

Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs



The United Nations Convention on the Law of the Sea and its Implementing Agreements

Texts of the

United Nations Convention on the Law of the Sea

Agreement relating to the Implementation of Part XI of
the United Nations Convention on the Law of the Sea

Agreement for the Implementation of the Provisions of
the United Nations Convention on the Law of the Sea relating to the
Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Agreement under the United Nations Convention on the Law of the Sea on the
Conservation and Sustainable Use of Marine Biological Diversity
of Areas beyond National Jurisdiction

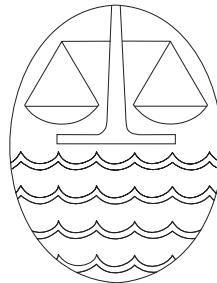
and excerpts from the

Final Act of the Third United Nations Conference on the Law of the Sea



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CONTENTS

	<i>Page</i>
FOREWORD	iv
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA	1
FINAL ACT OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (EXCERPTS)	165
AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982	177
AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS	196
AGREEMENT UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION	236

FOREWORD

The present publication was prepared in response to paragraph 371 of General Assembly resolution 78/69 of 5 December 2023, in which the Assembly requested the Secretary-General to continue the publication activities of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs (the Division), and in particular to publish a combined edition of the United Nations Convention on the Law of the Sea (the Convention); the Agreement relating to the Implementation of Part XI of the Convention; the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; and the Agreement under the Convention on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction.

This combined edition of the Convention and its three implementing agreements is part of a series of publications prepared by the Division in fulfilment of the responsibilities entrusted to the Secretary-General in the Convention and through several General Assembly resolutions.¹

The treaties and other documents published herein are reproduced from previous publications and official records of the United Nations. The Certified True Copies of treaties deposited with the Secretary-General of the United Nations are available on the website of the Treaty Section of the Office of Legal Affairs of the United Nations.²

¹ E.g., General Assembly resolution 52/26 of 26 November 1997 and General Assembly resolution 77/321 of 1 August 2023. See also Secretary-General's Bulletin ST/SGB/2021/1, "Organization of the Office of Legal Affairs", section 9.

² See <https://treaties.un.org/>.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

INTRODUCTION

On 10 December 1982, the United Nations Convention on the Law of the Sea was opened for signature at Montego Bay, Jamaica. This marked the culmination of over 14 years of work involving participation by more than 150 countries representing all regions of the world, all legal and political systems, all degrees of socioeconomic development. They comprised coastal States, States described as geographically disadvantaged with regard to ocean space, archipelagic States, island States and landlocked States. These countries convened for the purpose of establishing a comprehensive regime “dealing with all matters relating to the law of the sea, . . . bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole.” The fruits of their labours are embodied in the United Nations Convention on the Law of the Sea.

The Convention is multifaceted and represents a monument to international cooperation in the treaty-making process: the need to elaborate a new and comprehensive regime for the law of the sea was perceived, and the international community expressed its collective will to cooperate in this effort on a scale the magnitude of which was unprecedented in treaty history. The elaboration of the Convention represents an attempt to establish true universality in the effort to achieve a “just and equitable international economic order” governing ocean space.

These ideals were transformed through the treaty-making process into the substance of the text, which itself is of unique nature. It comprises 320 articles and nine annexes, governing all aspects of ocean space from delimitations to environmental control, scientific research, economic and commercial activities, technology and the settlement of disputes relating to ocean matters. An examination of the character of the individual provisions reveals that the Convention represents not only the codification of customary norms, but also and more significantly the progressive development of international law, and contains the constituent instruments of two major new international organizations.

It is, however, the conceptual underpinnings of the Convention as a “package” which is its most significant quality, and has contributed most distinctly to the remarkable achievement of the Convention. Its quality as a package is a result of the singular nature of the circumstances from which it emerged, including the close interrelationship of the many different issues involved, the large number of participating States and the vast number of often conflicting interests which frequently cut across the traditional lines of negotiation by region. In addition, the strong desire that the Convention allow for flexibility of practice in order to ensure durability over time to avoid encroaching upon the sovereignty of States was recognized as another important consideration. All of these factors necessitated that every individual provision of the text be weighed within the context of the whole, producing an intricately balanced text to provide a basis for universality.

The concept of the package pervaded all work on the elaboration of the Convention and was not limited to consideration of substance alone. It became the leitmotiv of the Conference and in fact permeates the law of the sea as it exists today.

THE HISTORY OF THE CONVENTION

The mammoth task of elaborating this new regime began in 1967 when the concept of the common heritage of mankind was first discussed by the General Assembly in the context of the question of the preservation of the seabed and ocean floor exclusively for peaceful purposes. The common heritage concept was not a new one (it dates back to the 19th century, and was referred to by the President of the first Law of the Sea Conference in his opening speech in 1958) but it had never before been discussed in an international forum. It is of particular relevance to note that the discussion took place in the First Committee of the General Assembly, as the item was perceived from the very beginning as being of primarily political significance, and not limited to strictly legal or economic concern. This conclusion was based on the same rationale which is the foundation of the package concept, and is the reason that the work of the Third United Nations Conference was not based on draft articles prepared by the International Law Commission, as was the work of the 1958 Conference.

The General Assembly established an Ad Hoc Committee to study the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, and subsequently created a standing committee, the Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction (Seabed Committee), for the purpose of shaping and refining the ideas and concepts which were to form the basis of the new international regime. These committees, cognizant of the concerns which were to develop into the concept of the package, worked on the basis of consensus.

In 1970, the General Assembly adopted a Declaration of Principles (General Assembly resolution 2749 (XXV)), following upon negotiations which took place in the Seabed Committee, in which the Assembly solemnly declared that “the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction ... as well as the resources of the area, are the common heritage of mankind” and “shall not be subject to appropriation by any means by States or persons”. In addition, it was declared that this area “shall be open to use exclusively for peaceful purposes by all States ... without discrimination”. Thus, the common heritage was formally spelled out.

The General Assembly at the same time adopted a related three-part resolution (resolution 2750 (XXV)), the preambular paragraphs of which reiterated the recognition of the need for a reformed regime and mandated its consideration as a package, as follows:

“Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole,

“Noting that the political and economic realities, scientific development and rapid technological advances of the last decade have accentuated the need for early and progressive development of the law of the sea, in a framework of close international cooperation,

“Having regard to the fact that many of the present States Members of the United Nations did not take part in the previous United Nations conferences on the law of the sea, ...” (resolution 2750 C (XXV))

The resolution continued, calling upon the Seabed Committee to act as a preparatory committee for the future conference. (For a more detailed history of the preconference work on law of the sea, see the introduction to the report of the Seabed Committee (document A/9021).)

In late 1973, the Third United Nations Conference on the Law of the Sea was convened in accordance with General Assembly resolution 3067 (XXVIII) of 16 November 1973, and set about its task with an organizational session. The first order of business was the question of procedure: procedural practices had to be developed which would foster the cohesiveness of the “package” of law of the sea. Indeed, the procedural innovations of the Conference were at times quite unique and have no doubt contributed to the progressive development of the treaty-making process itself.

As a consequence of the deliberations, the Conference adopted its rules of procedure (A/CONF.62/30/Rev.3). Since the earlier committees had worked on the basis of consensus, and as a result of the widely divergent interests on issues of such paramount importance, it was recognized that resort to traditional voting rules would be unsatisfactory as a method for achieving the desired goals. Consensus was therefore adopted as the principal means by which decisions were to be taken. This notion was embodied in the declaration incorporating the gentleman’s agreement, appended to the rules of procedure, and provided the context in which the rules themselves were framed. For example, the rules on decision-making required that the Conference in the first instance decide that it had exhausted all efforts to reach consensus before any voting on questions of substance could take place. In order to ensure that this decision was not taken lightly, the rules allowed various deferment or “cooling-off” periods before the actual voting might begin. By delaying the voting as long as possible, it was hoped that the divergent positions might be reconciled in the interim, thus obviating the need to vote at all.

The Conference realized at an early stage that negotiations could not be effectively carried out in formal proceedings, and that because of the large number of participants and sensitive issues involved, working groups would be more efficient than plenary meetings. Indeed, much of the elaboration process took place in smaller or more informal meetings, but always on an *ad referendum* basis to larger and/or more formal

bodies, and always on the basis of consensus. The working or negotiating groups were generally established on the basis of interest in a particular issue. In this respect States did not coalesce within traditional regional or political alignments. Rather, they grouped themselves to face specific issues and to protect clearly identifiable interests. For example, coastal States wanted a legal regime that would allow them to manage and conserve the biological and mineral resources within their national jurisdiction; archipelagic States wanted to obtain recognition for the new regime of archipelagic waters; landlocked States were seeking general rules of international law that would grant them transit to and from the sea and rights of access to the living resources of their neighbouring States; some industrialized nations wanted to have guaranteed access to the seabed mineral resources beyond national jurisdiction within a predictable legal framework; countries that produced the same minerals in their territories wanted assurances that the seabed production of these minerals would not undermine their economies or result in a “de facto” monopoly; developing countries wanted to be more than silent witnesses to the acquisition of new knowledge of the oceans so that marine science and technology could be put at the service of all and not only of a limited number of very wealthy countries; States bordering straits wanted to ensure that free passage would not result in damage to their marine environment or threats to their national security; practically all nations wanted to preserve the freedoms of navigation, commerce and communication; and finally, mankind as a whole needed to ensure that a new legal regime would safeguard the marine environment against depredation or irrational use of non-renewable resources, the discharge or dumping of noxious substances into the oceans or the so-called scientific tests that could affect the delicate balance of marine life. These are only a few of the multitude of particular interests which needed consideration at the Conference. Any individual State could fall into any number of different interest groups, depending upon its individual national concerns and the texture of the negotiations on the overall package. The interest groups did not, however, replace regional group consultations, which also took place, thereby enhancing the flow of information and compounding the number of considerations which had to be weighed with respect to any given issue at any given time.

It is understandable in this context, then, that the rules of procedure and the Gentleman’s Agreement appended to them not only contemplated the application of consensus with regard to the final adoption of the Convention a whole, but also for its application at each and every step along the way. The consensus principle was in fact applied throughout the work of the Conference and the many revisions of the text which would become the treaty. In some cases specific informal Conference practices were formally introduced, notably in the later stages of the work when only the more thorny issues remained to be resolved, in order to foster agreement and to ensure that there would be no objection to decisions taken.

A significant procedural step in this respect took place in 1977, at the seventh session of the Conference, when the programme of work contained in document A/CONF.62/62 was adopted. This document followed upon the consolidation, at the end of the sixth session, of the various parts of the text into a single working paper, the Informal Composite Negotiating Text. The procedural act of consolidation, albeit producing a text not yet refined nor acceptable to the point of constituting a draft text, itself represented a milestone and a significant step towards the realization of a single comprehensive and unified international regime.

The emergence of the Informal Composite Negotiating Text denotes that the negotiations had proceeded to a very delicate stage, and threw into relief the remaining “hardcore” issues which required resolution. Document A/CONF.62/62 acknowledged this situation and mandated the institutionalization of various previously utilized informal Conference practices to promote agreement. One such practice was the establishment of issue-specific negotiating groups. Another was the formal institution of the President’s “Collegium”, the body of principal officers of the Conference which acted in an advisory capacity to the President. It had been the principal officers who had informally prepared and revised the negotiating texts upon which the work of the Conference had been focused all along. However, the programme of work now established stringent standards to direct the Collegium in its work: it mandated that no revision could be made without prior presentation of the proposed change to the plenary, wherein it must have received “widespread and substantial support”, indicating that it offered a “substantially improved prospect of consensus”. By these procedural devices the Conference was able to ensure that the package remained cohesive until such time as all of the pieces fell into place.

Another of the peculiarities of the law of the sea treaty is that it is a major instrument which has equally authentic Arabic, Chinese, English, French, Russian and Spanish texts. Indeed, if the object of the package is to have a Convention which is universally acceptable, then it follows that it must be acceptable in each and every one of the six languages to which a State may refer. The achievement of this goal required another innovation in the treaty-making process as applied to the Drafting Committee.

The Drafting Committee of the Conference undertook its work in two stages. The first stage involved the harmonization of recurring words and phrases so as to ensure a sense of a whole, unified text, and to avoid misinterpretation and confusion in instances when an identical meaning was intended by phraseology which was varied. Such discrepancies had arisen because the different parts of the text had been drafted in different committees, with reference to varied existing treaty sources, thus necessitating this first stage. The second stage of the work involved the article-by-article reading of the text for the purpose of ensuring that each provision was identical in meaning in each of the languages.

To facilitate its work in the light of the desired goals, and because the Drafting Committee was the only committee of limited representation in the Conference, it was necessary to devise a procedure to ensure universality of participation in the work of the Committee. The informal language groups of the Conference accordingly developed. These were open-ended groups which grappled with Drafting Committee issues and their coordination, and then reported back to the Committee. The role of the Committee itself was reserved to policy and decision-making, with little of the actual deliberations taking place in that forum.

At the close of the tenth session in 1981, the Conference decided to revise the informal text, officially producing a Draft Convention (A/CONF.62/L.78). Virtually all the parts of the package had by now fallen into place—only the most seemingly intractable political questions remained. The shape of the comprehensive package on the law of the sea, as comprising the Convention itself plus a number of resolutions, could by now be foreseen. In conjunction with the issuance of the Draft Convention, the Conference adopted a timetable calling for the final decision-making session to be held in 1982. The five-week plan allowed time for negotiation of the remaining points to be resolved; these points included the mandate of the Preparatory Commission and the rules governing pioneer investors in the international seabed area prior to the entry into force of the Convention, that is, questions of the work to succeed the Conference.

After long deliberations marking the culmination of over 90 weeks of work, on 23 April 1982, the Conference, in accordance with its rules of procedure, determined that all efforts to reach a consensus had been exhausted. Thus the machinery for the final decision-making was set in motion. The Draft Convention and the four resolutions that were before the Conference on 30 April 1982 did not include any texts which had not undergone an elaborate structure of negotiations devised by the Conference in order to ensure that all provisions could command widespread and substantial support. On that day the Conference, at the request of one delegation, had to resort to voting on the question of adoption of the whole of the package on the law of the sea. The results of that vote (130 in favour, 4 against, with 17 abstentions) represented the overwhelming reaffirmation of support for the ideals, principles and goals of a new international order for the seas as embodied in the package of the United Nations Convention on the Law of the Sea. This reaffirmation of support is further strengthened by the fact that the majority of States which abstained in the voting later became signatories to the Convention.

The final meetings of the Conference were held at Montego Bay, Jamaica, from 6 to 10 December 1982. The Conference heard closing statements by delegations (see A/CONF.62/PV.185193), after which the Final Act was signed (see A/CONF.62/121). The Convention was opened for signature in Jamaica on 10 December. On that first day, signatures from 119 delegations comprising 117 States, the Cook Islands (a self-governing associated state) and the United Nations Council for Namibia, were appended to the Convention. In addition, one ratification, that of Fiji, was deposited that day. Never before had such overwhelming support been demonstrated so concretely on the first day that a treaty was opened for signature. The Convention's first achievement in its own right was unprecedented in the history of treaty law.

CONTENTS

	<i>Page</i>
PREAMBLE	20
PART I	INTRODUCTION
	Article 1 Use of terms and scope.....
PART II	TERRITORIAL SEA AND CONTIGUOUS ZONE
SECTION 1. GENERAL PROVISIONS	22
	Article 2 Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil
SECTION 2. LIMITS OF THE TERRITORIAL SEA	22
	Article 3 Breadth of the territorial sea
	Article 4 Outer limit of the territorial sea
	Article 5 Normal baseline.....
	Article 6 Reefs.....
	Article 7 Straight baselines.....
	Article 8 Internal waters.....
	Article 9 Mouths of rivers
	Article 10 Bays.....
	Article 11 Ports.....
	Article 12 Roadsteads
	Article 13 Low-tide elevations
	Article 14 Combination of methods for determining baselines
	Article 15 Delimitation of the territorial sea between States with opposite or adjacent coasts
	Article 16 Charts and lists of geographical coordinates.....
SECTION 3. INNOCENT PASSAGE IN THE TERRITORIAL SEA	25
SUBSECTION A. RULES APPLICABLE TO ALL SHIPS	25
	Article 17 Right of innocent passage
	Article 18 Meaning of passage.....
	Article 19 Meaning of innocent passage.....
	Article 20 Submarines and other underwater vehicles.....
	Article 21 Laws and regulations of the coastal State relating to innocent passage
	Article 22 Sea lanes and traffic separation schemes in the territorial sea
	Article 23 Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances.....

