one or more riparian States, as opposed to the new concept of "free transit" through "international straits".

(4) *Questions relating to the settlement of international disputes* relating to the law of the sea : Should there be a system of compulsory settlement ? Should there be more than one such system, more than one tribunal ? Was this a field in which even countries traditionally wary of compulsory mechanisms ought to consider accepting third party settlement ? Was the highest level of compromise on this point still some kind of "compulsory conciliation" ending in a recommendation to the parties, or was it possible and desirable for the community to move a stage further ?

(5) *Finally, should the Conference on the Law of the Sea take place as planned in 1973* ? In the light of the work thus far, was it possible or desirable for a Conference to be held at all ? Would the delay of a year or two materially affect the degree of preparedness ? Should the Conference, if held, take place in two or more stages ?

II. Archipelagic States

The Delegations of Indonesia and the Philippines submitted the basic principles relating to archipelagic States as follows :

" (1) An archipelagic State, whose component islands and other natural features form an intrinsic geographical, economic and political entity, and historically may have been regarded as such, may draw straight baselines connecting the outermost points of the outermost islands and drying reefs of the archipelago from which the extent of the territorial sea of the archipelagic State is, or may be, determined.

(2) The waters within the baselines, regardless of their depth or distance from the coasts, the sea-bed and

the subsoil thereof, and the superjacent airspace, as well as all their resources, belong to and are subject to the sovereignty of, the archipelagic State.

(3) Innocent passage of foreign vessels through the waters of the archipelagic State shall be allowed in accordance with its national legislation, taking into account the existing rules of international law. Such passage shall be through sealanes as may be designated for that purpose by the archipelagic State."

The Delegations of Indonesia and the Philippines hoped that the members of the Committee would now be able to lend their support to these principles in the next Conference on the Law of Sea.

Some delegations continued to support the concept of the archipelagic State while some sought clarification of certain points, among them the following :

(a) *In determining the right of innocent passage through the waters of archipelagic States, should that State's national legislation prevail over international law ?*

The Delegations of Indonesia and the Philippines explained that a workable balance should be found between national legislation and international law. Thus, innocent passage should be regulated by national legislation with the understanding that such national legislation must take into account the existing rules of international law with regard to innocent passage. While under international law foreign ships had no right of innocent passage through the internal waters of a State, the archipelagic States were nevertheless prepared to grant that right through the archipelagic waters along designated sea lanes. This would, however, oblige archipelagic States to enact laws and promulgate regulations concerning innocent passage, and establish the necessary sealanes.

(b) *Would an archipelagic State after claiming the waters within the archipelago, still claim a zone of exclusive economic jurisdiction outside the archipelago* ?

The Indonesian and the Philippine Delegations explained that the concept of the archipelagic State was intended to guarantee the unity of such a State, and was thus concerned only with the waters *within* the baselines from which its territorial sea was measured and not with the area outside those baselines. The concept of a zone of exclusive economic jurisdiction had relevance only in areas outside the territorial boundaries of a State.

(c) *Were the four elements of the archipelagic State concept outlined in the Indonesian and Philippine draft, namely : existence as an intrinsic geographical, economic and political entity, and the historical element, all to be taken together and co-exist as conditions for application of the archipelagic State concept ?*

The Delegations of Indonesia and the Philippines said that the archipelagic State was basically a geographical entity strengthened by political and economic unity.

Some countries had historically been regarded as archipelagic States while others did not emphasise the historical element. For these reasons the Indonesian and Philippine draft had indicated that the historical element was an additional, but optional qualification.

(d) *Should not the depth of waters and the distance between the islands of an archipelagic State be taken into consideration ?*

The Delegations of Indonesia and the Philippines said that it was a fact of geography that some waters within an archipelago were very deep even though

they are very close to an island in the archipelago group. It was also true that some of the outlying islands of an archipelago group might lie at an irregular distance from each other. Since the main purpose of the archipelagic State concept was to unite the archipelagic country, any distance or depth criteria would merely be irrelevant and their application could endanger the very unity which archipelagic States were trying to safeguard. It was also emphasised that this aspect of the matter should not create any apprehension that any isolated islands in mid-ocean would claim to form archipelagic States within the continent since an archipelagic State must be an intrinsic geographical unit. Small islands scattered in the middle of an ocean, did not either among themselves or in relation to a continent, satisfy this criterion. It was noted that the problem of islands was a separate and distinct one falling under item 15 of the List of Subjects and Issues introduced to the U. N. Preparatory Committee on the Conference on the Law of the Sea by 56 States (A/AC. 138/66).

(e) *Questions relating to ratio of land to water, distances between islands, and other data relating to Indonesia and the Philippines, such as the longest baselines in the two countries; the application of the archipelagic State concept to other island countries etc.*

The Indonesian and Philippine Delegations explained that in their countries islands lay at relatively short distances from one another Both countries have a ratio of approximately one third of land and two-thirds of water. The longest Indonesian baseline was 122.7 nautical miles and the average length of a baseline was about 40 miles. There were only five baselines of more than 100 miles, and there were 53 baselines of less than 24 miles among the 201 baselines. Thus the longest Indonesian baseline was still shorter than the baselines which had traditionally been admitted for an "historic bay". And the average

Indonesian baseline was still less than the baseline admitted for an archipelago by the international Court of Justice in the *Anglo-Norwegian Fisheries Case* (45.5) miles.

On the other hand, the Philippines land area consisted of approximately 115,830 square miles while its total water area within the baseline was only about 170,000 square nautical miles which was distributed more or less evenly over the archipelago between and around islands. Most of the component islands were separated by distances of less than 24 miles, a few by more than 50 miles but not any of those adjacent to each other on any side were beyond 83 miles. The Philippines had 64 baselines, the longest being not more than 200 kilometres.

