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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The delegate of IRAQ stated that the concept of free-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND MATERIALS

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

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

PART I : GENERAL PROVISIONS

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

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

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

Commentary

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

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

3. Paragraph 1.3 relates to the relationship between

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

PART II : PREFERENTIAL FISHING RIGHTS OF COASTAL STATES

2.1 Objective of preferential rights

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

Commentary

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

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

2.2 Preferential catch

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

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

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

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

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