Article 24 Duties of the coastal State	27
Article 25 Rights of protection of the coastal State.....	27
Article 26 Charges which may be levied upon foreign ships.....	27
SUBSECTION B. RULES APPLICABLE TO MERCHANT SHIPS AND GOVERNMENT SHIPS OPERATED FOR COMMERCIAL PURPOSES	27
Article 27 Criminal jurisdiction on board a foreign ship	27
Article 28 Civil jurisdiction in relation to foreign ships.....	28
SUBSECTION C. RULES APPLICABLE TO WARSHIPS AND OTHER GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES.....	28
Article 29 Definition of warships.....	28
Article 30 Non-compliance by warships with the laws and regulations of the coastal State ..	28
Article 31 Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes	29
Article 32 Immunities of warships and other government ships operated for non-commercial purposes	29
SECTION 4. CONTIGUOUS ZONE	29
Article 33 Contiguous zone	29
PART III STRAITS USED FOR INTERNATIONAL NAVIGATION	30
SECTION 1. GENERAL PROVISIONS	30
Article 34 Legal status of waters forming straits used for international navigation	30
Article 35 Scope of this Part.....	30
Article 36 High seas routes or routes through exclusive economic zones through straits used for international navigation.....	30
SECTION 2. TRANSIT PASSAGE.....	30
Article 37 Scope of this section	30
Article 38 Right of transit passage.....	30
Article 39 Duties of ships and aircraft during transit passage	31
Article 40 Research and survey activities	31
Article 41 Sea lanes and traffic separation schemes in straits used for international navigation	31
Article 42 Laws and regulations of States bordering straits relating to transit passage..	32
Article 43 Navigational and safety aids and other improvements and the prevention, reduction and control of pollution	32
Article 44 Duties of States bordering straits.....	32
SECTION 3. INNOCENT PASSAGE	32
Article 45 Innocent passage.....	32

PART IV	ARCHIPELAGIC STATES	33
	Article 46 Use of terms	33
	Article 47 Archipelagic baselines.....	33
	Article 48 Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf	34
	Article 49 Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil	34
	Article 50 Delimitation of internal waters.....	34
	Article 51 Existing agreements, traditional fishing rights and existing submarine cables.....	34
	Article 52 Right of innocent passage	34
	Article 53 Right of archipelagic sea lanes passage.....	35
	Article 54 Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage	35
PART V	EXCLUSIVE ECONOMIC ZONE	36
	Article 55 Specific legal regime of the exclusive economic zone.....	36
	Article 56 Rights, jurisdiction and duties of the coastal State in the exclusive economic zone	36
	Article 57 Breadth of the exclusive economic zone	36
	Article 58 Rights and duties of other States in the exclusive economic zone	36
	Article 59 Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone	37
	Article 60 Artificial islands, installations and structures in the exclusive economic zone	37
	Article 61 Conservation of the living resources	38
	Article 62 Utilization of the living resources	38
	Article 63 Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it.....	39
	Article 64 Highly migratory species.....	39
	Article 65 Marine mammals	39
	Article 66 Anadromous stocks.....	40
	Article 67 Catadromous species	40
	Article 68 Sedentary species.....	40
	Article 69 Right of land-locked States	41
	Article 70 Right of geographically disadvantaged States	41
	Article 71 Non-applicability of articles 69 and 70.....	42
	Article 72 Restrictions on transfer of rights	42
	Article 73 Enforcement of laws and regulations of the coastal State.....	42
	Article 74 Delimitation of the exclusive economic zone between States with opposite or adjacent coasts	43
	Article 75 Charts and lists of geographical coordinates	43

PART VI	CONTINENTAL SHELF	44
Article 76	Definition of the continental shelf.....	44
Article 77	Rights of the coastal State over the continental shelf.....	45
Article 78	Legal status of the superjacent waters and air space and the rights and freedoms of other States.....	45
Article 79	Submarine cables and pipelines on the continental shelf.....	45
Article 80	Artificial islands, installations and structures on the continental shelf.....	45
Article 81	Drilling on the continental shelf	45
Article 82	Payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles	46
Article 83	Delimitation of the continental shelf between States with opposite or adjacent coasts.....	46
Article 84	Charts and lists of geographical coordinates.....	46
Article 85	Tunnelling	46
PART VII	HIGH SEAS	47
SECTION 1. GENERAL PROVISIONS	47	
Article 86	Application of the provisions of this Part.....	47
Article 87	Freedom of the high seas	47
Article 88	Reservation of the high seas for peaceful purposes	47
Article 89	Invalidity of claims of sovereignty over the high seas	47
Article 90	Right of navigation.....	47
Article 91	Nationality of ships	47
Article 92	Status of ships.....	48
Article 93	Ships flying the flag of the United Nations, its specialized agencies and the International Atomic Energy Agency	48
Article 94	Duties of the flag State.....	48
Article 95	Immunity of warships on the high seas	49
Article 96	Immunity of ships used only on government non-commercial service	49
Article 97	Penal jurisdiction in matters of collision or any other incident of navigation	49
Article 98	Duty to render assistance.....	49
Article 99	Prohibition of the transport of slaves	50
Article 100	Duty to cooperate in the repression of piracy	50
Article 101	Definition of piracy	50
Article 102	Piracy by a warship, government ship or government aircraft whose crew has mutinied	50
Article 103	Definition of a pirate ship or aircraft	50
Article 104	Retention or loss of the nationality of a pirate ship or aircraft	50
Article 105	Seizure of a pirate ship or aircraft.....	50
Article 106	Liability for seizure without adequate grounds.....	51
Article 107	Ships and aircraft which are entitled to seize on account of piracy.....	51
Article 108	Illicit traffic in narcotic drugs or psychotropic substances.....	51

Article 109 Unauthorized broadcasting from the high seas	51
Article 110 Right of visit	51
Article 111 Right of hot pursuit	52
Article 112 Right to lay submarine cables and pipelines	53
Article 113 Breaking or injury of a submarine cable or pipeline	53
Article 114 Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline	53
Article 115 Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline	53
SECTION 2. CONSERVATION AND MANAGEMENT OF THE LIVING RESOURCES OF THE HIGH SEAS.....	53
Article 116 Right to fish on the high seas	53
Article 117 Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas.....	53
Article 118 Cooperation of States in the conservation and management of living resources	54
Article 119 Conservation of the living resources of the high seas.....	54
Article 120 Marine mammals	54
PART VIII REGIME OF ISLANDS	55
Article 121 Regime of islands	55
PART IX ENCLOSED OR SEMI-ENCLOSED SEAS	56
Article 122 Definition.....	56
Article 123 Cooperation of States bordering enclosed or semi-enclosed seas.....	56
PART X RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT	57
Article 124 Use of terms.....	57
Article 125 Right of access to and from the sea and freedom of transit	57
Article 126 Exclusion of application of the most-favoured-nation clause	57
Article 127 Customs duties, taxes and other charges.....	57
Article 128 Free zones and other customs facilities	58
Article 129 Cooperation in the construction and improvement of means of transport...	58
Article 130 Measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit	58
Article 131 Equal treatment in maritime ports.....	58
Article 132 Grant of greater transit facilities	58
PART XI THE AREA	59
SECTION 1. GENERAL PROVISIONS	59
Article 133 Use of terms.....	59
Article 134 Scope of this Part.....	59
Article 135 Legal status of the superjacent waters and air space	59

SECTION 2. PRINCIPLES GOVERNING THE	59
Article 136 Common heritage of mankind	59
Article 137 Legal status of the Area and its resources	59
Article 138 General conduct of States in relation to the Area.....	60
Article 139 Responsibility to ensure compliance and liability for damage	60
Article 140 Benefit of mankind	60
Article 141 Use of the Area exclusively for peaceful purposes.....	60
Article 142 Rights and legitimate interests of coastal States	60
Article 143 Marine scientific research	61
Article 144 Transfer of technology	61
Article 145 Protection of the marine environment.....	62
Article 146 Protection of human life.....	62
Article 147 Accommodation of activities in the Area and in the marine environment	62
Article 148 Participation of developing States in activities in the Area.....	62
Article 149 Archaeological and historical objects	63
SECTION 3. DEVELOPMENT OF RESOURCES OF THE AREA	63
Article 151 Production policies	63
Article 152 Exercise of powers and functions by the Authority	66
Article 153 System of exploration and exploitation	66
Article 154 Periodic review.....	66
SECTION 4. THE AUTHORITY	68
SUBSECTION A. GENERAL PROVISIONS	68
Article 156 Establishment of the Authority.....	68
Article 157 Nature and fundamental principles of the Authority.....	68
Article 158 Organs of the Authority	68
SUBSECTION B. THE ASSEMBLY	68
Article 159 Composition, procedure and voting	68
Article 160 Powers and functions	69
SUBSECTION C. THE COUNCIL	70
Article 161 Composition, procedure and voting	70
Article 162 Powers and functions	72
Article 163 Organs of the Council.....	74
Article 164 The Economic Planning Commission.....	75
Article 165 The Legal and Technical Commission.....	75
SUBSECTION D. THE SECRETARIAT	76
Article 166 The Secretariat.....	76
Article 167 The staff of the Authority.....	77

Article 168 International character of the Secretariat	77
Article 169 Consultation and cooperation with international and non-governmental organizations	77
 SUBSECTION E. THE ENTERPRISE	78
Article 170 The Enterprise	78
 SUBSECTION F. FINANCIAL ARRANGEMENTS OF THE AUTHORITY	78
Article 171 Funds of the Authority.....	78
Article 172 Annual budget of the Authority.....	78
Article 173 Expenses of the Authority.....	79
Article 174 Borrowing power of the Authority.....	79
Article 175 Annual audit.....	79
 SUBSECTION G. LEGAL STATUS, PRIVILEGES AND IMMUNITIES.....	79
Article 176 Legal status	79
Article 177 Privileges and immunities	79
Article 178 Immunity from legal process.....	79
Article 179 Immunity from search and any form of seizure	80
Article 180 Exemption from restrictions, regulations, controls and moratoria	80
Article 181 Archives and official communications of the Authority	80
Article 182 Privileges and immunities of certain persons connected with the Authority	80
Article 183 Exemption from taxes and customs duties	80
 SUBSECTION H. SUSPENSION OF THE EXERCISE OF RIGHTS AND PRIVILEGES OF MEMBERS .	81
Article 185 Suspension of exercise of rights and privileges of membership.....	81
 SECTION 5. SETTLEMENT OF DISPUTES AND ADVISORY	81
Article 186 Seabed Disputes Chamber of the International Tribunal for the Law of the Sea ..	81
Article 187 Jurisdiction of the Seabed Disputes Chamber.....	81
Article 188 Submission of disputes to a special chamber of the International Tribunal or the Law of the Sea or an ad hoc chamber of the Seabed Disputes Chamber or to binding commercial arbitration	82
Article 189 Limitation on jurisdictionwith regard to decisions of the Authority	82
Article 190 Participation and appearanceof sponsoring States Parties in proceedings..	83
Article 191 Advisory opinions	83
 PART XII PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT	84
 SECTION 1. GENERAL	84
Article 192 General obligation.....	84
Article 193 Sovereign right of States to exploit their natural resources	84
Article 194 Measures to prevent, reduce and control pollution of the marine environment	84

Article 195 Duty not to transfer damage or hazards or transform one type of pollution into another	85
Article 196 Use of technologies or introduction of alien or new species	85
SECTION 2. GLOBAL AND REGIONAL	85
Article 197 Cooperation on a global or regional basis.....	85
Article 198 Notification of imminent or actual damage.....	85
Article 199 Contingency plans against pollution	85
Article 200 Studies, research programmes and exchange of information and data.....	85
Article 201 Scientific criteria for regulations	86
SECTION 3. TECHNICAL	86
Article 202 Scientific and technical assistance to developing States	86
Article 203 Preferential treatment for developing States.....	86
SECTION 4. MONITORING AND ENVIRONMENTAL	86
Article 204 Monitoring of the risks or effects of pollution	86
Article 205 Publication of reports	87
Article 206 Assessment of potential effects of activities.....	87
SECTION 5. INTERNATIONAL RULES AND NATIONAL LEGISLATION TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT	87
Article 207 Pollution from land-based sources	87
Article 208 Pollution from seabed activities subject to national jurisdiction	87
Article 209 Pollution from activities in the Area.....	88
Article 210 Pollution by dumping	88
Article 211 Pollution from vessels	88
Article 212 Pollution from or through the atmosphere.....	89
SECTION 6. ENFORCEMENT	90
Article 213 Enforcement with respect to pollution from land-based sources.....	90
Article 214 Enforcement with respect to pollution from seabed activities.....	90
Article 215 Enforcement with respect to pollution from activities in the Area	90
Article 216 Enforcement with respect to pollution by dumping.....	90
Article 217 Enforcement by flag States	90
Article 218 Enforcement by port States	91
Article 219 Measures relating to seaworthiness of vessels to avoid pollution	92
Article 220 Enforcement by coastal States	92
Article 221 Measures to avoid pollution arising from maritime casualties.....	93
Article 222 Enforcement with respect to pollution from or through the atmosphere	93
SECTION 7. SAFEGUARDS.....	93
Article 223 Measures to facilitate proceedings.....	93
Article 224 Exercise of powers of enforcement	93

Article 225 Duty to avoid adverse consequences in the exercise of the powers of enforcement.....	93
Article 226 Investigation of foreign vessels	93
Article 227 Non-discrimination with respect to foreign vessels.....	94
Article 228 Suspension and restrictions on institution of proceedings	94
Article 229 Institution of civil proceedings.....	95
Article 230 Monetary penalties and the observance of recognized rights of the accused.	95
Article 231 Notification to the flag State and other States concerned.....	95
Article 232 Liability of States arising from enforcement measures	95
Article 233 Safeguards with respect to straits used for international navigation.....	95
SECTION 8. ICE-COVERED AREAS	95
Article 234 Ice-covered areas	95
SECTION 9. RESPONSIBILITY AND LIABILITY	96
Article 235 Responsibility and liability.....	96
SECTION 10. SOVEREIGN IMMUNITY	96
Article 236 Sovereign immunity	96
SECTION 11. OBLIGATIONS UNDER OTHER CONVENTIONS ON THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT	96
Article 237 Obligations under other conventions on the protection and preservation of the marine environment	96
PART XIII MARINE SCIENTIFIC RESEARCH	97
SECTION 1. GENERAL PROVISIONS.....	97
Article 238 Right to conduct marine scientific research	97
Article 239 Promotion of marine scientific research	97
Article 240 General principles for the conduct of marine scientific research.....	97
Article 241 Non-recognition of marine scientific research activities as the legal basis for claims.....	97
SECTION 2. INTERNATIONAL COOPERATION.....	97
Article 242 Promotion of international cooperation	97
Article 244 Publication and dissemination of information and knowledge	98
SECTION 3. CONDUCT AND PROMOTION OF MARINE SCIENTIFIC RESEARCH.....	98
Article 245 Marine scientific research in the territorial sea.....	98
Article 246 Marine scientific research in the exclusive economic zone and on the continental shelf.....	98
Article 247 Marine scientific research projects undertaken by or under the auspices of international organizations.....	99
Article 248 Duty to provide information to the coastal State	99

Article 249 Duty to comply with certain conditions	100
Article 250 Communications concerning marine scientific research projects	100
Article 251 General criteria and guidelines	100
Article 252 Implied consent	100
Article 253 Suspension or cessation of marine scientific research activities	101
Article 254 Rights of neighbouring land-locked and geographically disadvantaged States	101
Article 255 Measures to facilitate marine scientific research and assist research vessels	101
Article 256 Marine scientific research in the Area	102
Article 257 Marine scientific research in the water column beyond the exclusive economic zone	102
SECTION 4. SCIENTIFIC RESEARCH INSTALLATIONS OR EQUIPMENT IN THE MARINE ENVIRONMENT.....	102
Article 258 Deployment and use	102
Article 259 Legal status	102
Article 260 Safety zones	102
Article 261 Non-interference with shipping routes	102
Article 262 Identification markings and warning signals.....	102
SECTION 5. RESPONSIBILITY AND LIABILITY	103
Article 263 Responsibility and liability.....	103
SECTION 6. SETTLEMENT OF DISPUTES AND INTERIM MEASURES.....	103
Article 264 Settlement of disputes	103
Article 265 Interim measures.....	103
PART XIV DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY	104
SECTION 1. GENERAL PROVISIONS	104
Article 266 Promotion of the development and transfer of marine technology	104
Article 267 Protection of legitimate interests	104
Article 268 Basic objectives.....	104
Article 269 Measures to achieve the basic objectives.....	104
SECTION 2. INTERNATIONAL COOPERATION	105
Article 270 Ways and means of international cooperation.....	105
Article 271 Guidelines, criteria and standards	105
Article 272 Coordination of international programmes.....	105
Article 273 Cooperation with international organizations and the Authority	105
Article 274 Objectives of the Authority	105

SECTION 3. NATIONAL AND REGIONAL MARINE SCIENTIFIC AND TECHNOLOGICAL CENTRES	106
Article 275 Establishment of national centres.....	106
Article 276 Establishment of regional centres.....	106
Article 277 Functions of regional centres	106
SECTION 4. COOPERATION AMONG INTERNATIONAL ORGANIZATIONS	107
Article 278 Cooperation among international organizations.....	107
PART XV SETTLEMENT OF DISPUTES	108
SECTION 1. GENERAL PROVISIONS.....	108
Article 279 Obligation to settle disputes by peaceful means.....	108
Article 280 Settlement of disputes by any peaceful means chosen by the parties	108
Article 281 Procedure where no settlement has been reached by the parties.....	108
Article 282 Obligations under general, regional or bilateral agreements.....	108
Article 283 Obligation to exchange views	108
Article 284 Conciliation.....	109
Article 285 Application of this section to disputes submitted pursuant to Part XI.....	109
SECTION 2. COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS	109
Article 286 Application of procedures under this section.....	109
Article 287 Choice of procedure.....	109
Article 288 Jurisdiction	110
Article 289 Experts	110
Article 290 Provisional measures	110
Article 291 Access	111
Article 292 Prompt release of vessels and crews	111
Article 293 Applicable law.....	111
Article 294 Preliminary proceedings	111
Article 295 Exhaustion of local remedies.....	111
Article 296 Finality and binding force of decisions	112
SECTION 3. LIMITATIONS AND EXCEPTIONS TO APPLICABILITY OF SECTION 2.....	112
Article 297 Limitations on applicability of section 2	112
Article 298 Optional exceptions to applicability of section 2.....	113
Article 299 Right of the parties to agree upon a procedure	114
PART XVI GENERAL PROVISIONS	115
Article 300 Good faith and abuse of rights.....	115
Article 301 Peaceful uses of the seas	115
Article 302 Disclosure of information	115
Article 303 Archaeological and historical objects found at sea	115
Article 304 Responsibility and liability for damage.....	115

PART XVII	FINAL PROVISIONS	116
	Article 305 Signature.....	116
	Article 306 Ratification and formal confirmation.....	116
	Article 307 Accession	116
	Article 308 Entry into force.....	116
	Article 309 Reservations and exceptions	117
	Article 310 Declarations and statements	117
	Article 311 Relation to other conventions and international agreements	117
	Article 312 Amendment.....	117
	Article 313 Amendment by simplified procedure.....	118
	Article 314 Amendments to the provisions of this Convention relating exclusively to activities in the Area.....	118
	Article 315 Signature, ratification of, accession to and authentic texts of amendments .	118
	Article 316 Entry into force of amendments.....	118
	Article 317 Denunciation.....	119
	Article 318 Status of Annexes.....	119
	Article 319 Depositary	119
	Article 320 Authentic texts	120
ANNEX I.	HIGHLY MIGRATORY SPECIES	121
ANNEX II.	COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF	122
ANNEX III.	BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION	124
	Article 1 Title to minerals.....	124
	Article 2 Prospecting	124
	Article 3 Exploration and exploitation.....	124
	Article 4 Qualifications of applicants.....	125
	Article 5 Transfer of technology	125
	Article 6 Approval of plans of work.....	127
	Article 7 Selection among applicants for production authorizations	128
	Article 8 Reservation of areas.....	128
	Article 9 Activities in reserved areas.....	128
	Article 10 Preference and priority among applicants.....	129
	Article 11 Joint arrangements	129
	Article 12 Activities carried out by the Enterprise	129
	Article 13 Financial terms of contracts	129
	Article 14 Transfer of data.....	134
	Article 15 Training programmes.....	135
	Article 16 Exclusive right to explore and exploit.....	135
	Article 17 Rules, regulations and procedures of the Authority.....	135
	Article 18 Penalties	137
	Article 19 Revision of contract.....	137