With regard to the application of the archipelagic State concept to other island countries, the Delegations of Indonesia and the Philippines mentioned, among others, Fiji and Mauritius. There were other island countries, for example, Japan, which could fulfil the criteria for an archipelagic State, but due to different interests, and being a country already united and highly developed, might not wish to be regarded as an archipelagic country.

After an extensive exchange of views it was suggested that the last part of the third principle be re-drafted in order to make it clearer that the interests of the international community in passage through the waters of an archipelagic State would be properly taken into account. This suggestion was received favourably by the Indonesian and Philippine Delegations. The main purpose of their draft had been to expound the basic principles relating to archipelagic States, while the actual treaty articles on the subject could be studied much further.

There were also questions with regard to the legal nature of the airspace above the archipelago, the

small far outlying islands of the archipelagic States as well as the fisheries arrangements within the archipelagic waters.

The Indonesian and Philippine Delegations stressed again that the unity of their peoples and countries is foremost in their minds and as a consequence of this the airspace above the archipelago, the small far outlying islands of the archipelagic States as well as the fisheries and other resources should be considered as falling within their sovereignty, and as being the patrimony of their peoples. They did not consider that the archipelagic State concept encroached upon the interests of the international community because such States would be merely exercising rights which they believed to have been theirs from time immemorial and which, (as in the case of Indonesia during the period of colonial domination), might have been taken away from them by force from time to time.

At the conclusion of the discussion the Chairman said that :

(1) At present there were no rules of international law applicable to archipelagic States, and that Indonesia and the Philippines had attempted to formulate basic principles which should be applicable to their specific situations. In doing so, they had sought a balance between their national interest and the interest of the international community.

(2) The explanations and information given by the Delegations of Indonesia and the Philippines had proved very enlightening and had made it possible for the members of the Sub-Committee to advise their respective governments on the problems of archipelagic States.

III. Fisheries

On the basis of a working paper on fisheries earlier submitted to the Committee at its thirteenth session held in

Lagos, the Delegate of Japan presented in the form of provisional draft articles certain basic rules to be applied to fishing and conservation on the high seas including the preferential fishing right of the coastal States. The main points covered were as follows :

(a) In areas of the high seas beyond a limit of 12 miles measured in accordance with the relevant rules of international law, all States and their nationals would have the right to fish, subject to the regime proposed. That right would be subject to the obligation to take appropriate measures of conservation whenever necessary. When nationals of two or more States were engaged in fishing a single stock of fish on the high seas, these States would be required to co-operate in taking the necessary conservation measures.

(b) For the purpose of ensuring that reasonable protection is given to the fishing industry of a coastal State in its adjacent waters beyond 12 miles, a preferential fishing right would be recognised :

(i) In the case of a developing coastal State, that right would entitle that State annually to that part of the allowable catch of a stock of fish that can be taken on the basis of the fishing capacity of its fishing vessels in the adjacent waters. In determining the part of the allowable catch to be so reserved, account would be taken of the rate of growth of the fishing capacity of that State until such time as it had developed the capacity to be able to fish for a major portion of the allowable catch of the stock of fish concerned.

(ii) A coastal State whose economy was to an exceptional degree dependent on its coastal fishery in its adjacent waters, would be recognised as entitled to the right provided for in paragraph (i) above.

(iii) In the case of a developed coastal State, a region or regions of which were dependent on coastal fisheries conducted by small fishing vessels in adjacent waters, the right shall entitle that State annually to that part of the allowable catch of a stock of fish in the adjacent waters that is required for the maintenance of such small-scale coastal fisheries. The interest of traditionally established fisheries of non-coastal States, if any, shall be duly taken into account in determining the catch to be reserved for small scale coastal fisheries.

(c) In order to implement and safeguard the coastal State's preferential fishing right referred to in (b) above, regulatory measures which may include the establishment of open and closed seasons, closing of specific areas of fishing, regulation of gear, and limitation of the catch and which would be made applicable to vessels of non-coastal States, would be agreed between the coastal and non-coastal States concerned, on the basis of specific proposals submitted by the coastal State, so as to ensure adequate protection to the fishing activities of vessels of coastal States in the adjacent waters. Any such arrangement, would be required to be consistent with the general objectives of conservation of living resources, the maintenance of their productivity, and their rational utilization.

(d) Provision would be made for international co-operation in the field of fisheries and related industries through arrangements between coastal and non-coastal States for the necessary regulatory and other measures designed to assist in the development of the fishing capacity of developing coastal States and to facilitate the full enjoyment by such States of their preferential fishing right.

(e) There would be appropriate regulation of the fishing of highly migratory stocks on the basis of international

consultation or agreement in which all interested States would participate.

(f) Coastal States may enforce any regulatory measures adopted. In the exercise of such enforcement the coastal State may inspect vessels of non-coastal States, arrest those vessels violating the regulatory measures. The arrested vessels would be promptly returned to the flag State. Violations of the regulatory measures in force shall be duly punished by the flag State. Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to agreement between the coastal and non-coastal States concerned.

(g) In case of failure to agree to the arrangements, disputes may be settled by a special commission to be established to deal with such disputes.

In the course of discussion it was suggested that allocation of resources based on the criterion of the fishing capacity of a coastal State would be of little practical value when applied to a developing coastal State, because the fishing capacity of most developing States was small and its rapid expansion unlikely. Determination of the allowable catch was difficult in practice and the notion of the growth of fishing capacity of a State too vague as a criterion and difficult to assess.

