bodies, and each state party from whose territory or facility an object is launched, is internationally liable for damage to another state party to the Treaty or to its natural or juridical persons by such object or its component parts on the earth, in airspace or in outer space, including the moon and other celestial bodies."

Article I(a) of the Convention defines the term "damage" as "loss of life, personal injury or other impairment of health; loss of or damage to property of States or of persons, natural or juridical, or property of international inter-governmental organisations". Further, Article XI provides that if damage occurs to a space object elsewhere than on the surface of the earth by a space object of another State, the latter State shall be liable only if the damage is due to its fault or fault of persons for whom it is responsible. Article VI(1) exonerates the launching State from absolute liability if the damage results from the gross negligence or the international act or omission of either the State making the claim for compensation or the person its represents.

Articles IX and X deal with certain procedural aspects of the damage recovery process. Accordingly, a State which suffers such damage is entitled to present, through diplomatic channels, a claim for compensation to the responsible State, i.e. the launching State; presentation of such claim would not require the prior exhaustion of any local remedies that may be available to a claimant State or to natural or juridical persons it represents. The Convention provides that any claim for

compensation should be presented within one year following the date of the occurrence of damage.

The Convention on International Liability for Damage caused by Space Objects concluded in March 1972

This Convention further elaborates the principles incorporated in the 1967 Treaty. The new Convention contemplates liability for damage under the following four conditions:

(i) where damage is caused by the launching State's space object on the surface of the earth or to an aircraft in flight;

(ii) where damage is caused by the launching State's space object to the space object of another launching State elsewhere than on the surface of the earth;

(iii) where damage is caused by one launching State's space object to another launching State's space object elsewhere than on the surface of the earth and as a result, damage is caused to a third State on the surface of the earth or to an aircraft in flight; and

(iv) to a third State's space object elsewhere than on the surface of the earth.

In the first and third situations, the liability of the launching State is absolute, subject to one condition where the damage has been caused either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of the claimant state or of natural or juridical persons it represents. This exonerates the launching State from any liability for damage.

In the second and fourth situations, liability is one of fault. Further the Convention elaborates that in the third and fourth situations, the first two States shall be jointly or severally liable and the amount to compensation will be in proportion to the extent that they are at fault.

(iv) *Nuclear Activities:*

Paris Convention on Third Party Liability in the field of Nuclear Energy (1960) and the Vienna Convention on Civil Liability for Nuclear Damage (1963)

The two Conventions provide, as one of the basic general principles, for the exclusive liability of an operator of a nuclear installation and for no other person to be liable for damage caused by a nuclear incident. However, these Conventions lay down an exception to the above rule to provide for the cases, where, under any international agreement in the field of transport in force or open for signature, ratification or accession at the date of the nuclear convention any other person might be held liable.[25] The only reason to make this exception was to preserve the possibility of carrier's liability under international transport conventions. The nuclear operators' liability was not affected at all.

The Brussels Convention on the Liability of Operators of Nuclear Ships, 25 May 1962

The Convention follows the pattern established by the Paris and Vienna Conventions mentioned earlier. It also provides for the objective and sole liability of the operator for nuclear damage caused by a nuclear incident involving the nuclear fuel of, or radio-active products or wastes produced in his ship (Article II). Articles III and V stipulate details regarding limitation of the operator's liability in amount and time. Article III(2) obligates the operator to cover his liability by insurance or other financial security.

The Brussels Supplementary Convention of 31 January 1963

This Convention is supplementary to the Paris Convention of 29 July 1960, on Third Party Liability in the field of Nuclear Energy. The basic object of the Supplementary Convention is to set up a system of compensation providing for joint liability on

25. Article 6(b) of the Paris Convention, and Article II(5) of the Vienna Convention.

the national and international level as between all the contracting parties. It provides for broader compensation from public funds to supplement the compensation payable in respect of the maximum liability of the operator.

Convention relating to Civil Liability in the field of Maritime Carriage of Nuclear Material, Brussels, December 1973

In 1971, the IMCO and the IAEA jointly convened a conference which adopted a Convention to regulate liability in respect of damage arising from the maritime carriage of nuclear substances. The Convention provides that a maritime carrier is not liable for damage caused by a nuclear incident in the course of maritime carriage if an operator of a nuclear installation is liable for such damage under the nuclear conventions. In other words, the Convention reinforces the principle of the exclusive liability of the operator of a nuclear installation.