Article 20	Transfer of rights and obligations	137
Article 21	Applicable law.....	138
Article 22	Responsibility	138
ANNEX IV.	STATUTE OF THE ENTERPRISE	139
Article 1	Purposes.....	139
Article 2	Relationship to the Authority	139
Article 3	Limitation of liability	139
Article 4	Structure.....	139
Article 5	Governing Board.....	139
Article 6	Powers and functions of the Governing Board	140
Article 7	Director-General and staff of the Enterprise	141
Article 8	Location	141
Article 9	Reports and financial statements.....	141
Article 10	Allocation of net income.....	141
Article 11	Finances	142
Article 12	Operations.....	143
Article 13	Legal status, privileges and immunities.....	144
ANNEX V.	CONCILIATION	146
SECTION 1. CONCILIATION PROCEDURE PURSUANT TO SECTION 1 OF PART XV.....		146
Article 1	Institution of proceedings	146
Article 2	List of conciliators	146
Article 3	Constitution of conciliation commission	146
Article 4	Procedure.....	147
Article 5	Amicable settlement	147
Article 6	Functions of the commission	147
Article 7	Report	147
Article 8	Termination.....	147
Article 9	Fees and expenses	147
Article 10	Right of parties to modify procedure.....	147
SECTION 2. COMPULSORY SUBMISSION TO CONCILIATION PROCEDURE PURSUANT TO SECTION 3 OF PART XV		148
Article 11	Institution of proceedings	148
Article 12	Failure to reply or to submit to conciliation.....	148
Article 13	Competence.....	148
Article 14	Application of section 1.....	148
ANNEX VI.	STATUTE OF THE INTERNATIONAL FOR THE LAW OF THE SEA	149
Article 1	General provisions.....	149

SECTION 1. ORGANIZATION OF THE TRIBUNAL	149
Article 2 Composition	149
Article 3 Membership.....	149
Article 4 Nominations and elections	149
Article 5 Term of office	150
Article 6 Vacancies	150
Article 7 Incompatible activities	150
Article 8 Conditions relating to participation of members in a particular case	150
Article 9 Consequence of ceasing to fulfil required conditions	151
Article 10 Privileges and immunities	151
Article 11 Solemn declaration by members	151
Article 12 President, Vice-President and Registrar.....	151
Article 13 Quorum	151
Article 14 Seabed Disputes Chamber.....	151
Article 15 Special chambers.....	151
Article 16 Rules of the Tribunal.....	152
Article 17 Nationality of members	152
Article 18 Remuneration of members.....	152
Article 19 Expenses of the Tribunal	153
SECTION 2. COMPETENCE.....	153
Article 20 Access to the Tribunal.....	153
Article 21 Jurisdiction	153
Article 22 Reference of disputes subject to other agreements	153
Article 23 Applicable law.....	153
SECTION 3. PROCEDURE	153
Article 24 Institution of proceedings	153
Article 25 Provisional measures	153
Article 26 Hearing.....	154
Article 27 Conduct of case	154
Article 28 Default.....	154
Article 29 Majority for decision	154
Article 30 Judgment	154
Article 31 Request to intervene	154
Article 32 Right to intervene in cases of interpretation or application.....	155
Article 33 Finality and binding force of decisions	155
Article 34 Costs	155
SECTION 4. SEABED DISPUTES CHAMBER.....	155
Article 35 Composition	155
Article 36 Ad hoc chambers	155
Article 37 Access	156

Article 38	Applicable law.....	156
Article 39	Enforcement of decisions of the Chamber	156
Article 40	Applicability of other sections of this Annex.....	156
SECTION 5. AMENDMENTS		156
Article 41	Amendments	156
ANNEX VII. ARBITRATION		157
Article 1	Institution of proceedings	157
Article 2	List of arbitrators	157
Article 3	Constitution of arbitral tribunal.....	157
Article 4	Functions of arbitral tribunal	158
Article 5	Procedure.....	158
Article 6	Duties of parties to a dispute	158
Article 7	Expenses.....	158
Article 8	Required majority for decisions.....	158
Article 9	Default of appearance	158
Article 10	Award	159
Article 11	Finality of award	159
Article 12	Interpretation or implementation of award	159
Article 13	Application to entities other than States Parties.....	159
ANNEX VIII. SPECIAL ARBITRATION		160
Article 1	Institution of proceedings	160
Article 2	Lists of experts	160
Article 3	Constitution of special arbitral tribunal.....	160
Article 4	General provisions.....	161
Article 5	Fact finding.....	161
ANNEX IX. PARTICIPATION BY INTERNATIONAL ORGANIZATIONS		162
Article 1	Use of terms.....	162
Article 2	Signature.....	162
Article 3	Formal confirmation and accession	162
Article 4	Extent of participation and rights and obligations	162
Article 5	Declarations, notifications and communications	163
Article 6	Responsibility and liability.....	163
Article 7	Settlement of disputes	163
Article 8	Applicability of Part XVII.....	164

PREAMBLE

The States Parties to this Convention,

Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

Noting that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,

Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole,

Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment,

Bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,

Desiring by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared *inter alia* that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,

Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,

Affirming that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

Have agreed as follows:

PART I

INTRODUCTION

Article 1 *Use of terms and scope*

1. For the purposes of this Convention:
 - (1) “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;
 - (2) “Authority” means the International Seabed Authority;
 - (3) “activities in the Area” means all activities of exploration for, and exploitation of, the resources of the Area;
 - (4) “pollution of the marine environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
 - (5)
 - (a) “dumping” means:
 - (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
 - (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;
 - (b) “dumping” does not include:
 - (i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
 - (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.
2.
 - (1) “States Parties” means States which have consented to be bound by this Convention and for which this Convention is in force.
 - (2) This Convention applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent “States Parties” refers to those entities.

PART II

TERRITORIAL SEA AND CONTIGUOUS ZONE

SECTION 1. GENERAL PROVISIONS

Article 2

Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

- (1) The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
- (2) This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
- (3) The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 3

Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 4

Outer limit of the territorial sea

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 5

Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 6

Reefs

In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.

Article 7

Straight baselines

- (1) In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
- (2) Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and,

notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

- (3) The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
- (4) Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.
- (5) Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.
- (6) The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

Article 8
Internal waters

- (1) Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.
- (2) Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

Article 9
Mouths of rivers

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks.

Article 10
Bays

- (1) This article relates only to bays the coasts of which belong to a single State.
- (2) For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
- (3) For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.
- (4) If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
- (5) Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.
- (6) The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.

*Article 11
Ports*

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.

*Article 12
Roadsteads*

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.

*Article 13
Low-tide elevations*

- (1) A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
- (2) Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

*Article 14
Combination of methods for determining baselines*

The coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions.

*Article 15
Delimitation of the territorial sea between
States with opposite or adjacent coasts*

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

*Article 16
Charts and lists of geographical coordinates*

- (1) The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15 shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted.
- (2) The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

SECTION 3. INNOCENT PASSAGE IN THE TERRITORIAL SEA

SUBSECTION A. RULES APPLICABLE TO ALL SHIPS

Article 17 Right of innocent passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18 Meaning of passage

- (1) Passage means navigation through the territorial sea for the purpose of:
 - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
 - (b) proceeding to or from internal waters or a call at such roadstead or port facility.
- (2) Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19 Meaning of innocent passage

- (1) Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
- (2) Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
 - (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (b) any exercise or practice with weapons of any kind;
 - (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
 - (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
 - (e) the launching, landing or taking on board of any aircraft;
 - (f) the launching, landing or taking on board of any military device;
 - (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
 - (h) any act of wilful and serious pollution contrary to this Convention;
 - (i) any fishing activities;
 - (j) the carrying out of research or survey activities;
 - (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
 - (l) any other activity not having a direct bearing on passage.

Article 20
Submarines and other underwater vehicles

In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 21
Laws and regulations of the coastal State relating to innocent passage

- (1) The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
 - (a) the safety of navigation and the regulation of maritime traffic;
 - (b) the protection of navigational aids and facilities and other facilities or installations;
 - (c) the protection of cables and pipelines;
 - (d) the conservation of the living resources of the sea;
 - (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
 - (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
 - (g) marine scientific research and hydrographic surveys;
 - (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.
- (2) Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.
- (3) The coastal State shall give due publicity to all such laws and regulations.
- (4) Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

Article 22
Sea lanes and traffic separation schemes in the territorial sea

- (1) The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships.
- (2) In particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.
- (3) In the designation of sea lanes and the prescription of traffic separation schemes under this article, the coastal State shall take into account:
 - (a) the recommendations of the competent international organization;
 - (b) any channels customarily used for international navigation;
 - (c) the special characteristics of particular ships and channels; and
 - (d) the density of traffic.
- (4) The coastal State shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given.

Article 23

Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances

Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

Article 24

Duties of the coastal State

- (1) The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this Convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:
 - (a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
 - (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.
- (2) The coastal State shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.

Article 25

Rights of protection of the coastal State

- (1) The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.
- (2) In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.
- (3) The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

Article 26

Charges which may be levied upon foreign ships

- (1) No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.
- (2) Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

SUBSECTION B. RULES APPLICABLE TO MERCHANT SHIPS AND GOVERNMENT SHIPS OPERATED FOR COMMERCIAL PURPOSES

Article 27

Criminal jurisdiction on board a foreign ship

- (1) The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:
 - (a) if the consequences of the crime extend to the coastal State;
 - (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

- (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
- (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psycho-tropic substances.
- (2) The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.
- (3) In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.
- (4) In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.
- (5) Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 28
Civil jurisdiction in relation to foreign ships

- (1) The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.
- (2) The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.
- (3) Paragraph 2 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

**SUBSECTION C. RULES APPLICABLE TO WARSHIPS AND OTHER
 GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES**

Article 29
Definition of warships

For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

Article 30
*Non-compliance by warships with the laws
 and regulations of the coastal State*

If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately.

Article 31
*Responsibility of the flag State for damage caused
by a warship or other government ship operated
for non-commercial purposes*

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

Article 32
*Immunities of warships and other government
ships operated for non-commercial purposes*

With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

SECTION 4. CONTIGUOUS ZONE

Article 33
Contiguous zone

- (1) In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
 - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
 - (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.
- (2) The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

PART III

STRAITS USED FOR INTERNATIONAL NAVIGATION

SECTION 1. GENERAL PROVISIONS

Article 34

Legal status of waters forming straits used for international navigation

- (1) The regime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.
- (2) The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35

Scope of this Part

Nothing in this Part affects:

- (a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;
- (b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
- (c) the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article 36

High seas routes or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply.

SECTION 2. TRANSIT PASSAGE

Article 37

Scope of this section

This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

Article 38

Right of transit passage

- (1) In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.
- (2) Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part

of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

(3) Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39

Duties of ships and aircraft during transit passage

- (1) Ships and aircraft, while exercising the right of transit passage, shall:
 - (a) proceed without delay through or over the strait;
 - (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;
 - (d) comply with other relevant provisions of this Part.
- (2) Ships in transit passage shall:
 - (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;
 - (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
- (3) Aircraft in transit passage shall:
 - (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
 - (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40

Research and survey activities

During transit passage, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering straits.

Article 41

Sea lanes and traffic separation schemes in straits used for international navigation

- (1) In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.
- (2) Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.
- (3) Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.
- (4) Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

- (5) In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall cooperate in formulating proposals in consultation with the competent international organization.
- (6) States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.
- (7) Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Article 42

Laws and regulations of States bordering straits relating to transit passage

- (1) Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:
 - (a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;
 - (b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
 - (c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
 - (d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.
- (2) Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.
- (3) States bordering straits shall give due publicity to all such laws and regulations.
- (4) Foreign ships exercising the right of transit passage shall comply with such laws and regulations.
- (5) The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Article 43

Navigational and safety aids and other improvements and the prevention, reduction and control of pollution

User States and States bordering a strait should by agreement cooperate:

- (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and
- (b) for the prevention, reduction and control of pollution from ships.

Article 44

Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.

SECTION 3. INNOCENT PASSAGE

Article 45

Innocent passage

- (1) The regime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation:
 - (a) excluded from the application of the regime of transit passage under article 38, paragraph 1; or
 - (b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.
- (2) There shall be no suspension of innocent passage through such straits.

PART IV

ARCHIPELAGIC STATES

Article 46 *Use of terms*

For the purposes of this Convention:

- (a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;
- (b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 47 *Archipelagic baselines*

- (1) An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
- (2) The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
- (3) The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
- (4) Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
- (5) The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
- (6) If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.
- (7) For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.
- (8) The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.
- (9) The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 48
*Measurement of the breadth of the territorial sea, the contiguous zone,
the exclusive economic zone and the continental shelf*

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47.

Article 49
*Legal status of archipelagic waters, of the air space over
archipelagic waters and of their bed and subsoil*

- (1) The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
- (2) This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
- (3) This sovereignty is exercised subject to this Part.
- (4) The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

Article 50
Delimitation of internal waters

Within its archipelagic waters, the archipelagic State may draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11.

Article 51
*Existing agreements, traditional fishing rights
and existing submarine cables*

- (1) Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.
- (2) An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them.

Article 52
Right of innocent passage

- (1) Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3.
- (2) The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

Article 53
Right of archipelagic sea lanes passage

- (1) An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
- (2) All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.
- (3) Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.
- (4) Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.
- (5) Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.
- (6) An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.
- (7) An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.
- (8) Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.
- (9) In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.
- (10) The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.
- (11) Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.
- (12) If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Article 54
*Duties of ships and aircraft during their passage, research
and survey activities, duties of the archipelagic State
and laws and regulations of the archipelagic State
relating to archipelagic sea lanes passage*

Articles 39, 40, 42 and 44 apply *mutatis mutandis* to archipelagic sea lanes passage.

PART V

EXCLUSIVE ECONOMIC ZONE

Article 55 *Specific legal regime of the exclusive economic zone*

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 *Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*

- (1) In the exclusive economic zone, the coastal State has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
 - (c) other rights and duties provided for in this Convention.
- (2) In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
- (3) The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

Article 57 *Breadth of the exclusive economic zone*

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 58 *Rights and duties of other States in the exclusive economic zone*

- (1) In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
- (2) Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
- (3) In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 59
Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone

In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

Article 60
Artificial islands, installations and structures in the exclusive economic zone

- (1) In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
 - (a) artificial islands;
 - (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
 - (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.
- (2) The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.
- (3) Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.
- (4) The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.
- (5) The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.
- (6) All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.
- (7) Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.
- (8) Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 61
Conservation of the living resources

- (1) The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
- (2) The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.
- (3) Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
- (4) In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
- (5) Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62
Utilization of the living resources

- (1) The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.
- (2) The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.
- (3) In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.
- (4) Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:
 - (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
 - (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

- (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish and other species that may be caught;
- (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) the placing of observers or trainees on board such vessels by the coastal State;
- (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
- (i) terms and conditions relating to joint ventures or other cooperative arrangements;
- (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;
- (k) enforcement procedures.

(5) Coastal States shall give due notice of conservation and management laws and regulations.

Article 63

*Stocks occurring within the exclusive economic zones of
two or more coastal States or both within the exclusive economic zone
and in an area beyond and adjacent to it*

- (1) Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.
- (2) Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

Article 64 *Highly migratory species*

- (1) The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.
- (2) The provisions of paragraph 1 apply in addition to the other provisions of this Part.

Article 65 *Marine mammals*

Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

Article 66
Anadromous stocks

- (1) States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.
- (2) The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.
- (3)
 - (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.
 - (b) The State of origin shall cooperate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.
 - (c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.
 - (d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.
- (4) In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall cooperate with the State of origin with regard to the conservation and management of such stocks.
- (5) The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

Article 67
Catadromous species

- (1) A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.
- (2) Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.
- (3) In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68
Sedentary species

This Part does not apply to sedentary species as defined in article 77, paragraph 4.

Article 69
Right of land-locked States

- (1) Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
- (2) The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:
 - (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
 - (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
 - (c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
 - (d) the nutritional needs of the populations of the respective States.
- (3) When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.
- (4) Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.
- (5) The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70
Right of geographically disadvantaged States

- (1) Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
- (2) For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

- (3) The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:
 - (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
 - (b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
 - (c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
 - (d) the nutritional needs of the populations of the respective States.
- (4) When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.
- (5) Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.
- (6) The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 71
Non-applicability of articles 69 and 70

The provisions of articles 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

Article 72
Restrictions on transfer of rights

- (1) Rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned.
- (2) The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

Article 73
Enforcement of laws and regulations of the coastal State

- (1) The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspec-

tion, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

- (2) Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
- (3) Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
- (4) In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

Article 74

*Delimitation of the exclusive economic zone between
States with opposite or adjacent coasts*

- (1) The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
- (2) If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
- (3) Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
- (4) Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 75

Charts and lists of geographical coordinates

- (1) Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
- (2) The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

PART VI

CONTINENTAL SHELF

Article 76 *Definition of the continental shelf*

- (1) The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
- (2) The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
- (3) The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
- (4)
 - (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
 - (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
 - (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
 - (b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.
- (5) The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.
- (6) Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.
- (7) The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.
- (8) Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
- (9) The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.
- (10) The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article 77
Rights of the coastal State over the continental shelf

- (1) The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
- (2) The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
- (3) The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
- (4) The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 78
*Legal status of the superjacent waters and air space
and the rights and freedoms of other States*

- (1) The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
- (2) The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

Article 79
Submarine cables and pipelines on the continental shelf

- (1) All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.
- (2) Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.
- (3) The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.
- (4) Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.
- (5) When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 80
Artificial islands, installations and structures on the continental shelf

Article 60 applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf.

Article 81
Drilling on the continental shelf

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

Article 82
Payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles

- (1) The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.
- (2) The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include resources used in connection with exploitation.
- (3) A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.
- (4) The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

Article 83
Delimitation of the continental shelf between States with opposite or adjacent coasts

- (1) The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
- (2) If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
- (3) Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
- (4) Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Article 84
Charts and lists of geographical coordinates

- (1) Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
- (2) The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority.