It was pointed out that the question of ownership of the resources was of fundamental importance. The Japanese proposal was based on the premise that the fishery resources beyond the limit of 12 miles were in principle common to all. Such premise was unacceptable to several States who held the view that these resources up to a fixed distance from the coast were the property of adjacent coastal State and therefore subject to its exclusive jurisdiction. In that connection it was argued that the situation had radically changed since 1958 when the Geneva Conventions on the Law of the Sea were adopted. The technological advances that had taken place since then required a different approach from that adopted in 1958 that would take into account the interests of developing countries.

Some delegates felt that the system of enforcement proposed was not appropriate and somewhat illogical because while it recognized the right of a costal State to inspect and arrest ships violating the coastal State's regulations, it did not acknowledge that State's right to prosecute and punish offenders, preferring to accord that right to the flag State. It was also suggested that it was not clear whether the proposal was based on a zonal approach and in this connection the definition of the term "adjacent waters" as used in the draft articles might be necessary.

In reply, the following points were made by the Delegate of Japan :

(a) The allowable catch could in fact be determined objectively by estimating it on the basis of the best scientific evidence available. The States concerned could enlist the help of appropriate third parties, including international or regional bodies, in making the assessment. The catch of non-coastal States should also be within the limit of the allowable catch. A developing coastal State would be entitled to a catch based on its fishing capacity. Furthermore, developing coastal States were not precluded from sharing with non-coastal States in that part of the allowable catch not reserved to coastal States.

(b) Every effort would be made to ensure that future growth rates of fishing capacity was not underestimated, and the development plan for the fishing industry of the developing coastal State would be considered as one of the basic data in such an assessment.

(c) The Japanese draft did give adequate consideration to bridging the gap in fishing technology between developed and developing States. Where, for example, the quota arrangement could not ensure to the coastal State a catch upto the limit provided for under preferential rights, non-coastal States could be subjected to additional discriminatory restrictions, such as closed seasons, closed areas and prohibition of certain

fishing gear none of which would apply to coastal States.

(d) The Japanese draft had avoided the details of enforcement measures since experience over the years had shown that a procedure for enforcement could be most effectively established if it was based on specific circumstance and needs. Under the proposed regime no State or group of States had the exclusive right to enforce regulatory measures adopted in connection with preferential fishing rights. Accordingly, the coastal States concerned had the right to control the fishing activities of non-coastal States in their adjacent waters, but they would be required to accept Joint control with non-coastal States which wished to co-operate with the coastal States in the enforcement of the regulatory measures.

(e) It was recognized that coastal States, in view of their legitimate interest in the orderly enforcement of the regulatory measures, had a role to play in the matter of enforcement measures. · However, in view of the legal status of the high seas, which include the adjacent waters, each State should reserve to itself criminal jurisdiction over its vessels violating the regulatory measures adopted under the present regime. Flag State jurisdiction was often regarded by coastal States as tantamount to loose enforcement. In order to secure strict enforcement of regulatory measures, it was considered necessary to establish rules according to which any violation would be duly punished by the flag State and the coastal State concerned would be informed by the flag State of its action.

(f) The proposed regime was not based on any zonal approach. It was, in the view of the Japanese Delegation, most practical and effective that regulatory measures should be established to the extent possible with respect to each stock of fish concerned, having regard to the migratory range and biological characteristics of fish species.

IV. Preservation of the Marine Environment (Marine Pollution)

Introducing the subject of preservation of the marine environment, including marine pollution, the rapporteur said that it was a problem that had been brought before the world by the industrialised, developed countries who were themselves. through commercial expediency and industrial neglect, largely responsible for its creation. It was also a problem that affected the highly industrialised countries more than most developing areas. While developed countries were striving to secure international acceptance of rules and standards to combat the growing menace of pollution, the developing countries might be expected to be more concerned to prevent any unwarranted increase those rules and standards might cause in their industrial investment, and which might even impede their programmes of industrialisation. In determining their position on the subject of marine pollution, the developing countries might wish to consider the following :

(1) Degradation of the human environment, including the marine evironment, was a "social cost" for which the industrialised. developed countries were mainly responsible, and the burden of which ought to be borne principally by them.

(2) Environmental protection measures should be regarded only as one of the multiple objectives of economic planning, its priority being determined by each society in the light of its own economic and social problems.

(3) An environment relatively free of pollution was a natural resource which a developing country may exploit in a prudent and discriminating manner, e.g. through offering conditions for industrial investment that imposed relatively liberal environmental protection rules and standards and therefore offer the investor substantial financial advantages.

(4) Problems of pollution of the environment, including the marine environment, were inter-related. Piecemeal measures for pollution control (e. g. the

regulation of ocean dumping on a regional basis) should be approached with caution, unless satisfactory global controls that safeguard the interests of coastal States, and especially developing coastal States, could be worked out.

These positions found ample support in the document circulated by the Secretariat in the Brief for the present Inter-Sessional meeting of the Sub-Committee — viz. the Founex Report and the GATT Study. Particular attention was invited to paragraphs 22-25 (International Action) at the end of the Founex Report.

It was agreed that the most fundamental problem of the developing countries was the urgent need to increase their rate of economic growth and thereby raise the living standards of their peoples. Environmental protection measures were only one of many problems that had to be dealt with in perspective and should not be permitted in any way to impede the course of a country's industrialisation and stifle its economic growth.

Some delegates pointed out that a distinction might be drawn between pollution on land and pollution on the sea. Land pollution measures might be approached with greater circumspection by the developing countries concerned to prevent hampering on their industrial programmes. On the other hand, since marine pollution could be conveyed over long distances to endanger developing coastal States, developing countries might wish to consider more ready acceptance of stringent norms and regulations in this field. One delegate said that two types of approach to regulating pollution in the marine environment were often considered :

(1) regulation at source; and
(2) increase of jurisdiction by the coastal State to permit it to apply certain regulatory norms and standards and ensure their enforcement.