(3) SUMMARY RECORD OF DISCUSSIONS ON THE LAW RELATING TO HUMAN ENVIRONMENT

The Asian-African Legal Consultative Committee took up for a preliminary exchange of views the topic of "Law relating to Human Environment" in the third plenary meeting of the Tehran Session held on the 29th of January, 1975. The Delegate of *Japan* referring to the Stockholm Declaration of 1972 invited the Committee to examine Principles 21 and 22 embodied in the aforesaid Declaration. Principle 21 affirms the responsibility of States in accordance with the U.N. Charter and the principles of International Law to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction. Principle 22 calls upon States not only to ascertain but to further develop International Law in regard to liability and compensation for the pollution or environmental damage caused by activities within the national jurisdiction or control in the area beyond the national jurisdiction. Commenting on Principle 21, the Delegate observed that the responsibility referred to therein was the one prescribed by international law. and therefore unless international law on environmental issues was ascertained, the content of that responsibility would not be clear. In that context he referred to the Trail Smelter arbitration and said that the same could be taken as a precedent for it laid down two norms, namely (i) no State has a right to use or permit the use of its territory in such a manner as to cause injury to the territory of another; and (ii) it also embodied the element of forseeability which was relevant in imputing liability. He urged the Committee to reflect on these points while considering the development of environmental law.

Further the Delegate pointed out that Principle 21 listed activities not only within the jurisdiction of the State but also

within its control. He wondered if this control was based on territorial jurisdiction, and if it was so. to what extent. Under customary international law a State could be held responsible only if it failed to exercise diligence, but with regard to pollution damage, the Delegate felt, it would be desirable to hold the State responsible even if there was no fault on its part.

Commenting on Principle 22, the Delegate observed that on the compensation question, two approaches could be used, one was to use the concept of State responsibility. In his view, that was a reasonable approach when State activities caused damage, but when activities of private persons caused damage, it would be inappropriate to hold the State responsible only because the offending persons belonged to it. Another approach was to use the concept of civil liability whilst preserving the concept of State responsibility in the existing international law intact — which implied that the private person was obliged to pay compensation and the State was obliged to take necessary measures to ensure payment of compensation. To decide which approach would be the best, the nature of activities should be looked into before adopting any specific approach. Human activities, the Delegate said, which caused damage to the environment were quite diverse in their nature. He was, therefore, inclined to suggest that the study of the specific fields of environmental law should precede the formulation of general legal principles. Finally, he suggested that the Secretariat of the Committee continue the study of the subject and compile the relevant materials.

The Delegate of *India* considered the maintenance of human environment and the enchancement of its quality a matter of concern to the world community as a whole. The urgency of its protection was well realised by industrially advanced nations and it was a matter of concern to developing countries too. Surveying the work done on the subject, the Delegate stated that the question of human environment was comprehensive and complex and therefore it would have to be handled and promoted carefully. The preservation of human environment appertained to the land. the sea and the air. The sea constituted 5/7th of the globe, but much of the pollution

of the sea was caused not by the use of ships or by the exploitation of the continental shelf by the States, but the bulk of the pollution of the sea was from the land and the air. And since the land was occupied by sovereign States, any rules and regulations regarding the protection of human environment on the land would have to be, in the initial stage, in the form of recommendations for State actions. The State action in preserving the human environment might relate to innumerable aspects of human activity all of which might not be regulated by the State. Nevertheless in almost all the countries the State was new assuming a greater role in several aspects of human activity. The framework within which social and economic progress should be maintained and increased was already set out in the Stockholm Declaration on Human Environment, and against the background of its principles, it was necessary to develop programmes of action and a general legal framework for regulating such action.