Article 85
Tunnelling

This Part does not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling, irrespective of the depth of water above the subsoil.

PART VII

HIGH SEAS

SECTION 1. GENERAL PROVISIONS

Article 86 *Application of the provisions of this Part*

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87 *Freedom of the high seas*

- (1) The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
 - (f) freedom of scientific research, subject to Parts VI and XIII.
- (2) These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 88 *Reservation of the high seas for peaceful purposes*

The high seas shall be reserved for peaceful purposes.

Article 89 *Invalidity of claims of sovereignty over the high seas*

No State may validly purport to subject any part of the high seas to its sovereignty.

Article 90 *Right of navigation*

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article 91 *Nationality of ships*

- (1) Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
- (2) Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92
Status of ships

- (1) Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
- (2) A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 93
Ships flying the flag of the United Nations, its specialized agencies and the International Atomic Energy Agency

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization.

Article 94
Duties of the flag State

- (1) Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
- (2) In particular every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
 - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
- (3) Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
 - (a) the construction, equipment and seaworthiness of ships;
 - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
 - (c) the use of signals, the maintenance of communications and the prevention of collisions.
- (4) Such measures shall include those necessary to ensure:
 - (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
 - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
 - (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.
- (5) In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

- (6) A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
- (7) Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 95
Immunity of warships on the high seas

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article 96
Immunity of ships used only on government non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 97
Penal jurisdiction in matters of collision or any other incident of navigation

- (1) In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
- (2) In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.
- (3) No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 98
Duty to render assistance

- (1) Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
 - (a) to render assistance to any person found at sea in danger of being lost;
 - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
 - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
- (2) Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

Article 99
Prohibition of the transport of slaves

Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.

Article 100
Duty to cooperate in the repression of piracy

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101
Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102
Piracy by a warship, government ship or government aircraft whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103
Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104
Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105
Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 106
Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107
Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 108
Illicit traffic in narcotic drugs or psychotropic substances

- (1) All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.
- (2) Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

Article 109
Unauthorized broadcasting from the high seas

- (1) All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.
- (2) For the purposes of this Convention, “unauthorized broadcasting” means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.
- (3) Any person engaged in unauthorized broadcasting may be prosecuted before the court of:
 - (a) the flag State of the ship;
 - (b) the State of registry of the installation;
 - (c) the State of which the person is a national;
 - (d) any State where the transmissions can be received; or
 - (e) any State where authorized radio communication is suffering interference.
- (4) On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

Article 110
Right of visit

- (1) Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:
 - (a) the ship is engaged in piracy;
 - (b) the ship is engaged in the slave trade;
 - (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
 - (d) the ship is without nationality; or
 - (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

- (2) In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
- (3) If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
- (4) These provisions apply *mutatis mutandis* to military aircraft.
- (5) These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

Article 111
Right of hot pursuit

- (1) The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
- (2) The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
- (3) The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
- (4) Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.
- (5) The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
- (6) Where hot pursuit is effected by an aircraft:
 - (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;
 - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.
- (7) The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
- (8) Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 112
Right to lay submarine cables and pipelines

- (1) All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
- (2) Article 79, paragraph 5, applies to such cables and pipelines.

Article 113
Breaking or injury of a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114
Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 115
Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

SECTION 2. CONSERVATION AND MANAGEMENT OF THE LIVING RESOURCES OF THE HIGH SEAS

Article 116
Right to fish on the high seas

All States have the right for their nationals to engage in fishing on the high seas subject to:

- (a) their treaty obligations;
- (b) the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63, paragraph 2, and articles 64 to 67; and
- (c) the provisions of this section.

Article 117
Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas

All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 118
*Cooperation of States in the conservation
and management of living resources*

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article 119
Conservation of the living resources of the high seas

- (1) In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:
 - (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
 - (b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
- (2) Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.
- (3) States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

Article 120
Marine mammals

Article 65 also applies to the conservation and management of marine mammals in the high seas.

PART VIII

REGIME OF ISLANDS

Article 121 *Regime of islands*

- (1) An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
- (2) Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
- (3) Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

PART IX

ENCLOSED OR SEMI-ENCLOSED SEAS

Article 122 *Definition*

For the purposes of this Convention, “enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123 *Cooperation of States bordering enclosed or semi-enclosed seas*

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

PART X

RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT

Article 124 *Use of terms*

- (1) For the purposes of this Convention:
 - (a) “land-locked State” means a State which has no sea-coast;
 - (b) “transit State” means a State, with or without a sea-coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes;
 - (c) “traffic in transit” means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked State;
 - (d) “means of transport” means:
 - (i) railway rolling stock, sea, lake and river craft and road vehicles;
 - (ii) where local conditions so require, porters and pack animals.
- (2) Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1.

Article 125 *Right of access to and from the sea and freedom of transit*

- (1) Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.
- (2) The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.
- (3) Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

Article 126 *Exclusion of application of the most-favoured-nation clause*

The provisions of this Convention, as well as special agreements relating to the exercise of the right of access to and from the sea, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

Article 127 *Customs duties, taxes and other charges*

- (1) Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.
- (2) Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

Article 128
Free zones and other customs facilities

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

Article 129
Cooperation in the construction and improvement of means of transport

Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may cooperate in constructing or improving them.

Article 130
Measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit

- (1) Transit States shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit.
- (2) Should such delays or difficulties occur, the competent authorities of the transit States and land-locked States concerned shall cooperate towards their expeditious elimination.

Article 131
Equal treatment in maritime ports

Ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports.

Article 132
Grant of greater transit facilities

This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in this Convention and which are agreed between States Parties to this Convention or granted by a State Party. This Convention also does not preclude such grant of greater facilities in the future.

PART XI

THE AREA

SECTION 1. GENERAL PROVISIONS

Article 133 *Use of terms*

For the purposes of this Part:

- (a) “resources” means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules;
- (b) resources, when recovered from the Area, are referred to as “minerals”.

Article 134 *Scope of this Part*

- (1) This Part applies to the Area.
- (2) Activities in the Area shall be governed by the provisions of this Part.
- (3) The requirements concerning deposit of, and publicity to be given to, the charts or lists of geographical coordinates showing the limits referred to in article I, paragraph I(1), are set forth in Part VI.
- (4) Nothing in this article affects the establishment of the outer limits of the continental shelf in accordance with Part VI or the validity of agreements relating to delimitation between States with opposite or adjacent coasts.

Article 135 *Legal status of the superjacent waters and air space*

Neither this Part nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters superjacent to the Area or that of the air space above those waters.

SECTION 2. PRINCIPLES GOVERNING THE

Article 136 *Common heritage of mankind*

The Area and its resources are the common heritage of mankind.

Article 137 *Legal status of the Area and its resources*

- (1) No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.
- (2) All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.
- (3) No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

Article 138
General conduct of States in relation to the Area

The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international cooperation and mutual understanding.

Article 139
Responsibility to ensure compliance and liability for damage

- (1) States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.
- (2) Without prejudice to the rules of international law and Annex III, article 22, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability; States Parties or international organizations acting together shall bear joint and several liability. A State Party shall not however be liable for damage caused by any failure to comply with this Part by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III, article 4, paragraph 4.
- (3) States Parties that are members of international organizations shall take appropriate measures to ensure the implementation of this article with respect to such organizations.

Article 140
Benefit of mankind

- (1) Activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.
- (2) The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).

Article 141
Use of the Area exclusively for peaceful purposes

The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part.

Article 142
Rights and legitimate interests of coastal States

- (1) Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such deposits lie.
- (2) Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.

(3) Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

Article 143
Marine scientific research

- (1) Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, in accordance with Part XIII.
- (2) The Authority may carry out marine scientific research concerning the Area and its resources, and may enter into contracts for that purpose. The Authority shall promote and encourage the conduct of marine scientific research in the Area, and shall coordinate and disseminate the results of such research and analysis when available.
- (3) States Parties may carry out marine scientific research in the Area. States Parties shall promote international cooperation in marine scientific research in the Area by:
 - (a) participating in international programmes and encouraging cooperation in marine scientific research by personnel of different countries and of the Authority;
 - (b) ensuring that programmes are developed through the Authority or other international organizations as appropriate for the benefit of developing States and technologically less developed States with a view to:
 - (i) strengthening their research capabilities;
 - (ii) training their personnel and the personnel of the Authority in the techniques and applications of research;
 - (iii) fostering the employment of their qualified personnel in research in the Area;
 - (c) effectively disseminating the results of research and analysis when available, through the Authority or other international channels when appropriate.

Article 144
Transfer of technology

- (1) The Authority shall take measures in accordance with this Convention:
 - (a) to acquire technology and scientific knowledge relating to activities in the Area; and
 - (b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.
- (2) To this end the Authority and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:
 - (a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;
 - (b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

Article 145
Protection of the marine environment

Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for *inter alia*:

- (a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;
- (b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Article 146
Protection of human life

With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.

Article 147
Accommodation of activities in the Area and in the marine environment

- (1) Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.
- (2) Installations used for carrying out activities in the Area shall be subject to the following conditions:
 - (a) such installations shall be erected, emplaced and removed solely in accordance with this Part and subject to the rules, regulations and procedures of the Authority. Due notice must be given of the erection, emplacement and removal of such installations, and permanent means for giving warning of their presence must be maintained;
 - (b) such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity;
 - (c) safety zones shall be established around such installations with appropriate markings to ensure the safety of both navigation and the installations. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;
 - (d) such installations shall be used exclusively for peaceful purposes;
 - (e) such installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.
- (3) Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

Article 148
Participation of developing States in activities in the Area

The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.

Article 149
Archaeological and historical objects

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

SECTION 3. DEVELOPMENT OF RESOURCES OF THE AREA

Article 150
Policies relating to activities in the Area

Activities in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the over-all development of all countries, especially developing States, and with a view to ensuring:

- (a) the development of the resources of the Area;
- (b) orderly, safe and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;
- (c) the expansion of opportunities for participation in such activities consistent in particular with articles 144 and 148;
- (d) participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in this Convention;
- (e) increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;
- (f) the promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;
- (g) the enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;
- (h) the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, as provided in article 151;
- (i) the development of the common heritage for the benefit of mankind as a whole; and
- (j) conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

Article 151
Production policies

- (1)
 - (a) Without prejudice to the objectives set forth in article 150 and for the purpose of implementing subparagraph (h) of that article, the Authority, acting through existing forums or such new arrangements or agreements as may be appropriate, in which all interested parties, including both producers and consumers, participate, shall take measures necessary to promote the growth, efficiency and stability of markets for those commodities produced from the minerals derived

from the Area, at prices remunerative to producers and fair to consumers. All States Parties shall cooperate to this end.

- (b) The Authority shall have the right to participate in any commodity conference dealing with those commodities and in which all interested parties including both producers and consumers participate. The Authority shall have the right to become a party to any arrangement or agreement resulting from such conferences. Participation of the Authority in any organs established under those arrangements or agreements shall be in respect of production in the Area and in accordance with the relevant rules of those organs.
- (c) The Authority shall carry out its obligations under the arrangements or agreements referred to in this paragraph in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the Enterprise.

(2)

- (a) During the interim period specified in paragraph 3, commercial production shall not be undertaken pursuant to an approved plan of work until the operator has applied for and has been issued a production authorization by the Authority. Such production authorizations may not be applied for or issued more than five years prior to the planned commencement of commercial production under the plan of work unless, having regard to the nature and timing of project development, the rules, regulations and procedures of the Authority prescribe another period.
- (b) In the application for the production authorization, the operator shall specify the annual quantity of nickel expected to be recovered under the approved plan of work. The application shall include a schedule of expenditures to be made by the operator after he has received the authorization which are reasonably calculated to allow him to begin commercial production on the date planned.
- (c) For the purposes of subparagraphs (a) and (b), the Authority shall establish appropriate performance requirements in accordance with Annex III, article 17.
- (d) The Authority shall issue a production authorization for the level of production applied for unless the sum of that level and the levels already authorized exceeds the nickel production ceiling, as calculated pursuant to paragraph 4 in the year of issuance of the authorization, during any year of planned production falling within the interim period.
- (e) When issued, the production authorization and approved application shall become a part of the approved plan of work.
- (f) If the operator's application for a production authorization is denied pursuant to subparagraph (d), the operator may apply again to the Authority at any time.

(3) The interim period shall begin five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. If the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period and the production ceiling originally calculated shall be adjusted accordingly. The interim period shall last 25 years or until the end of the Review Conference referred to in article 155 or until the day when such new arrangements or agreements as are referred to in paragraph 1 enter into force, whichever is earliest. The Authority shall resume the power provided in this article for the remainder of the interim period if the said arrangements or agreements should lapse or become ineffective for any reason whatsoever.

(4)

- (a) The production ceiling for any year of the interim period shall be the sum of:
 - (i) the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year immediately prior to the year of the earliest commercial production and the year immediately prior to the commencement of the interim period; and
 - (ii) sixty per cent of the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year for which the production authori-

zation is being applied for and the year immediately prior to the year of the earliest commercial production.

- (b) For the purposes of subparagraph (a):
 - (i) trend line values used for computing the nickel production ceiling shall be those annual nickel consumption values on a trend line computed during the year in which a production authorization is issued. The trend line shall be derived from a linear regression of the logarithms of actual nickel consumption for the most recent 15-year period for which such data are available, time being the independent variable. This trend line shall be referred to as the original trend line;
 - (ii) if the annual rate of increase of the original trend line is less than 3 per cent, then the trend line used to determine the quantities referred to in subparagraph (a) shall instead be one passing through the original trend line at the value for the first year of the relevant 15-year period, and increasing at 3 per cent annually; provided however that the production ceiling established for any year of the interim period may not in any case exceed the difference between the original trend line value for that year and the original trend line value for the year immediately prior to the commencement of the interim period.
- (5) The Authority shall reserve to the Enterprise for its initial production a quantity of 38,000 metric tonnes of nickel from the available production ceiling calculated pursuant to paragraph 4.
- (6)
 - (a) An operator may in any year produce less than or up to 8 per cent more than the level of annual production of minerals from polymetallic nodules specified in his production authorization, provided that the over-all amount of production shall not exceed that specified in the authorization. Any excess over 8 per cent and up to 20 per cent in any year, or any excess in the first and subsequent years following two consecutive years in which excesses occur, shall be negotiated with the Authority, which may require the operator to obtain a supplementary production authorization to cover additional production.
 - (b) Applications for such supplementary production authorizations shall be considered by the Authority only after all pending applications by operators who have not yet received production authorizations have been acted upon and due account has been taken of other likely applicants. The Authority shall be guided by the principle of not exceeding the total production allowed under the production ceiling in any year of the interim period. It shall not authorize the production under any plan of work of a quantity in excess of 46,500 metric tonnes of nickel per year.
- (7) The levels of production of other metals such as copper, cobalt and manganese extracted from the polymetallic nodules that are recovered pursuant to a production authorization should not be higher than those which would have been produced had the operator produced the maximum level of nickel from those nodules pursuant to this article. The Authority shall establish rules, regulations and procedures pursuant to Annex III, article 17, to implement this paragraph.
- (8) Rights and obligations relating to unfair economic practices under relevant multilateral trade agreements shall apply to the exploration for and exploitation of minerals from the Area. In the settlement of disputes arising under this provision, States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements.
- (9) The Authority shall have the power to limit the level of production of minerals from the Area, other than minerals from polymetallic nodules, under such conditions and applying such methods as may be appropriate by adopting regulations in accordance with article 161, paragraph 8.
- (10) Upon the recommendation of the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation or take other measures of economic adjustment assistance including cooperation with specialized agencies and other international organizations to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area. The Authority on request shall initiate studies on the problems of those States which are likely to be most seriously affected with a view to minimizing their difficulties and assisting them in their economic adjustment.

Article 152
Exercise of powers and functions by the Authority

- (1) The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.
- (2) Nevertheless, special consideration for developing States, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this Part shall be permitted.

Article 153
System of exploration and exploitation

- (1) Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole in accordance with this article as well as other relevant provisions of this Part and the relevant Annexes, and the rules, regulations and procedures of the Authority.
- (2) Activities in the Area shall be carried out as prescribed in paragraph 3:
 - (a) by the Enterprise, and
 - (b) in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III.
- (3) Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III and approved by the Council after review by the Legal and Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in paragraph 2(b), the plan of work shall, in accordance with Annex III, article 3, be in the form of a contract. Such contracts may provide for joint arrangements in accordance with Annex III, article 11.
- (4) The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.
- (5) The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.
- (6) A contract under paragraph 3 shall provide for security of tenure. Accordingly, the contract shall not be revised, suspended or terminated except in accordance with Annex III, articles 18 and 19.

Article 154
Periodic review

Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international regime of the Area established in this Convention has operated in practice. In the light of this review the Assembly may take, or recommend that other organs take, measures in accordance with the provisions and procedures of this Part and the Annexes relating thereto which will lead to the improvement of the operation of the regime.

Article 155
The Review Conference

- (1) Fifteen years from 1 January of the year in which the earliest commercial production commences under an approved plan of work, the Assembly shall convene a conference for the review of those provi-

sions of this Part and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area. The Review Conference shall consider in detail, in the light of the experience acquired during that period:

- (a) whether the provisions of this Part which govern the system of exploration and exploitation of the resources of the Area have achieved their aims in all respects, including whether they have benefited mankind as a whole;
- (b) whether, during the 15-year period, reserved areas have been exploited in an effective and balanced manner in comparison with non-reserved areas;
- (c) whether the development and use of the Area and its resources have been undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade;
- (d) whether monopolization of activities in the Area has been prevented;
- (e) whether the policies set forth in articles 150 and 151 have been fulfilled; and
- (f) whether the system has resulted in the equitable sharing of benefits derived from activities in the Area, taking into particular consideration the interests and needs of the developing States.

(2) The Review Conference shall ensure the maintenance of the principle of the common heritage of mankind, the international regime designed to ensure equitable exploitation of the resources of the Area for the benefit of all countries, especially the developing States, and an Authority to organize, conduct and control activities in the Area. It shall also ensure the maintenance of the principles laid down in this Part with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the rights of States and their general conduct in relation to the Area, and their participation in activities in the Area in conformity with this Convention, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, economic aspects of activities in the Area, marine scientific research, transfer of technology, protection of the marine environment, protection of human life, rights of coastal States, the legal status of the waters superjacent to the Area and that of the air space above those waters and accommodation between activities in the Area and other activities in the marine environment.