He felt that the former — regulation at source — was the most reasonable approach, and one that was in harmony with existing international law.

It was suggested that while all countries should collaborate in the establishment of international norms and standards for marine pollution control, the developed countries would have to bear the major costs involved, and accept regulation in all its stringency. On the other hand, a relaxation of controls in the case of developing countries, justified on the ground that industrial growth might otherwise be impeded, was equally essential. One delegate pointed out that pollution might well be caused in one developing country through some allegedly justified relaxation of controls in a neighbouring developing country. It was not enough to think of regulatory measures : questions of jurisdiction and liability had also to be studied concurrently in order to cover the problem adequately.

It was emphasised that a cautious approach to the problem of marine pollution by the developing countries should not be construed as the result of a negative attitude. As had been emphasised in the Founex Report, no country could afford to treat environment as a free resource as the presently developed countries had done in the initial stages of their economic progress. It was important to avoid the mistakes of the past. What was important was that the long-term costs of environmental problems were fully understood and reflected in the current planning policies of the developing world.

Further Work

As to the further work to be done on the subject of marine pollution before the Committee's next session, the Sub-Committee felt that the following should be the subjects of study :

(1) Pages 8-14 of Document 10 of the Conference on the Human Environment, which was explicit as to the measures necessary to safeguard the interest of the developing countries.
(2) The question of liability for damage caused by marine pollution, including the question of jurisdiction and enforcement measures, in that connection paragraph 22 of the Declaration on the Human Environment called for special examination.

It was decided that the Secretariat should prepare and circulate :

(1) An analytical study of the Declaration on the Human Environment;

(2) A list of international agreements regarding marine pollution together with brief summaries of their main provisions.

V. Sea-bed beyond National Jurisdiction

Regulation of the exploration and exploitation of the sea-bed beyond national jurisdiction was discussed on the basis of working papers prepared by the Government of Japan reproduced on pages 111–126 of Volume IV of the Brief of Documents for the Committee's Lagos meeting, and by the rapporteur reproduced on pages 375–411 of the Report of that meeting. The rapporteur recalled that Dr. Jagota of India had been kind enough to introduce his working paper in Lagos. He intended to revise that paper in the light of comments he had received, but the revisions were not yet complete. In the main, the revision would consist of regrouping of provisions and the elimination of non-essential material. He did not envisage many major changes of substance.

The rapporteur suggested that rather than embarking on an article by article discussion of the draft, the meeting might consider four main areas of importance : (1) the functions of the proposed International Sea-Bed Authority, (2) financing the organization; (3) the composition of the executive body and (4) benefit sharing. As to the first, he recalled that at the Committee's Colombo meeting in January 1971, he had proposed a tentative list of powers and functions of the Authority which had been accepted by the Committee. These were the powers and functions now listed in section 2 of Chapter III of the draft before the Committee. They had also been incorporated in the Tanzanian draft before the Preparatory Committee for the Conference on the Law of the Sea. The first power listed, viz.

> "to explore the international sea-bed and exploit its resources for peaceful purposes by means of its own facilities, equipment and services, or such as are procured by it for the purpose"

had immediately evoked sharp criticism from several developed countries whose private industry currently held a monopoly of sea-bed technology. It had been urged time and time again that this particular power of the Authority be omitted altogether. The developing countries had, in general, remained unconvinced of the wisdom of omitting this power which appeared to them entirely logical to confer on machinery that was in effect the trustee or administrator of the "common heritage of mankind." They had pointed out that although the power to exploit should be conferred on the organization by its charter, it would not be exercised initially, and would be exercised at all only if and when the management were to decide that such exploitation was technologically, financially and from a business point of view, a sound proposition. The draft envisaged that exploitation by the Authority would exist side by side with a system for licensing other exploiters of sea-bed resources and there was no intention to create a monopoly situation. Members would have to give serious thought to how strongly they felt regarding conferment of this power since it could become a matter of controversy with far-reaching consequences for the progress of the Conference.

If this power was to be conferred on the Authority, it would have to be decided how it was to be exercised. The present draft envisaged that this power would be exercised through an autonomous body — the Sea-bed Development Corporation, under the aegis of the Authority. But there were other methods.

Another power which the developing countries felt should be conferred on the machinery that was likely to cause controversy was that of taking action to minimize fluctuation of prices of land minerals and raw materials that might result from the exploitation of the resources of the sea-bed, and any adverse economic effects caused thereby. In this connection it was necessary to note that conferment of the power did not necessarily mean that the Authority should alone seek to establish and implement measures for the purpose by itself. It could and should seek these results through collaboration with existing

arrangements and organizations already active in the field, e.g. UNCTAD, commodity arrangements, so as to take advantage of their experience and expertise.

In the course of the discussion of this point, one member suggested that consideration be given to employing a stage-by-stage approach to the conferment of powers on the Authority. It might be better for the organization in its initial stages not to undertake complex tasks that would necessitate a large capital outlay, but rather to allow it to start in a modest manner and progress toward fulfilling all the functions that might appear desirable. It was pointed out that there were two ways of doing this : either to confer all desirable powers on the Authority as and allow it to determine how and when to use them; or to confer powers on the authority and when it was felt that it was ready to exercise them with acceptable efficiency. Of the two, the latter was open to the objection and charters were notoriously difficult to amend, particularly in controversial areas such as this one. It was suggested that if a slow evolutionary process was desirable, and perhaps inevitable in the circumstances, it would be preferable to let it take place on the basis of a carefully drafted comprehensive competence enshrined in its charter. The chairman suggested that much of the heat might be taken out of the controversy surrounding powers of the Authority if the drafting could be made somewhat less explicit. The same result could be achieved by drafting in broader terms less likely to evoke specific apprehensions among certain interests.