As regards suggestions for further study by the Secretariat of the Committee, the Delegate stated that preservation of marine environment should be left out since the question was already under study by several organisations such as IMCO, FAO, IAEA and also by UNEP. However, the Committee might concern itself with the coordination of work of all these bodies after some time. For the immediate future, the Committee might concentrate on some aspects of the preservation of human environment on the land and in the air. The Delegate put forward two suggestions for consideration of the Committee : (i) The Committee might prepare a draft of a general convention on the human environment on the basis of the principles adopted in the Stockholm Declaration and on the other evidence of State practice; (ii) The Committee might also prepare draft provisions, either as part of general convention or in form of separate articles on the following aspects:- (a) the provision and preservation of clean water; (b) the preservation of the quality of clean air; (c) the organisation and maintenance of human settlements and (d) the preservation and protection of wild life, particularly the endangered species of wild fauna and flora. The Delegate also requested the Committee's Secretariat to collect the relevant information.

The Delegate of *Pakistan* endorsed the point made in the Founex Report that the current concern with environmental issues was a sequel to the distorted economic development of the industrially advanced countries. The Delegate cautioned the countries represented in the Committee to take a lesson from the case of the developed countries and advised them to start to plan their development within the context of their own environmental problems. It was with that objective that the Delegate proposed that the Committee constitute a special study group of experts to examine the issues relating to Human Environment and to submit its recommendations at the next session of the Committee.

At this stage the President drew attention of the Members that two suggestions had been put forward: one by the Delegation of India requesting the Secretariat to study particular aspects of Human Environment, and another by Pakistan on the formation of a special study group to study the problems relating to Human Environment and to report to the next session of the Committee. The Delegate of *Iraq* wondered if it was possible to reconcile the two suggestions so as not to duplicate the work. The Secretary-General pointed out that the past practice had been that initially material was collected and drafts were prepared by the Secretariat and thereafter, the expert group was formed to go into the matter. So in his view the suggestions made by India and Pakistan were not incompatible, but he wondered if time was ripe for the setting up of a special study group particularly when Foreign Offices of member countries were involved in the negotiations for the Law of the Sea Treaty.

In the fourth plenary meeting held on the 1st of February, 1975, the President invited the Representative of the UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) to address the Committee. At the outset the UNEP Representative urged the Committee to consider the possibility of establishing closer inter-secretariat cooperation with the UNEP in the field of the development of international environmental laws. The Representative stated that one of the chief concerns of the UNEP was the protection and preservation of the marine environment and that since its very first session in June 1973, the UNEP had been engaged *inter alia* in the following tasks:

(1) to carry out objective assessments of problems affecting the marine environment and its living resources in specific bodies of water;

(2) to assist nations in identifying and controlling land-based sources of pollution, particularly those which reach oceans through rivers;

(3) to stimulate international and regional arrangements for the control of all forms of pollution of the marine environment and especially agreements relating to particular bodies of water;

(4) to urge IMCO to set a time-limit for the complete prohibition of international oil discharges in the seas, as well as to seek measures to minimize the possibility of accidental discharges;

(5) to develop a programme for the monitoring of maritime pollution and its effects on marine ecosystems, paying particular attention to the special problems of specific bodies of water including some semienclosed seas, if the nations concerned so agree; and

(6) to promote the development on an entirely voluntary basis of a register of clean rivers.

Further, the Representative pointed out, UNEP had submitted 16 specific recommendations relating to the protection of the marine environment including the prevention and control of marine pollution and marine scientific research for consideration at the Caracas meeting on the Law of the Sea. He felt that those recommendations would be of considerable importance to the Delegations at the forthcoming Geneva meeting on the Law of the Sea.

On the question as to what role could be assigned to UNEP within the provisions of the proposed Law of the Sea Convention, the Representative, after briefly reviewing the functions and responsibilities of UNEP as laid down by the U.N. General Assembly, said that it would further the aims and objectives of General Assembly Resolution 2997 (XXVII) which

had established UNEP, if its role in the protection and preservation of the marine environment was expressly affirmed in the proposed Convention. This affirmation and recognition, he added, ought to extend both to the general as well as to the specific functions and responsibilities of UNEP. With respect to general functions, the Representative said, the Convention could recognise the role of the UNEP in providing the overall integrated framework for comprehensively coordinating, reviewing and guiding activities of States and international organisations that might affect the quality of the marine environment. As for specific responsibilities, the Representative felt that the Convention could recognise the UNEP as the appropriate forum for the international community of States in its endeavour to establish, both at the regional and global levels, standards, rules and regulations for the prevention of marine pollution from land-based sources. This particular responsibility, the Representative pointed out, at present did not fall within the specific competence of any other U.N. organisation and therefore UNEP under its mandate had already initiated action in that regard.