(3) The decision-making procedure applicable at the Review Conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea. The Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at achieving consensus have been exhausted.

(4) If, five years after its commencement, the Review Conference has not reached agreement on the system of exploration and exploitation of the resources of the Area, it may decide during the ensuing 12 months, by a three-fourths majority of the States Parties, to adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate. Such amendments shall enter into force for all States Parties 12 months after the deposit of instruments of ratification or accession by three fourths of the States Parties.

(5) Amendments adopted by the Review Conference pursuant to this article shall not affect rights acquired under existing contracts.

SECTION 4. THE AUTHORITY

SUBSECTION A. GENERAL PROVISIONS

Article 156

Establishment of the Authority

- (1) There is hereby established the International Seabed Authority, which shall function in accordance with this Part.
- (2) All States Parties are ipso facto members of the Authority.
- (3) Observers at the Third United Nations Conference on the Law of the Sea who have signed the Final Act and who are not referred to in article 305, paragraph 1(c), (d), (e) or (f), shall have the right to participate in the Authority as observers, in accordance with its rules, regulations and procedures.
- (4) The seat of the Authority shall be in Jamaica.
- (5) The Authority may establish such regional centres or offices as it deems necessary for the exercise of its functions.

Article 157

Nature and fundamental principles of the Authority

- (1) The Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area.
- (2) The powers and functions of the Authority shall be those expressly conferred upon it by this Convention. The Authority shall have such incidental powers, consistent with this Convention, as are implicit in and necessary for the exercise of those powers and functions with respect to activities in the Area.
- (3) The Authority is based on the principle of the sovereign equality of all its members.
- (4) All members of the Authority shall fulfil in good faith the obligations assumed by them in accordance with this Part in order to ensure to all of them the rights and benefits resulting from membership.

Article 158

Organs of the Authority

- (1) There are hereby established, as the principal organs of the Authority, an Assembly, a Council and a Secretariat.
- (2) There is hereby established the Enterprise, the organ through which the Authority shall carry out the functions referred to in article 170, paragraph 1.
- (3) Such subsidiary organs as may be found necessary may be established in accordance with this Part.
- (4) Each principal organ of the Authority and the Enterprise shall be responsible for exercising those powers and functions which are conferred upon it. In exercising such powers and functions each organ shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ.

SUBSECTION B. THE ASSEMBLY

Article 159 Composition, procedure and voting

- (1) The Assembly shall consist of all the members of the Authority. Each member shall have one representative in the Assembly, who may be accompanied by alternates and advisers.

- (2) The Assembly shall meet in regular annual sessions and in such special sessions as may be decided by the Assembly, or convened by the Secretary-General at the request of the Council or of a majority of the members of the Authority.
- (3) Sessions shall take place at the seat of the Authority unless otherwise decided by the Assembly.
- (4) The Assembly shall adopt its rules of procedure. At the beginning of each regular session, it shall elect its President and such other officers as may be required. They shall hold office until a new President and other officers are elected at the next regular session.
- (5) A majority of the members of the Assembly shall constitute a quorum.
- (6) Each member of the Assembly shall have one vote.
- (7) Decisions on questions of procedure, including decisions to convene special sessions of the Assembly, shall be taken by a majority of the members present and voting.
- (8) Decisions on questions of substance shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members participating in the session. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Assembly by the majority required for decisions on questions of substance.
- (9) When a question of substance comes up for voting for the first time, the President may, and shall, if requested by at least one fifth of the members of the Assembly, defer the issue of taking a vote on that question for a period not exceeding five calendar days. This rule may be applied only once to any question, and shall not be applied so as to defer the question beyond the end of the session.
- (10) Upon a written request addressed to the President and sponsored by at least one fourth of the members of the Authority for an advisory opinion on the conformity with this Convention of a proposal before the Assembly on any matter, the Assembly shall request the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to give an advisory opinion thereon and shall defer voting on that proposal pending receipt of the advisory opinion by the Chamber. If the advisory opinion is not received before the final week of the session in which it is requested, the Assembly shall decide when it will meet to vote upon the deferred proposal.

Article 160
Powers and functions

- (1) The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the supreme organ of the Authority to which the other principal organs shall be accountable as specifically provided for in this Convention. The Assembly shall have the power to establish general policies in conformity with the relevant provisions of this Convention on any question or matter within the competence of the Authority.
- (2) In addition, the powers and functions of the Assembly shall be:
 - (a) to elect the members of the Council in accordance with article 161;
 - (b) to elect the Secretary-General from among the candidates proposed by the Council;
 - (c) to elect, upon the recommendation of the Council, the members of the Governing Board of the Enterprise and the Director-General of the Enterprise;
 - (d) to establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Part. In the composition of these subsidiary organs due account shall be taken of the principle of equitable geographical distribution and of special interests and the need for members qualified and competent in the relevant technical questions dealt with by such organs;
 - (e) to assess the contributions of members to the administrative budget of the Authority in accordance with an agreed scale of assessment based upon the scale used for the regular budget of the United Nations until the Authority shall have sufficient income from other sources to meet its administrative expenses;

(f)

- (i) to consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status. If the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in the light of the views expressed by the Assembly;
- (ii) to consider and approve the rules, regulations and procedures of the Authority, and any amendments thereto, provisionally adopted by the Council pursuant to article 162, paragraph 2 (o)(ii). These rules, regulations and procedures shall relate to prospecting, exploration and exploitation in the Area, the financial management and internal administration of the Authority, and, upon the recommendation of the Governing Board of the Enterprise, to the transfer of funds from the Enterprise to the Authority;
- (g) to decide upon the equitable sharing of financial and other economic benefits derived from activities in the Area, consistent with this Convention and the rules, regulations and procedures of the Authority;
- (h) to consider and approve the proposed annual budget of the Authority submitted by the Council;
- (i) to examine periodic reports from the Council and from the Enterprise and special reports requested from the Council or any other organ of the Authority;
- (j) to initiate studies and make recommendations for the purpose of promoting international co-operation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification;
- (k) to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, as well as those problems for States in connection with activities in the Area that are due to their geographical location, particularly for land-locked and geographically disadvantaged States;
- (l) to establish, upon the recommendation of the Council, on the basis of advice from the Economic Planning Commission, a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 10;
- (m) to suspend the exercise of rights and privileges of membership pursuant to article 185;
- (n) to discuss any question or matter within the competence of the Authority and to decide as to which organ of the Authority shall deal with any such question or matter not specifically entrusted to a particular organ, consistent with the distribution of powers and functions among the organs of the Authority.

SUBSECTION C. THE COUNCIL

Article 161

Composition, procedure and voting

- (1) The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:
 - (a) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent of total world consumption or have had net imports of more than 2 per cent of total world imports of the commodities produced from the categories of minerals to be derived from the Area, and in any case one State from the Eastern European (Socialist) region, as well as the largest consumer;

- (b) four members from among the eight States Parties which have the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals, including at least one State from the Eastern European (Socialist) region;
- (c) four members from among States Parties which on the basis of production in areas under their jurisdiction are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
- (d) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals, and least developed States;
- (e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European (Socialist), Latin America and Western European and Others.

(2) In electing the members of the Council in accordance with paragraph 1, the Assembly shall ensure that:

- (a) land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly;
- (b) coastal States, especially developing States, which do not qualify under paragraph 1(a), (b), (c) or (d) are represented to a degree which is reasonably proportionate to their representation in the Assembly;
- (c) each group of States Parties to be represented on the Council is represented by those members, if any, which are nominated by that group.

(3) Elections shall take place at regular sessions of the Assembly. Each member of the Council shall be elected for four years. At the first election, however, the term of one half of the members of each group referred to in paragraph 1 shall be two years.

(4) Members of the Council shall be eligible for re-election, but due regard should be paid to the desirability of rotation of membership.

(5) The Council shall function at the seat of the Authority, and shall meet as often as the business of the Authority may require, but not less than three times a year.

(6) A majority of the members of the Council shall constitute a quorum.

(7) Each member of the Council shall have one vote.

(8)

- (a) Decisions on questions of procedure shall be taken by a majority of the members present and voting.
- (b) Decisions on questions of substance arising under the following provisions shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 2, subparagraphs (f); (g); (h); (i); (n); (p); (v); article 191.
- (c) Decisions on questions of substance arising under the following provisions shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 1; article 162, paragraph 2, subparagraphs (a); (b); (c); (d); (e); (l); (q); (r); (s); (t); (u) in cases of non-compliance by a contractor or a sponsor; (w) provided that orders issued thereunder may be binding for not more than 30 days unless confirmed by a decision taken in accordance with subparagraph (d);

article 162, paragraph 2, subparagraphs (x); (y); (z); article 163, paragraph 2; article 174, paragraph 3; Annex IV, article 11.

- (d) Decisions on questions of substance arising under the following provisions shall be taken by consensus: article 162, paragraph 2(m) and (o); adoption of amendments to Part XI.
- (e) For the purposes of subparagraphs (d), (f) and (g), “consensus” means the absence of any formal objection. Within 14 days of the submission of a proposal to the Council, the President of the Council shall determine whether there would be a formal objection to the adoption of the proposal. If the President determines that there would be such an objection, the President shall establish and convene, within three days following such determination, a conciliation committee consisting of not more than nine members of the Council, with the President as chairman, for the purpose of reconciling the differences and producing a proposal which can be adopted by consensus. The committee shall work expeditiously and report to the Council within 14 days following its establishment. If the committee is unable to recommend a proposal which can be adopted by consensus, it shall set out in its report the grounds on which the proposal is being opposed.
- (f) Decisions on questions not listed above which the Council is authorized to take by the rules, regulations and procedures of the Authority or otherwise shall be taken pursuant to the subparagraphs of this paragraph specified in the rules, regulations and procedures or, if not specified therein, then pursuant to the subparagraph determined by the Council if possible in advance, by consensus.
- (g) When the issue arises as to whether a question is within subparagraph (a), (b), (c) or (d), the question shall be treated as being within the subparagraph requiring the higher or highest majority or consensus as the case may be, unless otherwise decided by the Council by the said majority or by consensus.

(9) The Council shall establish a procedure whereby a member of the Authority not represented on the Council may send a representative to attend a meeting of the Council when a request is made by such member, or a matter particularly affecting it is under consideration. Such a representative shall be entitled to participate in the deliberations but not to vote.

*Article 162
Powers and functions*

- (1) The Council is the executive organ of the Authority. The Council shall have the power to establish, in conformity with this Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority on any question or matter within the competence of the Authority.
- (2) In addition, the Council shall:
 - (a) supervise and coordinate the implementation of the provisions of this Part on all questions and matters within the competence of the Authority and invite the attention of the Assembly to cases of non-compliance;
 - (b) propose to the Assembly a list of candidates for the election of the Secretary-General;
 - (c) recommend to the Assembly candidates for the election of the members of the Governing Board of the Enterprise and the Director-General of the Enterprise;
 - (d) establish, as appropriate, and with due regard to economy and efficiency, such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Part. In the composition of subsidiary organs, emphasis shall be placed on the need for members qualified and competent in relevant technical matters dealt with by those organs provided that due account shall be taken of the principle of equitable geographical distribution and of special interests;
 - (e) adopt its rules of procedure including the method of selecting its president;
 - (f) enter into agreements with the United Nations or other international organizations on behalf of the Authority and within its competence, subject to approval by the Assembly;

- (g) consider the reports of the Enterprise and transmit them to the Assembly with its recommendations;
- (h) present to the Assembly annual reports and such special reports as the Assembly may request;
- (i) issue directives to the Enterprise in accordance with article 170;
- (j) approve plans of work in accordance with Annex III, article 6. The Council shall act upon each plan of work within 60 days of its submission by the Legal and Technical Commission at a session of the Council in accordance with the following procedures:
 - (i) if the Commission recommends the approval of a plan of work, it shall be deemed to have been approved by the Council if no member of the Council submits in writing to the President within 14 days a specific objection alleging non-compliance with the requirements of Annex III, article 6. If there is an objection, the conciliation procedure set forth in article 161, paragraph 8(e), shall apply. If, at the end of the conciliation procedure, the objection is still maintained, the plan of work shall be deemed to have been approved by the Council unless the Council disapproves it by consensus among its members excluding any State or States making the application or sponsoring the applicant;
 - (ii) if the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may approve the plan of work by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members participating in the session;
- (k) approve plans of work submitted by the Enterprise in accordance with Annex IV, article 12, applying, *mutatis mutandis*, the procedures set forth in subparagraph (j);
- (l) exercise control over activities in the Area in accordance with article 153, paragraph 4, and the rules, regulations and procedures of the Authority;
- (m) take, upon the recommendation of the Economic Planning Commission, necessary and appropriate measures in accordance with article 150, subparagraph (h), to provide protection from the adverse economic effects specified therein;
- (n) make recommendations to the Assembly, on the basis of advice from the Economic Planning Commission, for a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 10;
- (o)
 - (i) recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status;
 - (ii) adopt and apply provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, and any amendments thereto, taking into account the recommendations of the Legal and Technical Commission or other subordinate organ concerned. These rules, regulations and procedures shall relate to prospecting, exploration and exploitation in the Area and the financial management and internal administration of the Authority. Priority shall be given to the adoption of rules, regulations and procedures for the exploration for and exploitation of polymetallic nodules. Rules, regulations and procedures for the exploration for and exploitation of any resource other than polymetallic nodules shall be adopted within three years from the date of a request to the Authority by any of its members to adopt such rules, regulations and procedures in respect of such resource. All rules, regulations and procedures shall remain in effect on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly;
- (p) review the collection of all payments to be made by or to the Authority in connection with operations pursuant to this Part;

- (q) make the selection from among applicants for production authorizations pursuant to Annex III, article 7, where such selection is required by that provision;
- (r) submit the proposed annual budget of the Authority to the Assembly for its approval;
- (s) make recommendations to the Assembly concerning policies on any question or matter within the competence of the Authority;
- (t) make recommendations to the Assembly concerning suspension of the exercise of the rights and privileges of membership pursuant to article 185;
- (u) institute proceedings on behalf of the Authority before the Seabed Disputes Chamber in cases of non-compliance;
- (v) notify the Assembly upon a decision by the Seabed Disputes Chamber in proceedings instituted under subparagraph (u), and make any recommendations which it may find appropriate with respect to measures to be taken;
- (w) issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area;
- (x) disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;
- (y) establish a subsidiary organ for the elaboration of draft financial rules, regulations and procedures relating to:
 - (i) financial management in accordance with articles 171 to 175; and
 - (ii) financial arrangements in accordance with Annex III, article 13 and article 17, paragraph 1(c);
- (z) establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.

Article 163
Organs of the Council

- (1) There are hereby established the following organs of the Council:
 - (a) an Economic Planning Commission;
 - (b) a Legal and Technical Commission.
- (2) Each Commission shall be composed of 15 members, elected by the Council from among the candidates nominated by the States Parties. However, if necessary, the Council may decide to increase the size of either Commission having due regard to economy and efficiency.
- (3) Members of a Commission shall have appropriate qualifications in the area of competence of that Commission. States Parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commissions.
- (4) In the election of members of the Commissions, due account shall be taken of the need for equitable geographical distribution and the representation of special interests.
- (5) No State Party may nominate more than one candidate for the same Commission. No person shall be elected to serve on more than one Commission.
- (6) Members of the Commissions shall hold office for a term of five years. They shall be eligible for re-election for a further term.
- (7) In the event of the death, incapacity or resignation of a member of a Commission prior to the expiration of the term of office, the Council shall elect for the remainder of the term, a member from the same geographical region or area of interest.
- (8) Members of Commissions shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Commissions upon which they serve, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary

data which are transferred to the Authority in accordance with Annex III, article 14, or any other confidential information coming to their knowledge by reason of their duties for the Authority.

- (9) Each Commission shall exercise its functions in accordance with such guidelines and directives as the Council may adopt.
- (10) Each Commission shall formulate and submit to the Council for approval such rules and regulations as may be necessary for the efficient conduct of the Commission's functions.
- (11) The decision-making procedures of the Commissions shall be established by the rules, regulations and procedures of the Authority. Recommendations to the Council shall, where necessary, be accompanied by a summary on the divergencies of opinion in the Commission.
- (12) Each Commission shall normally function at the seat of the Authority and shall meet as often as is required for the efficient exercise of its functions.
- (13) In the exercise of its functions, each Commission may, where appropriate, consult another commission, any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject-matter of such consultation.

Article 164
The Economic Planning Commission

- (1) Members of the Economic Planning Commission shall have appropriate qualifications such as those relevant to mining, management of mineral resource activities, international trade or international economics. The Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications. The Commission shall include at least two members from developing States whose exports of the categories of minerals to be derived from the Area have a substantial bearing upon their economies.
- (2) The Commission shall:
 - (a) propose, upon the request of the Council, measures to implement decisions relating to activities in the Area taken in accordance with this Convention;
 - (b) review the trends of and the factors affecting supply, demand and prices of minerals which may be derived from the Area, bearing in mind the interests of both importing and exporting countries, and in particular of the developing States among them;
 - (c) examine any situation likely to lead to the adverse effects referred to in article 150, subparagraph (h), brought to its attention by the State Party or States Parties concerned, and make appropriate recommendations to the Council;
 - (d) propose to the Council for submission to the Assembly, as provided in article 151, paragraph 10, a system of compensation or other measures of economic adjustment assistance for developing States which suffer adverse effects caused by activities in the Area. The Commission shall make the recommendations to the Council that are necessary for the application of the system or other measures adopted by the Assembly in specific cases.