On the question of financing, the rapporteur said that provision might be made for the Authority to receive moneys through (1) a form of contribution from developed countries out of value received through exploitation of sea-bed resources within their national jurisdiction (not available for distribution as "benefits" to all members) ; (2) license fees, and other levies on exploitation, such as rents and royalties ; (3) profits from its own exploitation activities ; (4) loans ; (5) voluntary contributions ; and (6) regular contributions from all member States of the organization assessed in accordance with an agreed scale. The question of financing had been linked with the question of limits of national jurisdiction, the argument being

that if the area beyond national jurisdiction were to contain no mineral resources of significance, or was not commercially exploitable with acceptable efficiency, this would greatly reduce the income of the Authority, and could affect its scope and competence as it was being currently evolved in the deliberations of the U. N. Preparatory Committee. Members would have to assess the validity of this argument and decide how best to proceed.

Some delegates were not inclined to accept as conclusive the assertion that if national jurisdiction over sea-bed resources were to extend, for example to 200 miles, there would be little of commercial significance for exploitation in the immediate future beyond that limit, so that the whole concept of an organization with "comprehensive powers" might have to be abandoned. If the 200-mile zone were to be accepted, this would still leave several areas at commercially exploitable depth from which revenues might be expected.

The rapporteur invited the members to consider prior to the next meeting of the Committee, the structure, and particularly the financing, of the proposed Sea-Bed Development Corporation. Should, as had been proposed in his paper, all members of the Authority be *ipso facto* members of the Corporation ? If so, profits and losses of the Corporation might be distributed or borne proportionately. On the other hand, if only some States become shareholders of the Corporation, profits might have to go to them only, and correspondingly only they would bear the Corporation's losses. It was also essential to give serious consideration to the Latin-American idea of "joint ventures" as the only method of sea-bed exploitation that would ensure the authority of the organization in the matter of price adjustment. One member pointed out that adequate control over prices could well be achieved through a licensing system, the conditions of the licence and contingencies for withdrawal, suspension or cancellation of licences providing a sufficient framework. It was suggested by one delegate that provision ought to be made in the convention for sanctions in the event of default in payment of dues to the Authority.

It was pointed out that inadequate attention had been paid to methods of benefit-sharing. The Secretariat and some

member States had proposed methods varying with the "benefit" concerned, but no general opinion had begun to crystallise.

On the question of the composition of the executive organ, the rapporteur invited attention to section 2 of chapter IV of his draft, which was patterned after the governing body of the International Atomic Energy Agency. This was a scientific and technical organization within the U. N. family that had stood the test of time. The basis of the composition of the "Council" was (a) technological competence ; (b) politics and (c) geography — in a wide sense of comprehending geomorphological features in addition to mere location.

Some delegates felt that while the proposal went a good way toward achieving a balance of various competing interests, the second designated group in Article 33 (1) (a)–States most advanced in sea-bed technology from ten regions to be delimited after negotiation — might be difficult to arrive at. In many regions countries had only an elementary knowledge of sea-bed technology and it would be a case of choosing the least ignorant among them. Again, in certain regions, a country once designated on this basis would tend to occupy that position indefinitely since the technological gap between it and its neighbours was unlikely to close. Sometimes the country most qualified for designation might be politically unacceptable as a representative of the region. For these regions, it was suggested that a different system of selection might be sought.

One delegate asked how the number of representatives of special interest groups on the Council [Article 33 (1) (b)] had been arrived at and whether they might not need to be increased. Adequate safeguards should be included to ensure their receiving an equitable share of the benefits of the sea-bed.

The rapporteur said that degree of technological advancement had been thought to be a logical basis for designation to the executive organ of an operational organization of this kind. The difficulties mentioned by some delegates in relation to designations under Article 33 (1) (a) did exist, but might not

prove insurmountable in practice. The categories of special interest groups and number of representatives from each could be expanded if necessary.

The Delegate of Japan introduced his proposal pointing out that in regard to the composition of the executive organ, that proposal too took account of the existence of various competing interests and attempted to bring about a balance between them. He emphasized that special consideration had been given to the representation of developing countries, and that unlike certain other proposals before the Preparatory Committee, no system of veto or weighted voting had been incorporated.

With reference to the draft prepared by the rapporteur he said it was not realistic or necessary to accord the power of direct exploitation to the international machinery since it would involve a commercial risk as well as large expenditure and organization for equipment and technical staff, whereas the use of existing enterprises would involve neither such risk nor expenditure. Effective control of sea-bed exploitation by international machinery could be ensured without necessarily having recourse to direct exploitation by the machinery, either under a joint venture system or otherwise, if the machinery could be entrusted with the necessary powers for issuing exclusive licences, exercising regular supervision and revocation of licences or sub-licences. Collection of licence fees, rental fees and royalties must be strictly enforced by the machinery.

The machinery should be financed in principle out of the revenues derived from fees and royalties but, before becoming financially self-supporting, the gap should be borne by the member States. In this connection, six designated members of the Council which are the most industrialized States, might be requested to give sympathetic consideration to such financing. The proposal of the rapporteur regarding the composition of the Council was in some respects similar in approach to the Japanese proposal.

VI. Exclusive Economic Zone

The representative of Kenya presented a number of draft articles on the exclusive economic zone concept. He explained

that the concept of the exclusive economic zone had been generally discussed since the Colombo session of this Committee in the Sea-bed Committee and in a number of other forums, including, most recently, the African States Regional Seminar on the Law of the Sea held at Yaounde from June 20 to 30, 1972, which had agreed on significant recommendations. The present articles had been drafted bearing in mind the suggestions made in those meetings.