In the fifth plenary meeting held on the 2nd of February, 1975, the Committee decided on the proposal of Pakistan to appoint an expert Study Group on the subject of Human Environment, composed of the representatives of the Arab Republic of Egypt, Bangladesh, Ghana, India, Iran, Pakistan and Sri Lanka. It was agreed that the expert group would meet after a study and relevant documentation had been prepared by the Committee's Secretariat. The UNEP Representative informed the Committee that his organisation would like to cooperate with the Study Group.

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VI. TRADE LAW MATTERS

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At the Tehran Session, a Sub-Committee composed of the representatives of Egypt, Bangladesh, India, Indonesia, Iraq, Japan, Malaysia, Nepal, Pakistan, Sierra Leone, Sri Lanka and Tanzania was constituted to consider the trade law items included in the agenda of the session, namely (i) General Conditions of Sale and Model or Standard Contracts in International Sale of Goods; (ii) International Commercial Arbitration; and (iii) International Shipping Legislation. Although the Sub-Committee had before it extensive briefs and documents prepared by the Committee's Secretariat on all the topics referred to above, to assist in its deliberations, due to lack of time the Sub-Committee was only able to give detailed consideration to the question of drawing up of model contracts and general conditions of sale.

The Committee's involvement with the question of standard forms of contract and general conditions of sale dates back to its Accra Session held in 1970 at which a suggestion had been made by the Chief of UNCITRAL that the Committee might profitably undertake the preparation of standard forms to contract and general conditions of sale in respect of commodities of special interest to the buyers and sellers of the Asian-African region on the same lines as was being done by the Economic Commission for Europe (ECE) for European region. As the Committee appeared to be favourably inclined to the acceptance of this suggestion, the governments of almost all Asian-African States and their trade organisations and chambers of commerce were consulted with regard to this question. As their response was favourable, the matter was taken up at the Colombo Session of the Committee in 1971 for determining the mode and manner of proceeding with this topic. It was agreed that the Committee should proceed on the topic of model contracts, meaning by that term not contracts of adhesion, but standard contracts with general terms which could be modified by the parties. The commodities considered suitable as a starting point for such

model contracts were rubber, timber, rice, textiles, machinery, oil and coconut products and it was agreed that member governments and the chambers of commerce in the Asian-African region be consulted with regard to other commodities. It was also agreed that work could proceed both in commenting on existing contracts and drafting new ones where necessary. In pursuance of this decision, the Committee's Secretariat studied the model contracts in use in other regions and prepared the draft of a standard form of contract for sale of agricultural products and other goods where Asian-African countries were sellers on F.O.B./F.A.S. basis. The draft contract was submitted to the governments and trading organisations in the Asian-African region and useful suggestions were received. The draft contract was thereafter considered by a Standing Sub-Committee during the Lagos Session (1972) of the Committee and revised in the light of the comments received. At that session it was agreed that the Committee's Secretariat should prepare another draft standard form of contract together with corresponding general conditions of sale in respect of certain commodities in respect of which Asian-African countries were mainly importers. Light machinery and durable consumer goods were chosen for the purpose of this draft.

The Sub-Committee constituted at the Tehran Session considered both the draft standard forms of contract and general conditions of sale as prepared by the Committee's Secretariat together with the comments received from Governments, chambers of commerce and expert bodies and institutions engaged in the field. After careful consideration, the Sub-Committee was able to finalise the draft of a standard contract on F.O.B./F.A.S. basis in respect of commodities where Asian-African countries have the role of sellers and another draft standard contract on C.I.F. (Maritime) basis in respect of finished goods and light machinery together with the relative general conditions of sale. The Committee during the Tehran Session endorsed the recommendation of the Sub-Committee to organise a meeting of experts in the spring of 1976 with the participation of the representatives of trade in the region and such of the expert organisations as may be interested, to finalise the aforesaid contracts.*

*A meeting of experts was convened in Kuala Lumpur under the auspices of the Asian-African Legal Consultative Committee from 6th to 9th July 1976 which finalised two model contracts, one on F.O.B. basis and another on F.A.S. basis for sale of goods in international transactions. These contracts are intended to be used in trade between countries of the Asian-African region and parties outside.