Article 165
The Legal and Technical Commission

- (1) Members of the Legal and Technical Commission shall have appropriate qualifications such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise. The Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications.
- (2) The Commission shall:
 - (a) make recommendations with regard to the exercise of the Authority's functions upon the request of the Council;

- (b) review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission shall base its recommendations solely on the grounds stated in Annex III and shall report fully thereon to the Council;
- (c) supervise, upon the request of the Council, activities in the Area, where appropriate, in consultation and collaboration with any entity carrying out such activities or State or States concerned and report to the Council;
- (d) prepare assessments of the environmental implications of activities in the Area;
- (e) make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;
- (f) formulate and submit to the Council the rules, regulations and procedures referred to in article 162, paragraph 2(o), taking into account all relevant factors including assessments of the environmental implications of activities in the Area;
- (g) keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;
- (h) make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area, ensure that existing regulations are adequate and are complied with and coordinate the implementation of the monitoring programme approved by the Council;
- (i) recommend to the Council that proceedings be instituted on behalf of the Authority before the Seabed Disputes Chamber, in accordance with this Part and the relevant Annexes taking into account particularly article 187;
- (j) make recommendations to the Council with respect to measures to be taken, upon a decision by the Seabed Disputes Chamber in proceedings instituted in accordance with subparagraph (i);
- (k) make recommendations to the Council to issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area. Such recommendations shall be taken up by the Council on a priority basis;
- (l) make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;
- (m) make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with;
- (n) calculate the production ceiling and issue production authorizations on behalf of the Authority pursuant to article 151, paragraphs 2 to 7, following any necessary selection among applicants for production authorizations by the Council in accordance with Annex III, article 7.

(3) The members of the Commission shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State or other party concerned when carrying out their function of supervision and inspection.

SUBSECTION D. THE SECRETARIAT

Article 166
The Secretariat

- (1) The Secretariat of the Authority shall comprise a Secretary-General and such staff as the Authority may require.

- (2) The Secretary-General shall be elected for four years by the Assembly from among the candidates proposed by the Council and may be re-elected.
- (3) The Secretary-General shall be the chief administrative officer of the Authority, and shall act in that capacity in all meetings of the Assembly, of the Council and of any subsidiary organ, and shall perform such other administrative functions as are entrusted to the Secretary-General by these organs.
- (4) The Secretary-General shall make an annual report to the Assembly on the work of the Authority.

Article 167
The staff of the Authority

- (1) The staff of the Authority shall consist of such qualified scientific and technical and other personnel as may be required to fulfil the administrative functions of the Authority.
- (2) The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
- (3) The staff shall be appointed by the Secretary-General. The terms and conditions on which they shall be appointed, remunerated and dismissed shall be in accordance with the rules, regulations and procedures of the Authority.

Article 168
International character of the Secretariat

- (1) In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials responsible only to the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. Any violation of responsibilities by a staff member shall be submitted to the appropriate administrative tribunal as provided in the rules, regulations and procedures of the Authority.
- (2) The Secretary-General and the staff shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III, article 14, or any other confidential information coming to their knowledge by reason of their employment with the Authority.
- (3) Violations of the obligations of a staff member of the Authority set forth in paragraph 2 shall, on the request of a State Party affected by such violation, or a natural or juridical person, sponsored by a State Party as provided in article 153, paragraph 2(b), and affected by such violation, be submitted by the Authority against the staff member concerned to a tribunal designated by the rules, regulations and procedures of the Authority. The Party affected shall have the right to take part in the proceedings. If the tribunal so recommends, the Secretary-General shall dismiss the staff member concerned.
- (4) The rules, regulations and procedures of the Authority shall contain such provisions as are necessary to implement this article.

Article 169
*Consultation and cooperation with international
and non-governmental organizations*

- (1) The Secretary-General shall, on matters within the competence of the Authority, make suitable arrangements, with the approval of the Council, for consultation and cooperation with international and non-governmental organizations recognized by the Economic and Social Council of the United Nations.
- (2) Any organization with which the Secretary-General has entered into an arrangement under paragraph 1 may designate representatives to attend meetings of the organs of the Authority as observers in ac-

cordance with the rules of procedure of these organs. Procedures shall be established for obtaining the views of such organizations in appropriate cases.

(3) The Secretary-General may distribute to States Parties written reports submitted by the non-governmental organizations referred to in paragraph 1 on subjects in which they have special competence and which are related to the work of the Authority.

SUBSECTION E. THE ENTERPRISE

*Article 170
The Enterprise*

(1) The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area.

(2) The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex IV. The Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.

(3) The Enterprise shall have its principal place of business at the seat of the Authority.

(4) The Enterprise shall, in accordance with article 173, paragraph 2, and Annex IV, article 11, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144 and other relevant provisions of this Convention.

SUBSECTION F. FINANCIAL ARRANGEMENTS OF THE AUTHORITY

*Article 171
Funds of the Authority*

The funds of the Authority shall include:

(a) assessed contributions made by members of the Authority in accordance with article 160, paragraph 2(e);

(b) funds received by the Authority pursuant to Annex III, article 13, in connection with activities in the Area;

(c) funds transferred from the Enterprise in accordance with Annex IV, article 10;

(d) funds borrowed pursuant to article 174;

(e) voluntary contributions made by members or other entities; and

(f) payments to a compensation fund, in accordance with article 151, paragraph 10, whose sources are to be recommended by the Economic Planning Commission.

*Article 172
Annual budget of the Authority*

The Secretary-General shall draft the proposed annual budget of the Authority and submit it to the Council. The Council shall consider the proposed annual budget and submit it to the Assembly, together with any recommendations thereon. The Assembly shall consider and approve the proposed annual budget in accordance with article 160, paragraph 2(h).

Article 173
Expenses of the Authority

- (1) The contributions referred to in article 171, subparagraph (a), shall be paid into a special account to meet the administrative expenses of the Authority until the Authority has sufficient funds from other sources to meet those expenses.
- (2) The administrative expenses of the Authority shall be a first call upon the funds of the Authority. Except for the assessed contributions referred to in article 171, subparagraph (a), the funds which remain after payment of administrative expenses may, *inter alia*:
 - (a) be shared in accordance with article 140 and article 160, paragraph 2(g);
 - (b) be used to provide the Enterprise with funds in accordance with article 170, paragraph 4;
 - (c) be used to compensate developing States in accordance with article 151, paragraph 10, and article 160, paragraph 2(l).

Article 174
Borrowing power of the Authority

- (1) The Authority shall have the power to borrow funds.
- (2) The Assembly shall prescribe the limits on the borrowing power of the Authority in the financial regulations adopted pursuant to article 160, paragraph 2(f).
- (3) The Council shall exercise the borrowing power of the Authority.
- (4) States Parties shall not be liable for the debts of the Authority.

Article 175
Annual audit

The records, books and accounts of the Authority, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Assembly.

SUBSECTION G. LEGAL STATUS, PRIVILEGES AND IMMUNITIES

Article 176
Legal status

The Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 177
Privileges and immunities

To enable the Authority to exercise its functions, it shall enjoy in the territory of each State Party the privileges and immunities set forth in this subsection. The privileges and immunities relating to the Enterprise shall be those set forth in Annex IV, article 13.

Article 178
Immunity from legal process

The Authority, its property and assets, shall enjoy immunity from legal process except to the extent that the Authority expressly waives this immunity in a particular case.

Article 179
Immunity from search and any form of seizure

The property and assets of the Authority, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Article 180
*Exemption from restrictions, regulations,
controls and moratoria*

The property and assets of the Authority shall be exempt from restrictions, regulations, controls and moratoria of any nature.

Article 181
Archives and official communications of the Authority

- (1) The archives of the Authority, wherever located, shall be inviolable.
- (2) Proprietary data, industrial secrets or similar information and personnel records shall not be placed in archives which are open to public inspection.
- (3) With regard to its official communications, the Authority shall be accorded by each State Party treatment no less favourable than that accorded by that State to other international organizations.

Article 182
*Privileges and immunities of certain persons
connected with the Authority*

Representatives of States Parties attending meetings of the Assembly, the Council or organs of the Assembly or the Council, and the Secretary-General and staff of the Authority, shall enjoy in the territory of each State Party:

- (a) immunity from legal process with respect to acts performed by them in the exercise of their functions, except to the extent that the State which they represent or the Authority, as appropriate, expressly waives this immunity in a particular case;
- (b) if they are not nationals of that State Party, the same exemptions from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by that State to the representatives, officials and employees of comparable rank of other States Parties.

Article 183
Exemption from taxes and customs duties

- (1) Within the scope of its official activities, the Authority, its assets and property, its income, and its operations and transactions, authorized by this Convention, shall be exempt from all direct taxation and goods imported or exported for its official use shall be exempt from all customs duties. The Authority shall not claim exemption from taxes which are no more than charges for services rendered.
- (2) When purchases of goods or services of substantial value necessary for the official activities of the Authority are made by or on behalf of the Authority, and when the price of such goods or services includes taxes or duties, appropriate measures shall, to the extent practicable, be taken by States Parties to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the State Party which granted the exemption, except under conditions agreed with that State Party.

(3) No tax shall be levied by States Parties on or in respect of salaries and emoluments paid or any other form of payment made by the Authority to the Secretary-General and staff of the Authority, as well as experts performing missions for the Authority, who are not their nationals.

SUBSECTION H. SUSPENSION OF THE EXERCISE OF RIGHTS AND PRIVILEGES OF MEMBERS

Article 184 Suspension of the exercise of voting rights

A State Party which is in arrears in the payment of its financial contributions to the Authority shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

Article 185 Suspension of exercise of rights and privileges of membership

- (1) A State Party which has grossly and persistently violated the provisions of this Part may be suspended from the exercise of the rights and privileges of membership by the Assembly upon the recommendation of the Council.
- (2) No action may be taken under paragraph 1 until the Seabed Disputes Chamber has found that a State Party has grossly and persistently violated the provisions of this Part.

SECTION 5. SETTLEMENT OF DISPUTES AND ADVISORY

Article 186 Seabed Disputes Chamber of the International Tribunal for the Law of the Sea

The establishment of the Seabed Disputes Chamber and the manner in which it shall exercise its jurisdiction shall be governed by the provisions of this section, of Part XV and of Annex VI.

Article 187 Jurisdiction of the Seabed Disputes Chamber

The Seabed Disputes Chamber shall have jurisdiction under this Part and the Annexes relating thereto in disputes with respect to activities in the Area falling within the following categories:

- (a) disputes between States Parties concerning the interpretation or application of this Part and the Annexes relating thereto;
- (b) disputes between a State Party and the Authority concerning:
 - (i) acts or omissions of the Authority or of a State Party alleged to be in violation of this Part or the Annexes relating thereto or of rules, regulations and procedures of the Authority adopted in accordance therewith; or
 - (ii) acts of the Authority alleged to be in excess of jurisdiction or a misuse of power;
- (c) disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), concerning:
 - (i) the interpretation or application of a relevant contract or a plan of work; or
 - (ii) acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests;

- (d) disputes between the Authority and a prospective contractor who has been sponsored by a State as provided in article 153, paragraph 2(b), and has duly fulfilled the conditions referred to in Annex III, article 4, paragraph 6, and article 13, paragraph 2, concerning the refusal of a contract or a legal issue arising in the negotiation of the contract;
- (e) disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2(b), where it is alleged that the Authority has incurred liability as provided in Annex III, article 22;
- (f) any other disputes for which the jurisdiction of the Chamber is specifically provided in this Convention.

Article 188

Submission of disputes to a special chamber of the International Tribunal or the Law of the Sea or an ad hoc chamber of the Seabed Disputes Chamber or to binding commercial arbitration

- (1) Disputes between States Parties referred to in article 187, subparagraph (a), may be submitted:
 - (a) at the request of the parties to the dispute, to a special chamber of the International Tribunal for the Law of the Sea to be formed in accordance with Annex VI, articles 15 and 17; or
 - (b) at the request of any party to the dispute, to an ad hoc chamber of the Seabed Disputes Chamber to be formed in accordance with Annex VI, article 36.
- (2)
 - (a) Disputes concerning the interpretation or application of a contract referred to in article 187, subparagraph (c)(i), shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree. A commercial arbitral tribunal to which the dispute is submitted shall have no jurisdiction to decide any question of interpretation of this Convention. When the dispute also involves a question of the interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question shall be referred to the Seabed Disputes Chamber for a ruling.
 - (b) If, at the commencement of or in the course of such arbitration, the arbitral tribunal determines, either at the request of any party to the dispute or proprio motu, that its decision depends upon a ruling of the Seabed Disputes Chamber, the arbitral tribunal shall refer such question to the Seabed Disputes Chamber for such ruling. The arbitral tribunal shall then proceed to render its award in conformity with the ruling of the Seabed Disputes Chamber.
 - (c) In the absence of a provision in the contract on the arbitration procedure to be applied in the dispute, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority, unless the parties to the dispute otherwise agree.

Article 189

Limitation on jurisdiction with regard to decisions of the Authority

The Seabed Disputes Chamber shall have no jurisdiction with regard to the exercise by the Authority of its discretionary powers in accordance with this Part; in no case shall it substitute its discretion for that of the Authority. Without prejudice to article 191, in exercising its jurisdiction pursuant to article 187, the Seabed Disputes Chamber shall not pronounce itself on the question of whether any rules, regulations and procedures of the Authority are in conformity with this Convention, nor declare invalid any such rules, regulations and procedures. Its jurisdiction in this regard shall be confined to deciding claims that the application of any rules, regulations and procedures of the Authority in individual cases would be in conflict with the contractual obligations of the parties to the dispute or their obligations under this Convention, claims concerning excess of jurisdiction or misuse of power, and to claims for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its contractual obligations or its obligations under this Convention.

*Article 190 Participation and appearance
of sponsoring States Parties in proceedings*

- (1) If a natural or juridical person is a party to a dispute referred to in article 187, the sponsoring State shall be given notice thereof and shall have the right to participate in the proceedings by submitting written or oral statements.
- (2) If an action is brought against a State Party by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), the respondent State may request the State sponsoring that person to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange to be represented by a juridical person of its nationality.

*Article 191
Advisory opinions*

The Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency.

PART XII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

SECTION 1. GENERAL

Article 192 General obligation

States have the obligation to protect and preserve the marine environment.

Article 193 Sovereign right of States to exploit their natural resources

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

Article 194 Measures to prevent, reduce and control pollution of the marine environment

- (1) States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
- (2) States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.
- (3) The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent:
 - (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
 - (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
 - (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
 - (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.
- (4) In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

(5) The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Article 195
Duty not to transfer damage or hazards
or transform one type of pollution into another

In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

Article 196
Use of technologies or introduction of alien or new species

- (1) States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.
- (2) This article does not affect the application of this Convention regarding the prevention, reduction and control of pollution of the marine environment.

SECTION 2. GLOBAL AND REGIONAL

Article 197
Cooperation on a global or regional basis

States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Article 198
Notification of imminent or actual damage

When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

Article 199
Contingency plans against pollution

In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.

Article 200
Studies, research programmes and
exchange of information and data

States shall cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

Article 201
Scientific criteria for regulations

In the light of the information and data acquired pursuant to article 200, States shall cooperate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.

SECTION 3. TECHNICAL

Article 202
Scientific and technical assistance to developing States

States shall, directly or through competent international organizations:

- (a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, *inter alia*:
 - (i) training of their scientific and technical personnel;
 - (ii) facilitating their participation in relevant international programmes;
 - (iii) supplying them with necessary equipment and facilities;
 - (iv) enhancing their capacity to manufacture such equipment;
 - (v) advice on and developing facilities for research, monitoring, educational and other programmes;
- (b) provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;
- (c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.

Article 203
Preferential treatment for developing States

Developing States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in:

- (a) the allocation of appropriate funds and technical assistance; and
- (b) the utilization of their specialized services.

SECTION 4. MONITORING AND ENVIRONMENTAL

Article 204
Monitoring of the risks or effects of pollution

- (1) States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.
- (2) In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

*Article 205
Publication of reports*

States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.

*Article 206
Assessment of potential effects of activities*

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

**SECTION 5. INTERNATIONAL RULES AND NATIONAL
LEGISLATION TO PREVENT, REDUCE AND CONTROL
POLLUTION OF THE MARINE ENVIRONMENT**

*Article 207
Pollution from land-based sources*

- (1) States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
- (2) States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- (3) States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
- (4) States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
- (5) Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.

*Article 208
Pollution from seabed activities subject to national jurisdiction*

- (1) Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
- (2) States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- (3) Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.
- (4) States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
- (5) States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

Article 209
Pollution from activities in the Area

- (1) International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.
- (2) Subject to the relevant provisions of this section, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1.

Article 210
Pollution by dumping

- (1) States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.
- (2) States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- (3) Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.
- (4) States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
- (5) Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.
- (6) National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

Article 211
Pollution from vessels

- (1) States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routeing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.
- (2) States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
- (3) States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such

cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

- (4) Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.
- (5) Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
- (6)
 - (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization.
 - (b) The coastal States shall publish the limits of any such particular, clearly defined area.
 - (c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall, when submitting the aforesaid communication, at the same time notify the organization thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organization, provided that the organization agrees within 12 months after the submission of the communication.
- (7) The international rules and standards referred to in this article should include *inter alia* those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.

Article 212
Pollution from or through the atmosphere

- (1) States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.
- (2) States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- (3) States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

SECTION 6. ENFORCEMENT

Article 213

Enforcement with respect to pollution from land-based sources

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

Article 214

Enforcement with respect to pollution from seabed activities

States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

Article 215

Enforcement with respect to pollution from activities in the Area

Enforcement of international rules, regulations and procedures established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area shall be governed by that Part.

Article 216

Enforcement with respect to pollution by dumping

- (1) Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:
 - (a) by the coastal State with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf;
 - (b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;
 - (c) by any State with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals.
- (2) No State shall be obliged by virtue of this article to institute proceedings when another State has already instituted proceedings in accordance with this article.

Article 217

Enforcement by flag States

- (1) States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.
- (2) States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the

requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.

- (3) States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.
- (4) If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.
- (5) Flag States conducting an investigation of the violation may request the assistance of any other State whose cooperation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.
- (6) States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.
- (7) Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.
- (8) Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

*Article 218
Enforcement by port States*

- (1) When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.
- (2) No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.
- (3) When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.
- (4) The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

Article 219
Measures relating to seaworthiness of vessels to avoid pollution

Subject to section 7, States which, upon request or on their own initiative, have ascertained that a vessel within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing. Such States may permit the vessel to proceed only to the nearest appropriate repair yard and, upon removal of the causes of the violation, shall permit the vessel to continue immediately.

Article 220
Enforcement by coastal States

- (1) When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.
- (2) Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.
- (3) Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
- (4) States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.
- (5) Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.
- (6) Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.
- (7) Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.
- (8) The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

Article 221
Measures to avoid pollution arising from maritime casualties

- (1) Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.
- (2) For the purposes of this article, “maritime casualty” means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

Article 222
Enforcement with respect to pollution from or through the atmosphere

States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation.