His point of departure had been the premise in Article I, that all States have a right to determine their jurisdiction over the sea adjacent to their coasts, taking into account such considerations as their own geographical, geological, biological, ecological, economic and national security factors. From that basic premise Article II went on to formulate a principle of vital concern to the developing countries viz. that they had a right to establish an economic zone beyond a distance of 12 miles from their coasts, over the natural resources of which they had sovereignty and wherein they would exercise exclusive jurisdiction for the control, prevention, regulation and exploitation of both living and non-living resources, for the primary benefit of their peoples and economies. Jurisdiction would also extend to the prevention and control of pollution.

The Delegate of Kenya said that the aim of Article II had originally been to protect the developing countries only. They alone needed protection, as the developed marine nations had the rest of the seas and oceans which they had the means to harvest. However, it had not proved feasible to restrict the right to establish a zone to developing countries only, and Article II now contemplated that all States would have that right.

Most of the delegates welcomed the Kenya initiative in preparing these draft articles which went a long way toward giving expression to the concept of the exclusive economic zone.

Some delegates suggested that the reference in Article I should be to all *coastal* States since land-locked countries could

not determine limits of jurisdiction over marine areas. Others felt, however, that the meaning was clear : "All States" could only be understood in the sense of all *coastal* States.

One delegate suggested that the reference to 12 miles in Article II should be deleted since many States had territorial limits beyond 12 miles, and Article VII in any event provided for the maximum limit of the economic zone.

A number of delegates felt that the draft articles should only cover the economic zone as such, and not other factors. In this connexion they were of the view that reference to "national security factors" in Article I was not appropriate. The Delegate of Kenya noted that every State would be concerned with security within the economic zone and suggested that nothing would be lost by mentioning "national security factors" in a non-exhaustive list of the factors. Other delegates suggested the deletion of the reference to "reasonable" as applied to "criteria" in Article I as being superfluous in view of the list of criteria already contained in that provision.

It was agreed that the philosophies of the Japanese paper on fisheries and the Kenya paper on the exclusive economic zone were essentially different and therefore difficult to reconcile. The former started from the assumption that the resources beyond 12 miles belonged to all and conceded limited preferential rights to the developing countries. The latter, however, took as a point of departure the premise that a developing coastal State had sovereignty over the resources beyond 12 miles. Noting this fundamental difference, one delegate suggested that Article II of the Kenya paper should, in addition to its present provisions, commence with a statement that coastal States had sovereignty over the resources adjacent to their territorial sea, and add a provision on the right of a coastal State to enforce its laws and prosecute and punish those who infringed its rights in the economic zone.

One delegate said that the draft correctly denied the right to establish an exclusive economic zone around islands under foreign domination. However, that prohibition ought to extend to all territories under colonial rule, and not merely to islands.

It was decided that the draft articles should be amended in the light of the discussion. The amended draft is contained in the Annex to this Report.

VII. Straits

On the question of straits it was observed by most of the delegates that the notion of "international straits" within territorial or archipelagic waters did not receive support. Consequently, the notion of "free transit" through and over straits used for international navigation falling within territorial archipelagic waters was not accepted. Passage through straits used for international navigation is governed by the right of innocent passage.

VIII. Land-locked States

The problems of the land-locked States were discussed in relation to one important area viz. the exclusive economic zone. It was decided that discussion of these and related questions should continue at the next meeting of the Committee.

IX. Other Subjects

The Sub-Committee was unable to discuss fully, for lack of time, the amendments that had been proposed to the List of Subjects and Issues relating to the Law of the Sea sponsored by 56 States (UN Doc. A/AC. 138/66), and problems relating to the territorial sea, including the question of its breadth. As to the latter, the Sub-Committee noted the chairman's suggestion that the discussion might proceed on the basis of an examination of the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone in order to determine in what areas it had proved inadequate.

ANNEX

REVISED DRAFT ARTICLES ON THE EXCLUSIVE ECONOMIC ZONE

(Submitted by Kenya as Member of AALCC)

Article-I

All States have a right to determine the limits of their jurisdiction over the seas adjacent to their coasts beyond a territorial sea of 12 miles in accordance with criteria which take into account their own geographical, geological, biological, ecological, economic and national security factors.

Article-II

In accordance with the foregoing article, all States have the right to establish an economic zone beyond the territorial sea for the primary benefit of their peoples and their respective economies, in which they shall exercise sovereign rights over natural resources for the purpose of exploration and exploitation. Within the zone they shall 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.

The coastal State shall exercise jurisdiction over its economic zone and third States or their nationals shall bear responsibility for damage resulting from their activities within the zone.

Article-III

The establishment of such a zone shall be without prejudice to the exercise of freedom of navigation, freedom of overflight and freedom to lay submarine cables and pipelines as recognised in international law.

Article-IV

The exercise of jurisdiction over the zone shall encompass all the economic resources of the area, living and non-living, either on the water surface or within the water column, or on the soil or sub-soil of the sea-bed and ocean floor below.

Article-V

Without prejudice to the general jurisdictional competence conferred upon the coastal State by Article II above, the state may establish special regulations within its economic zone for—

(a) Exclusive exploration and exploitation of non-renewable marine resources;

(b) Exclusive or preferential exploitation of renewable resources;

(c) Protection and conservation of renewable resources;

(d) Control, prevention and elimination of pollution of marine environment;

(e) Scientific research.

Any State may obtain permission from the coastal State to exploit the resources of the zone where permitted on such terms as may be laid down and in conformity with laws and regulations of the coastal State.

Article-VI

The coastal State shall permit the exploitation of the living resources within its economic zone to the neighbouring developing land-locked or near land–locked States and States with a small shelf provided the enterprises of those States desiring to exploit these resources are effectively controlled by their national capital and personnel.

To be effective the rights of land-locked or near-land-locked States small be complemented by the right of access to the sea and the right of transit. These rights shall be embodied in multilateral, regional or bilateral agreements.

Article-VII

The limits of the economic zone shall be fixed in nautical miles in accordance with criteria in each region, which take into consideration the resources of the region and rights and interests of developing land-locked, near-land locked, shelf-

locked States, and States with narrow shelves and without prejudice to limits adopted by any State within the region. The economic zone shall not in any case exceed 200 nautical miles, measured from the baselines for determining territorial sea.

Article-VIII

The delineation of the economic zone between adjacent and opposite States shall be carried out in accordance with international law. Dispute arising there from shall be settled in conformity with the Charter of the United Nations and any other relevant regional arrangements.

Article-IX

Neighbouring developing States shall mutually recognise their existing historic rights. They shall also give reciprocal preferential treatment to one another in the exploitation of the living resources of their respective economic zones.

Article-X

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.

Article-XI

No territory under foreign domination and control shall be entitled to establish an economic zone.

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

The subject "Law of the Sea including questions relating to Peaceful Uses of the Sea-Bed and the Ocean Floor and the Subsoil thereof lying beyond the limits of National Jurisdiction" was taken up as a priority item at the fourteenth session of the Committee held in New Delhi from January 10 to 18, 1973. At the beginning of the session, the Working Group of the Committee on the Law of the Sea met on the 10th of January and it recommended that discussion at the present session be confined to the following four topics : (i) Fisheries. Exclusive Economic Zone; (ii) Rights and Interests of Land-locked States; (iii) International Machinery for the Sea-Bed; and (iv) Marine Pollution. Although the aforesaid recommendation was accepted by the Committee, deliberations during the plenary session were confined only to the topic of "Fisheries. Exclusive Economic Zone." However, in the meetings of the Sub-Committee, apart from this topic, the question of the Rights and Duties of Land-locked States was also discussed at some length.

Opening the discussion in the plenary meeting held on Thursday the 11th of January, 1973, the Observer for ARGENTINA stated that although his country had been a member of the so-called '200-mile club' and supported fully the unilateral declarations by coastal States of their maritime jurisdictions, it was nevertheless the view of his Government that determination of boundaries in the sea adjacent to the coast must be done according to reasonable principles reflecting in the main geographical and biological characteristics as well as the needs of a rational use of their resources and the requirements of international communications. In regard to the concept of the continental shelf, the observer expressed the view that future negotiations on the law of the sea must proceed from the legal conception of the continental shelf which, according to him, had already been accepted by the international community in order to fill

the gaps and develop new criteria which might satisfy the aspirations of all the coastal States. As regards delimitation of the international sea-bed area, the Observer suggested that this be established either on the basis of a pre-fixed distance such as 200-mile line or on the basis of a depth line. Touching upon the question of the rights and interests of land-locked States in regard to their access to the sea and the resources therein, the Observer pointed out that the policy of his country had been to facilitate, to the extent possible, the access to the sea of the land-locked countries, allowing the free transit of goods to and from the sea and the unrestricted use of her rivers and maritime harbours.

Discussion being resumed in the plenary meeting held on Friday the 12th of January, the Observer for MEXICO stated that the relatively new concept of exclusive or preferential fishing zone for coastal States in the high seas adjacent to their coast had taken shape and gained acceptability by a large number of States as a result of the philosophy of development and as a corollary of the greater recognition by the international community of the interests and needs of developing countries. Elaborating the concept of patrimonial sea, as recognised in the Santa Domingo Declaration of 1972, the Observer said that patrimonial sea was an economic jurisdictional area — not a sovereignty zone — and its purpose was purely economic and not political or strategic. He felt that the concept of patrimonial sea was similar to the concept of exclusive economic zone as contained in the Kenyan proposal. The legal rules applicable to the proposed zone would, in his view, set the maximum to which the coastal State could legally limit the freedom of others within that zone. The effect of those rules would be that all States would have an obligation to respect regional arrangements made or measures taken by individual States which fell within the maximum limits authorised by the proposed universal rule.

The Delegate of JAPAN said that his Government could not endorse the idea behind the exclusive economic zone concept as, in his Government's view, any attempt to solve the problem of fisheries by recognising exclusive economic rights of coastal States over the fishery resources in a zone of waters extending far beyond the limit of territorial sea, if not 200 miles but less

according to the need of each nation, would totally fail to take into account the legitimate interests of other States. Further, his Government considered that any solution which provided for a limited number of States having very extensive and long coast-lines, and a further limited number of States adjoining the rich fishing grounds of the world, an exclusive enjoyment of fishery resources at the expense of the legitimate interests of other States, would not be an equitable one. The Delegate felt that efforts and process of development of the fishing industries in the developing countries would be seriously jeopardised by an arbitrary partition of the seas and oceans into areas of national jurisdiction in pursuance of the establishment of exclusive economic zones. Besides, the concept of exclusive economic zone, in his view, would be contrary to sound conservation of the fishery resources because each coastal State would apply in an arbitrary manner the measures it deemed fit, without regard to international standards of conservation based on scientific data. The Delegate then explained in detail the salient features of the Japanese proposal submitted to the United Nations Sea-Bed Committee in August 1972, which, according to him, aimed at reconciling the interests of coastal States with those of distant water fishing States in the international law of high seas fisheries.