SECTION 7. SAFEGUARDS

Article 223
Measures to facilitate proceedings

In proceedings instituted pursuant to this Part, States shall take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities of another State, or by the competent international organization, and shall facilitate the attendance at such proceedings of official representatives of the competent international organization, the flag State and any State affected by pollution arising out of any violation. The official representatives attending such proceedings shall have such rights and duties as may be provided under national laws and regulations or international law.

Article 224
Exercise of powers of enforcement

The powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 225
Duty to avoid adverse consequences in the exercise of the powers of enforcement

In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.

Article 226
Investigation of foreign vessels

- (1) (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be lim-

ited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

- (i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;
- (ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
- (iii) the vessel is not carrying valid certificates and records.

(b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

(c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.

(2) States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

Article 227

Non-discrimination with respect to foreign vessels

In exercising their rights and performing their duties under this Part, States shall not discriminate in form or in fact against vessels of any other State.

Article 228

Suspension and restrictions on institution of proceedings

(1) Proceedings to impose penalties in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State instituting proceedings shall be suspended upon the taking of proceedings to impose penalties in respect of corresponding charges by the flag State within six months of the date on which proceedings were first instituted, unless those proceedings relate to a case of major damage to the coastal State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State previously instituting proceedings a full dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the coastal State.

(2) Proceedings to impose penalties on foreign vessels shall not be instituted after the expiry of three years from the date on which the violation was committed, and shall not be taken by any State in the event of proceedings having been instituted by another State subject to the provisions set out in paragraph 1.

(3) The provisions of this article are without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State.

*Article 229
Institution of civil proceedings*

Nothing in this Convention affects the institution of civil proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

*Article 230
Monetary penalties and the observance
of recognized rights of the accused*

- (1) Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.
- (2) Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.
- (3) In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

*Article 231
Notification to the flag State and other States concerned*

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State apply only to such measures as are taken in proceedings. The diplomatic agents or consular officers and where possible the maritime authority of the flag State, shall be immediately informed of any such measures taken pursuant to section 6 against foreign vessels.

*Article 232
Liability of States arising from enforcement measures*

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to section 6 when such measures are unlawful or exceed those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

*Article 233
Safeguards with respect to straits used for international navigation*

Nothing in sections 5, 6 and 7 affects the legal regime of straits used for international navigation. However, if a foreign ship other than those referred to in section 10 has committed a violation of the laws and regulations referred to in article 42, paragraph 1(a) and (b), causing or threatening major damage to the marine environment of the straits, the States bordering the straits may take appropriate enforcement measures and if so shall respect *mutatis mutandis* the provisions of this section.

SECTION 8. ICE-COVERED AREAS

*Article 234
Ice-covered areas*

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

SECTION 9. RESPONSIBILITY AND LIABILITY

Article 235 Responsibility and liability

- (1) States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.
- (2) States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
- (3) With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

SECTION 10. SOVEREIGN IMMUNITY

Article 236 Sovereign immunity

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

SECTION 11. OBLIGATIONS UNDER OTHER CONVENTIONS ON THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

Article 237 Obligations under other conventions on the protection and preservation of the marine environment

- (1) The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.
- (2) Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this Convention.

PART XIII

MARINE SCIENTIFIC RESEARCH

SECTION 1. GENERAL PROVISIONS

Article 238 *Right to conduct marine scientific research*

All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention.

Article 239 *Promotion of marine scientific research*

States and competent international organizations shall promote and facilitate the development and conduct of marine scientific research in accordance with this Convention.

Article 240 *General principles for the conduct of marine scientific research*

In the conduct of marine scientific research the following principles shall apply:

- (a) marine scientific research shall be conducted exclusively for peaceful purposes;
- (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention;
- (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses;
- (d) marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.

Article 241 *Non-recognition of marine scientific research activities as the legal basis for claims*

Marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources.

SECTION 2. INTERNATIONAL COOPERATION

Article 242 *Promotion of international cooperation*

- (1) States and competent international organizations shall, in accordance with the principle of respect for sovereignty and jurisdiction and on the basis of mutual benefit, promote international cooperation in marine scientific research for peaceful purposes.
- (2) In this context, without prejudice to the rights and duties of States under this Convention, a State, in the application of this Part, shall provide, as appropriate, other States with a reasonable opportunity to obtain from it, or with its cooperation, information necessary to prevent and control damage to the health and safety of persons and to the marine environment.

Article 243
Creation of favourable conditions

States and competent international organizations shall cooperate, through the conclusion of bilateral and multilateral agreements, to create favourable conditions for the conduct of marine scientific research in the marine environment and to integrate the efforts of scientists in studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them.

Article 244
Publication and dissemination of information and knowledge

- (1) States and competent international organizations shall, in accordance with this Convention, make available by publication and dissemination through appropriate channels information on proposed major programmes and their objectives as well as knowledge resulting from marine scientific research.
- (2) For this purpose, States, both individually and in cooperation with other States and with competent international organizations, shall actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, especially to developing States, as well as the strengthening of the autonomous marine scientific research capabilities of developing States through, *inter alia*, programmes to provide adequate education and training of their technical and scientific personnel.

**SECTION 3. CONDUCT AND PROMOTION OF
MARINE SCIENTIFIC RESEARCH**

Article 245
Marine scientific research in the territorial sea

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.

Article 246
Marine scientific research in the exclusive economic zone and on the continental shelf

- (1) Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.
- (2) Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.
- (3) Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.
- (4) For the purposes of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the researching State.
- (5) Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State if that project:
 - (a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;

- (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- (c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80;
- (d) contains information communicated pursuant to article 248 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project.

(6) Notwithstanding the provisions of paragraph 5, coastal States may not exercise their discretion to withhold consent under subparagraph (a) of that paragraph in respect of marine scientific research projects to be undertaken in accordance with the provisions of this Part on the continental shelf, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, outside those specific areas which coastal States may at any time publicly designate as areas in which exploitation or detailed exploratory operations focused on those areas are occurring or will occur within a reasonable period of time. Coastal States shall give reasonable notice of the designation of such areas, as well as any modifications thereto, but shall not be obliged to give details of the operations therein.

(7) The provisions of paragraph 6 are without prejudice to the rights of coastal States over the continental shelf as established in article 77.

(8) Marine scientific research activities referred to in this article shall not unjustifiably interfere with activities undertaken by coastal States in the exercise of their sovereign rights and jurisdiction provided for in this Convention.

Article 247
Marine scientific research projects undertaken by or
under the auspices of international organizations

A coastal State which is a member of or has a bilateral agreement with an international organization, and in whose exclusive economic zone or on whose continental shelf that organization wants to carry out a marine scientific research project, directly or under its auspices, shall be deemed to have authorized the project to be carried out in conformity with the agreed specifications if that State approved the detailed project when the decision was made by the organization for the undertaking of the project, or is willing to participate in it, and has not expressed any objection within four months of notification of the project by the organization to the coastal State.

Article 248
Duty to provide information to the coastal State

States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide that State with a full description of:

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the project is to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- (e) the name of the sponsoring institution, its director, and the person in charge of the project; and
- (f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

Article 249
Duty to comply with certain conditions

- (1) States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:
 - (a) ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project;
 - (b) provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
 - (c) undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
 - (d) if requested, provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
 - (e) ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;
 - (f) inform the coastal State immediately of any major change in the research programme;
 - (g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.
- (2) This article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 5, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

Article 250
Communications concerning marine scientific research projects

Communications concerning the marine scientific research projects shall be made through appropriate official channels, unless otherwise agreed.

Article 251
General criteria and guidelines

States shall seek to promote through competent international organizations the establishment of general criteria and guidelines to assist States in ascertaining the nature and implications of marine scientific research.

Article 252
Implied consent

States or competent international organizations may proceed with a marine scientific research project six months after the date upon which the information required pursuant to article 248 was provided to the coastal State unless within four months of the receipt of the communication containing such information the coastal State has informed the State or organization conducting the research that:

- (a) it has withheld its consent under the provisions of article 246; or
- (b) the information given by that State or competent international organization regarding the nature or objectives of the project does not conform to the manifestly evident facts; or
- (c) it requires supplementary information relevant to conditions and the information provided for under articles 248 and 249; or
- (d) outstanding obligations exist with respect to a previous marine scientific research project carried out by that State or organization, with regard to conditions established in article 249.

Article 253
Suspension or cessation of marine scientific research activities

- (1) A coastal State shall have the right to require the suspension of any marine scientific research activities in progress within its exclusive economic zone or on its continental shelf if:
 - (a) the research activities are not being conducted in accordance with the information communicated as provided under article 248 upon which the consent of the coastal State was based; or
 - (b) the State or competent international organization conducting the research activities fails to comply with the provisions of article 249 concerning the rights of the coastal State with respect to the marine scientific research project.
- (2) A coastal State shall have the right to require the cessation of any marine scientific research activities in case of any non-compliance with the provisions of article 248 which amounts to a major change in the research project or the research activities.
- (3) A coastal State may also require cessation of marine scientific research activities if any of the situations contemplated in paragraph 1 are not rectified within a reasonable period of time.
- (4) Following notification by the coastal State of its decision to order suspension or cessation, States or competent international organizations authorized to conduct marine scientific research activities shall terminate the research activities that are the subject of such a notification.
- (5) An order of suspension under paragraph 1 shall be lifted by the coastal State and the marine scientific research activities allowed to continue once the researching State or competent international organization has complied with the conditions required under articles 248 and 249.

Article 254
Rights of neighbouring land-locked and geographically disadvantaged States

- (1) States and competent international organizations which have submitted to a coastal State a project to undertake marine scientific research referred to in article 246, paragraph 3, shall give notice to the neighbouring land-locked and geographically disadvantaged States of the proposed research project, and shall notify the coastal State thereof.
- (2) After the consent has been given for the proposed marine scientific research project by the coastal State concerned, in accordance with article 246 and other relevant provisions of this Convention, States and competent international organizations undertaking such a project shall provide to the neighbouring land-locked and geographically disadvantaged States, at their request and when appropriate, relevant information as specified in article 248 and article 249, paragraph 1(f).
- (3) The neighbouring land-locked and geographically disadvantaged States referred to above shall, at their request, be given the opportunity to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or competent international organizations conducting the marine scientific research.
- (4) States and competent international organizations referred to in paragraph 1 shall provide to the above-mentioned land-locked and geographically disadvantaged States, at their request, the information and assistance specified in article 249, paragraph 1(d), subject to the provisions of article 249, paragraph 2.

Article 255
Measures to facilitate marine scientific research and assist research vessels

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research conducted in accordance with this Convention beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their laws and regulations, access to their harbours and promote assistance for marine scientific research vessels which comply with the relevant provisions of this Part.

Article 256
Marine scientific research in the Area

All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with the provisions of Part XI, to conduct marine scientific research in the Area.

Article 257
Marine scientific research in the water column beyond the exclusive economic zone

All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with this Convention, to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone.

**SECTION 4. SCIENTIFIC RESEARCH INSTALLATIONS
OR EQUIPMENT IN THE MARINE ENVIRONMENT**

Article 258
Deployment and use

The deployment and use of any type of scientific research installations or equipment in any area of the marine environment shall be subject to the same conditions as are prescribed in this Convention for the conduct of marine scientific research in any such area.

Article 259
Legal status

The installations or equipment referred to in this section do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 260
Safety zones

Safety zones of a reasonable breadth not exceeding a distance of 500 metres may be created around scientific research installations in accordance with the relevant provisions of this Convention. All States shall ensure that such safety zones are respected by their vessels.

Article 261
Non-interference with shipping routes

The deployment and use of any type of scientific research installations or equipment shall not constitute an obstacle to established international shipping routes.

Article 262
Identification markings and warning signals

Installations or equipment referred to in this section shall bear identification markings indicating the State of registry or the international organization to which they belong and shall have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account rules and standards established by competent international organizations.

SECTION 5. RESPONSIBILITY AND LIABILITY

Article 263 Responsibility and liability

- (1) States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with this Convention.
- (2) States and competent international organizations shall be responsible and liable for the measures they take in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations, and shall provide compensation for damage resulting from such measures.
- (3) States and competent international organizations shall be responsible and liable pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

SECTION 6. SETTLEMENT OF DISPUTES AND INTERIM MEASURES

Article 264 Settlement of disputes

Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with Part XV, sections 2 and 3.

Article 265 Interim measures

Pending settlement of a dispute in accordance with Part XV, sections 2 and 3, the State or competent international organization authorized to conduct a marine scientific research project shall not allow research activities to commence or continue without the express consent of the coastal State concerned.

PART XIV

DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY

SECTION 1. GENERAL PROVISIONS

Article 266

Promotion of the development and transfer of marine technology

- (1) States, directly or through competent international organizations, shall cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.
- (2) States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States.
- (3) States shall endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis.

Article 267

Protection of legitimate interests

States, in promoting cooperation pursuant to article 266, shall have due regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology.

Article 268

Basic objectives

States, directly or through competent international organizations, shall promote:

- (a) the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data;
- (b) the development of appropriate marine technology;
- (c) the development of the necessary technological infrastructure to facilitate the transfer of marine technology;
- (d) the development of human resources through training and education of nationals of developing States and countries and especially the nationals of the least developed among them;
- (e) international cooperation at all levels, particularly at the regional, subregional and bilateral levels.

Article 269

Measures to achieve the basic objectives

In order to achieve the objectives referred to in article 268, States, directly or through competent international organizations, shall endeavour, *inter alia*, to:

- (a) establish programmes of technical cooperation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, particularly the developing land-locked and geographically disadvantaged States, as well as other developing

States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology;

- (b) promote favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions;
- (c) hold conferences, seminars and symposia on scientific and technological subjects, in particular on policies and methods for the transfer of marine technology;
- (d) promote the exchange of scientists and of technological and other experts;
- (e) undertake projects and promote joint ventures and other forms of bilateral and multilateral cooperation.

SECTION 2. INTERNATIONAL COOPERATION

Article 270 Ways and means of international cooperation

International cooperation for the development and transfer of marine technology shall be carried out, where feasible and appropriate, through existing bilateral, regional or multilateral programmes, and also through expanded and new programmes in order to facilitate marine scientific research, the transfer of marine technology, particularly in new fields, and appropriate international funding for ocean research and development.

Article 271 Guidelines, criteria and standards

States, directly or through competent international organizations, shall promote the establishment of generally accepted guidelines, criteria and standards for the transfer of marine technology on a bilateral basis or within the framework of international organizations and other fora, taking into account, in particular, the interests and needs of developing States.

Article 272 Coordination of international programmes

In the field of transfer of marine technology, States shall endeavour to ensure that competent international organizations coordinate their activities, including any regional or global programmes, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.

Article 273 Cooperation with international organizations and the Authority

States shall cooperate actively with competent international organizations and the Authority to encourage and facilitate the transfer to developing States, their nationals and the Enterprise of skills and marine technology with regard to activities in the Area.

Article 274 Objectives of the Authority

Subject to all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of technology, the Authority, with regard to activities in the Area, shall ensure that:

- (a) on the basis of the principle of equitable geographical distribution, nationals of developing States, whether coastal, land-locked or geographically disadvantaged, shall be taken on for the purposes of training as members of the managerial, research and technical staff constituted for its undertakings;

- (b) the technical documentation on the relevant equipment, machinery, devices and processes is made available to all States, in particular developing States which may need and request technical assistance in this field;
- (c) adequate provision is made by the Authority to facilitate the acquisition of technical assistance in the field of marine technology by States which may need and request it, in particular developing States, and the acquisition by their nationals of the necessary skills and know-how, including professional training;
- (d) States which may need and request technical assistance in this field, in particular developing States, are assisted in the acquisition of necessary equipment, processes, plant and other technical know-how through any financial arrangements provided for in this Convention.\

SECTION 3. NATIONAL AND REGIONAL MARINE SCIENTIFIC AND TECHNOLOGICAL CENTRES

Article 275

Establishment of national centres

- (1) States, directly or through competent international organizations and the Authority, shall promote the establishment, particularly in developing coastal States, of national marine scientific and technological research centres and the strengthening of existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and to enhance their national capabilities to utilize and preserve their marine resources for their economic benefit.
- (2) States, through competent international organizations and the Authority, shall give adequate support to facilitate the establishment and strengthening of such national centres so as to provide for advanced training facilities and necessary equipment, skills and know-how as well as technical experts to such States which may need and request such assistance.

Article 276

Establishment of regional centres

- (1) States, in coordination with the competent international organizations, the Authority and national marine scientific and technological research institutions, shall promote the establishment of regional marine scientific and technological research centres, particularly in developing States, in order to stimulate and advance the conduct of marine scientific research by developing States and foster the transfer of marine technology.
- (2) All States of a region shall cooperate with the regional centres therein to ensure the more effective achievement of their objectives.

Article 277

Functions of regional centres

The functions of such regional centres shall include, *inter alia*:

- (a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the seabed, mining and desalination technologies;
- (b) management studies;
- (c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;
- (d) organization of regional conferences, seminars and symposia;
- (e) acquisition and processing of marine scientific and technological data and information;

- (f) prompt dissemination of results of marine scientific and technological research in readily available publications;
- (g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;
- (h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;
- (i) technical cooperation with other States of the region.

SECTION 4. COOPERATION AMONG INTERNATIONAL ORGANIZATIONS

Article 278
Cooperation among international organizations

The competent international organizations referred to in this Part and in Part XIII shall take all appropriate measures to ensure, either directly or in close cooperation among themselves, the effective discharge of their functions and responsibilities under this Part.

PART XV

SETTLEMENT OF DISPUTES

SECTION 1. GENERAL PROVISIONS

Article 279 *Obligation to settle disputes by peaceful means*

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

Article 280 *Settlement of disputes by any peaceful means chosen by the parties*

Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice.

Article 281 *Procedure where no settlement has been reached by the parties*

- (1) If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.
- (2) If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

Article 282 *Obligations under general, regional or bilateral agreements*

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

Article 283 *Obligation to exchange views*

- (1) When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
- (2) The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

Article 284
Conciliation

- (1) A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.
- (2) If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.
- (3) If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.
- (4) Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

Article 285
Application of this section to disputes submitted pursuant to Part XI

This section applies to any dispute which pursuant to Part XI, section 5, is to be settled in accordance with procedures provided for in this Part. If an entity other than a State Party is a party to such a dispute, this section applies *mutatis mutandis*.