The Delegate of IRAN observed that the basic provisions of the international sea-bed regime should be based on the Declaration of Principles adopted by the U.N. General Assembly in December 1970, which could be translated into treaty language. He suggested that the activities of the proposed International Sea-Bed Authority should extend to only non-living resources of the sea, while the living resources might be subject of a separate arrangement. The proposed International Authority, he added, should have powers that would enable it to cope rationally and effectively with matters relating to exploration and exploitation of the international sea-bed area. The Authority, in his view, must be able to engage directly in the exploration and exploitation of the sea-bed and subsoil thereof and at the same time it must also have the competence to supervise and regulate scientific research and other activities in the international area, keeping in view the legitimate needs of developing States, including land-locked countries. The Delegate felt that

the international Sea-bed Authority might further be empowered to prevent adverse economic repercussions on land-based mineral production by controlling the production, processing and marketing of minerals derived from sea-bed exploitation. He was also of the view that the machinery might be empowered to engage in joint ventures in the transitional period before it could assume its full powers and duties. Dealing with the question of exclusive economic zone, the Delegate stated that the boundaries of such a zone should be determined by the coastal State taking into account the geological and biological characteristics of the sea adjacent to its coast as well as the economic necessities of its inhabitants. He advocated for the establishment of an institute with the avowed objective of undertaking research in marine technology, predicting hazards and providing intensive training courses so as to obviate the dangers of technological irresponsibility of the past. On the subject of marine pollution, the Delegate commended the resolutions adopted by the Stockholm Conference on Human Environment as a step in the right direction. He considered that inspite of the prevailing misconception about duplication of work in view of the Stockholm Conference and the recent London Conference on Ocean Dumping, the U.N. Sea-Bed Committee should go ahead with preparing draft articles on the preservation of marine environment and the prevention of pollution. He was of the view that while the Stockholm Conference dealt mostly with pollution on land, the London Conference dealt with marine pollution. The latter, however, in his view, suffered from two limitations, namely (i) it neither sought to prohibit dumping of certain materials including such poisonous substances like arsenic and lead nor (ii) dumping of pollutants in rivers which was a major source of marine pollution. He pleaded, finally, for close collaboration of the bodies established for the preservation of marine environment and prevention of marrine pollution.

The Delegate of SRI LANKA believed that acceptance of the concept of exclusive economic zone would pave the way to discussions on the application of certain international norms and practices by coastal States within that zone. The Delegate welcomed the Kenyan initiative and observed that the Draft Articles on the Exclusive Economic Zone submitted by the

Delegate of Kenya were extremely valuable and had materially enhanced the prospects for the success of the Conference on the Law of the Sea. On the question of fisheries, the Delegate was of the view that any proposals on that subject should contain adequate safeguards for any historic rights which a coastal State presently enjoyed in regard to fishing whether it was in relation to free moving or sedantary fisheries. Finally the Delegate invited the attention of the Committee to the problems that could arise in relation to decision making process in the procedure of the forthcoming Conference on the Law of the Sea.

The Delegate of GHANA recognised that any viable international legal order could not be established without reconciling the conflicting interests in the world community. In his view, the developing nations were not likely to accept any international system under which the content of the right of coastal States to exploit the resources of the seas adjacent to their territorial waters was determined by their economic development, capacity to exploit fishery and other resources. The Delegate basically endorsed the concept of the exclusive economic zone propounded by Kenya and suggested that as far as the limits were concerned, it should be possible to operate between a lower limit of 50 and an upper limit of 200 nautical miles measured from the coastline. He, however, stressed that the establishment of such a zone by a developing coastal State should not preclude the participation of a developed State in the exploitation of the resources in that zone. In his view, some of the responsibilities incidental to the exclusive economic zone concept would be to prevent pollution of waters in that zone. Commenting on the proposal of Japan on fisheries he stated that the regulatory measures taken by a coastal State should be supported by the international community.

The Observer for AUSTRALIA drew attention to the Working Paper on Fisheries jointly sponsored by Australia and New Zealand at the fourth session of the Sea-Bed Committee in July-August 1972. The said Working paper, according to him, represented a serious attempt on the part of the co-sponsors to reconcile the interests of coastal States and of distant water

fishing States. That could, in his view, be done only if these States reached an agreement which would result in the rational utilisation of each particular stock of fish, besides further ensuring the maximum possible production of food from the available resources. On the question of exclusive economic zone, the Observer said that the U.N. Sea-Bed Committee would be benifitted by the useful and constructive contribution of various regional conferences and seminars such as the recent ones held at Santa Domingo and Yaounde. As regards the topic of land-locked States, he made three observations : Firstly, the Convention which hopefully would emerge from the work of the Sea-Bed Committee and the Conference would inevitably involve compromises in order to accommodate as far as possible the interests of all States. Secondly, the position of land-locked States was taken due note of in the 1958 Conference of the Law of the Sea, as evidenced by Article 3 of the 1958 Convention on the High Seas. Thirdly, the Kenyan draft articles on the exclusive economic zone, which took into account the rights and interests of land-locked States might possibly contain the seed of a possible solution.

The Australian Observer felt that the proposed International Sea-Bed Authority should not, in the first instance, undertake operational activities connected with sea-bed exploitation until such time as it was able to command its own financial resources.

On the question of marine pollution, the Observer stated that Australia, with her extensive coastline, was deeply interested with the progressive development of rules which could effectively be applied to combat marine pollution. He was hopeful that the decisions taken at the Stockholm Conference and at the recent London Conference would pave the way to an effective action in the Sea-Bed Committee on this vital issue.

The Delegate of the REPUBLIC OF KOREA considered the question of fisheries as one of the most pivotal questions at the forthcoming U. N. Conference on the Law of the Sea. He said that his country, although belonging to the category of long distant fishing countries, had never pursued its own economic