SECTION 2. COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS

Article 286
Application of procedures under this section

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

Article 287
Choice of procedure

- (1) When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
 - (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
 - (b) the International Court of Justice;
 - (c) an arbitral tribunal constituted in accordance with Annex VII;
 - (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
- (2) A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.
- (3) A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.
- (4) If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.
- (5) If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.
- (6) A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.

- (7) A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.
- (8) Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

*Article 288
Jurisdiction*

- (1) A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.
- (2) A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.
- (3) The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.
- (4) In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

*Article 289
Experts*

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts chosen preferably from the relevant list prepared in accordance with Annex VIII, article 2, to sit with the court or tribunal but without the right to vote.

*Article 290
Provisional measures*

- (1) If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.
- (2) Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.
- (3) Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.
- (4) The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.
- (5) Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.
- (6) The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

Article 291
Access

- (1) All the dispute settlement procedures specified in this Part shall be open to States Parties.
- (2) The dispute settlement procedures specified in this Part shall be open to entities other than States Parties only as specifically provided for in this Convention.

Article 292
Prompt release of vessels and crews

- (1) Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.
- (2) The application for release may be made only by or on behalf of the flag State of the vessel.
- (3) The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.
- (4) Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

Article 293
Applicable law

- (1) A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
- (2) Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

Article 294
Preliminary proceedings

- (1) A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.
- (2) Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.
- (3) Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

Article 295
Exhaustion of local remedies

Any dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law.

Article 296
Finality and binding force of decisions

- (1) Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.
- (2) Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

**SECTION 3. LIMITATIONS AND EXCEPTIONS
TO APPLICABILITY OF SECTION 2**

Article 297
Limitations on applicability of section 2

- (1) Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
 - (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;
 - (b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or
 - (c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.
- (2)
 - (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:
 - (i) the exercise by the coastal State of a right or discretion in accordance with article 246; or
 - (ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.
 - (b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.
- (3)
 - (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity,

the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.

- (b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that:
 - (i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;
 - (ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or
 - (iii) a coastal State has arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.
- (c) In no case shall the conciliation commission substitute its discretion for that of the coastal State.
- (d) The report of the conciliation commission shall be communicated to the appropriate international organizations.
- (e) In negotiating agreements pursuant to articles 69 and 70, States Parties, unless they otherwise agree, shall include a clause on measures which they shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how they should proceed if a disagreement nevertheless arises.

Article 298

Optional exceptions to applicability of section 2

- (1) When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
 - (a)
 - (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
 - (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;
 - (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;
 - (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

- (c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.
- (2) A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in this Convention.
- (3) A State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in this Convention as against another State Party, without the consent of that party.
- (4) If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.
- (5) A new declaration, or the withdrawal of a declaration, does not in any way affect proceedings pending before a court or tribunal in accordance with this article, unless the parties otherwise agree.
- (6) Declarations and notices of withdrawal of declarations under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

Article 299

Right of the parties to agree upon a procedure

- (1) A dispute excluded under article 297 or excepted by a declaration made under article 298 from the dispute settlement procedures provided for in section 2 may be submitted to such procedures only by agreement of the parties to the dispute.
- (2) Nothing in this section impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.

PART XVI

GENERAL PROVISIONS

Article 300 *Good faith and abuse of rights*

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

Article 301 *Peaceful uses of the seas*

In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

Article 302 *Disclosure of information*

Without prejudice to the right of a State Party to resort to the procedures for the settlement of disputes provided for in this Convention, nothing in this Convention shall be deemed to require a State Party, in the fulfilment of its obligations under this Convention, to supply information the disclosure of which is contrary to the essential interests of its security.

Article 303 *Archaeological and historical objects found at sea*

- (1) States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.
- (2) In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.
- (3) Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.
- (4) This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

Article 304 *Responsibility and liability for damage*

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

PART XVII

FINAL PROVISIONS

Article 305 *Signature*

- (1) This Convention shall be open for signature by:
 - (a) all States;
 - (b) Namibia, represented by the United Nations Council for Namibia;
 - (c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
 - (d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
 - (e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
 - (f) international organizations, in accordance with Annex IX.
- (2) This Convention shall remain open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York.

Article 306 *Ratification and formal confirmation*

This Convention is subject to ratification by States and the other entities referred to in article 305, paragraph 1(b), (c), (d) and (e), and to formal confirmation, in accordance with Annex IX, by the entities referred to in article 305, paragraph 1(f). The instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 307 *Accession*

This Convention shall remain open for accession by States and the other entities referred to in article 305. Accession by the entities referred to in article 305, paragraph 1(f), shall be in accordance with Annex IX. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 308 *Entry into force*

- (1) This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession.
- (2) For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.
- (3) The Assembly of the Authority shall meet on the date of entry into force of this Convention and shall elect the Council of the Authority. The first Council shall be constituted in a manner consistent with the purpose of article 161 if the provisions of that article cannot be strictly applied.

- (4) The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.
- (5) The Authority and its organs shall act in accordance with resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment and with decisions of the Preparatory Commission taken pursuant to that resolution.

Article 309
Reservations and exceptions

No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention.

Article 310
Declarations and statements

Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.

Article 311
Relation to other conventions and international agreements

- (1) This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
- (2) This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
- (3) Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
- (4) States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depositary of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides.
- (5) This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.
- (6) States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

Article 312
Amendment

- (1) After the expiry of a period of 10 years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, other than those relating to activities in the Area, and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within 12 months from the date of

the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

(2) The decision-making procedure applicable at the amendment conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

Article 313
Amendment by simplified procedure

(1) A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Convention, other than an amendment relating to activities in the Area, to be adopted by the simplified procedure set forth in this article without convening a conference. The Secretary-General shall circulate the communication to all States Parties.

(2) If, within a period of 12 months from the date of the circulation of the communication, a State Party objects to the proposed amendment or to the proposal for its adoption by the simplified procedure, the amendment shall be considered rejected. The Secretary-General shall immediately notify all States Parties accordingly.

(3) If, 12 months from the date of the circulation of the communication, no State Party has objected to the proposed amendment or to the proposal for its adoption by the simplified procedure, the proposed amendment shall be considered adopted. The Secretary-General shall notify all States Parties that the proposed amendment has been adopted.

Article 314
Amendments to the provisions of this Convention
relating exclusively to activities in the Area

(1) A State Party may, by written communication addressed to the Secretary-General of the Authority, propose an amendment to the provisions of this Convention relating exclusively to activities in the Area, including Annex VI, section 4. The Secretary-General shall circulate such communication to all States Parties. The proposed amendment shall be subject to approval by the Assembly following its approval by the Council. Representatives of States Parties in those organs shall have full powers to consider and approve the proposed amendment. The proposed amendment as approved by the Council and the Assembly shall be considered adopted.

(2) Before approving any amendment under paragraph 1, the Council and the Assembly shall ensure that it does not prejudice the system of exploration for and exploitation of the resources of the Area, pending the Review Conference in accordance with article 155.

Article 315
Signature, ratification of, accession to and authentic texts of amendments

(1) Once adopted, amendments to this Convention shall be open for signature by States Parties for 12 months from the date of adoption, at United Nations Headquarters in New York, unless otherwise provided in the amendment itself.

(2) Articles 306, 307 and 320 apply to all amendments to this Convention.

Article 316
Entry into force of amendments

(1) Amendments to this Convention, other than those referred to in paragraph 5, shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties or by 60 States Parties, whichever is greater. Such amendments shall not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

- (2) An amendment may provide that a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.
- (3) For each State Party ratifying or acceding to an amendment referred to in paragraph 1 after the deposit of the required number of instruments of ratification or accession, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.
- (4) A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 1 shall, failing an expression of a different intention by that State:
 - (a) be considered as a Party to this Convention as so amended; and
 - (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.
- (5) Any amendment relating exclusively to activities in the Area and any amendment to Annex VI shall enter into force for all States Parties one year following the deposit of instruments of ratification or accession by three fourths of the States Parties.
- (6) A State which becomes a Party to this Convention after the entry into force of amendments in accordance with paragraph 5 shall be considered as a Party to this Convention as so amended.

Article 317
Denunciation

- (1) A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
- (2) A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.
- (3) The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 318
Status of Annexes

The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the Annexes relating thereto.

Article 319
Depositary

- (1) The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.
- (2) In addition to his functions as depositary, the Secretary-General shall:
 - (a) report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention;
 - (b) notify the Authority of ratifications and formal confirmations of and accessions to this Convention and amendments thereto, as well as of denunciations of this Convention;
 - (c) notify States Parties of agreements in accordance with article 311, paragraph 4;
 - (d) circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;
 - (e) convene necessary meetings of States Parties in accordance with this Convention.

(3)

- (a) The Secretary-General shall also transmit to the observers referred to in article 156:
 - (i) reports referred to in paragraph 2(a);
 - (ii) notifications referred to in paragraph 2(b) and (c); and
 - (iii) texts of amendments referred to in paragraph 2(d), for their information.
- (b) The Secretary-General shall also invite those observers to participate as observers at meetings of States Parties referred to in paragraph 2(e).

Article 320
Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall, subject to article 305, paragraph 2, be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE AT MONTEGO BAY, this tenth day of December, one thousand nine hundred and eighty-two.

ANNEX I.

HIGHLY MIGRATORY SPECIES

- (1) Albacore tuna: *Thunnus alalunga*.
- (2) Bluefin tuna: *Thunnus thynnus*.
- (3) Bigeye tuna: *Thunnus obesus*.
- (4) Skipjack tuna: *Katsuwonus pelamis*.
- (5) Yellowfin tuna: *Thunnus albacares*.
- (6) Blackfin tuna: *Thunnus atlanticus*.
- (7) Little tuna: *Euthynnus alletteratus*; *Euthynnus affinis*.
- (8) Southern bluefin tuna: *Thunnus maccoyii*.
- (9) Frigate mackerel: *Auxis thazard*; *Auxis rochei*.
- (10) Pomfrets: Family *Bramidae*.
- (11) Marlins: *Tetrapturus angustirostris*; *Tetrapturus belone*; *Tetrapturus pfluegeri*; *Tetrapturus albidus*; *Tetrapturus audax*; *Tetrapturus georgei*; *Makaira mazara*; *Makaira indica*; *Makaira nigricans*.
- (12) Sail-fishes: *Istiophorus platypterus*; *Istiophorus albicans*.
- (13) Swordfish: *Xiphias gladius*.
- (14) Sauries: *Scomberesox saurus*; *Cololabis saira*; *Cololabis adocetus*; *Scomberesox saurus scombroides*.
- (15) Dolphin: *Coryphaena hippurus*; *Coryphaena equiselis*.
- (16) Oceanic sharks: *Hexanchus griseus*; *Cetorhinus maximus*; Family *Alopiidae*; *Rhincodon typus*; Family *Carcharhinidae*; Family *Sphyrnidae*; Family *Isurida*.
- (17) Cetaceans: Family *Physeteridae*; Family *Balaenopteridae*; Family *Balaenidae*; Family *Eschrichtiidae*; Family *Monodontidae*; Family *Ziphiidae*; Family *Delphinidae*.

ANNEX II.

COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Article 1

In accordance with the provisions of article 76, a Commission on the Limits of the Continental Shelf beyond 200 nautical miles shall be established in conformity with the following articles.

Article 2

- (1) The Commission shall consist of 21 members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to this Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities.
- (2) The initial election shall be held as soon as possible but in any case within 18 months after the date of entry into force of this Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties, inviting the submission of nominations, after appropriate regional consultations, within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated and shall submit it to all the States Parties.
- (3) Elections of the members of the Commission shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Commission shall be those nominees who obtain a two-thirds majority of the votes of the representatives of States Parties present and voting. Not less than three members shall be elected from each geographical region.
- (4) The members of the Commission shall be elected for a term of five years. They shall be eligible for re-election.
- (5) The State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties. The coastal State concerned shall defray the expenses incurred in respect of the advice referred to in article 3, paragraph 1(b), of this Annex. The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.

Article 3

- (1) The functions of the Commission shall be:
 - (a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;
 - (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).
- (2) The Commission may cooperate, to the extent considered necessary and useful, with the Intergovernmental Oceanographic Commission of UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information which might be of assistance in discharging the Commission's responsibilities.

Article 4

Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.

Article 5

Unless the Commission decides otherwise, the Commission shall function by way of sub-commissions composed of seven members, appointed in a balanced manner taking into account the specific elements of each submission by a coastal State. Nationals of the coastal State making the submission who are members of the Commission and any Commission member who has assisted a coastal State by providing scientific and technical advice with respect to the delineation shall not be a member of the sub-commission dealing with that submission but has the right to participate as a member in the proceedings of the Commission concerning the said submission. The coastal State which has made a submission to the Commission may send its representatives to participate in the relevant proceedings without the right to vote.

Article 6

- (1) The sub-commission shall submit its recommendations to the Commission.
- (2) Approval by the Commission of the recommendations of the sub-commission shall be by a majority of two thirds of Commission members present and voting.
- (3) The recommendations of the Commission shall be submitted in writing to the coastal State which made the submission and to the Secretary-General of the United Nations.

Article 7

Coastal States shall establish the outer limits of the continental shelf in conformity with the provisions of article 76, paragraph 8, and in accordance with the appropriate national procedures.

Article 8

In the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.

Article 9

The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

ANNEX III.

BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1 *Title to minerals*

Title to minerals shall pass upon recovery in accordance with this Convention.

Article 2 *Prospecting*

- (1)
 - (a) The Authority shall encourage prospecting in the Area.
 - (b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector will comply with this Convention and the relevant rules, regulations and procedures of the Authority concerning cooperation in the training programmes referred to in articles 143 and 144 and the protection of the marine environment, and will accept verification by the Authority of compliance therewith. The proposed prospector shall, at the same time, notify the Authority of the approximate area or areas in which prospecting is to be conducted.
 - (c) Prospecting may be conducted simultaneously by more than one prospector in the same area or areas.
- (2) Prospecting shall not confer on the prospector any rights with respect to resources. A prospector may, however, recover a reasonable quantity of minerals to be used for testing.

Article 3 *Exploration and exploitation*

- (1) The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2(b), may apply to the Authority for approval of plans of work for activities in the Area.
- (2) The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 9 of this Annex.
- (3) Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, and approved by the Authority in accordance with this Convention and the relevant rules, regulations and procedures of the Authority.
- (4) Every approved plan of work shall:
 - (a) be in conformity with this Convention and the rules, regulations and procedures of the Authority;
 - (b) provide for control by the Authority of activities in the Area in accordance with article 153, paragraph 4;
 - (c) confer on the operator, in accordance with the rules, regulations and procedures of the Authority, the exclusive right to explore for and exploit the specified categories of resources in the area covered by the plan of work. If, however, the applicant presents for approval a plan of work covering only the stage of exploration or the stage of exploitation, the approved plan of work shall confer such exclusive right with respect to that stage only.
- (5) Upon its approval by the Authority, every plan of work, except those presented by the Enterprise, shall be in the form of a contract concluded between the Authority and the applicant or applicants.

Article 4
Qualifications of applicants

- (1) Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2(b), and if they follow the procedures and meet the qualification standards set forth in the rules, regulations and procedures of the Authority.
- (2) Except as provided in paragraph 6, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under any previous contracts with the Authority.
- (3) Each applicant shall be sponsored by the State Party of which it is a national unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.
- (4) The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.
- (5) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.
- (6) The qualification standards shall require that every applicant, without exception, shall as part of his application undertake:
 - (a) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and terms of his contracts with the Authority;
 - (b) to accept control by the Authority of activities in the Area, as authorized by this Convention;
 - (c) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;
 - (d) to comply with the provisions on the transfer of technology set forth in article 5 of this Annex.

Article 5
Transfer of technology

- (1) When submitting a plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available.
- (2) Every operator shall inform the Authority of revisions in the description and information made available pursuant to paragraph 1 whenever a substantial technological change or innovation is introduced.
- (3) Every contract for carrying out activities in the Area shall contain the following undertakings by the contractor:
 - (a) to make available to the Enterprise on fair and reasonable commercial terms and conditions, whenever the Authority so requests, the technology which he uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer. This shall be done by means of licences or other appropriate arrangements which the contractor shall negotiate with the Enterprise and which shall be set forth in a specific agreement supplementary to the contract. This undertaking may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions;

- (b) to obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which is not generally available on the open market and which is not covered by subparagraph (a), that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor. If this assurance is not obtained, the technology in question shall not be used by the contractor in carrying out activities in the Area;
- (c) to acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor, in carrying out activities in the Area under the contract, which the contractor is otherwise not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work;
- (d) to facilitate, upon the request of the Enterprise, the acquisition by the Enterprise of any technology covered by subparagraph (b), under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology;
- (e) to take the same measures as are prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9 of this Annex, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8 of this Annex and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. The obligation under this provision shall only apply with respect to any given contractor where technology has not been requested by the Enterprise or transferred by that contractor to the Enterprise.

(4) Disputes concerning undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory settlement in accordance with Part XI and, in cases of violation of these undertakings, suspension or termination of the contract or monetary penalties may be ordered in accordance with article 18 of this Annex. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. If the finding is that the offer made by the contractor is not within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action in accordance with article 18 of this Annex.

(5) If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

(6) In the case of joint ventures with the Enterprise, transfer of technology will be in accordance with the terms of the joint venture agreement.

- (7) The undertakings required by paragraph 3 shall be included in each contract for the carrying out of activities in the Area until 10 years after the commencement of commercial production by the Enterprise, and may be invoked during that period.
- (8) For the purposes of this article, “technology” means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6
Approval of plans of work

- (1) Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.
- (2) When considering an application for approval of a plan of work in the form of a contract, the Authority shall first ascertain whether:
 - (a) the applicant has complied with the procedures established for applications in accordance with article 4 of this Annex and has given the Authority the undertakings and assurances required by that article. In cases of non-compliance with these procedures or in the absence of any of these undertakings and assurances, the applicant shall be given 45 days to remedy these defects;
 - (b) the applicant possesses the requisite qualifications provided for in article 4 of this Annex.
- (3) All proposed plans of work shall be taken up in the order in which they are received. The proposed plans of work shall comply with and be governed by the relevant provisions of this Convention and the rules, regulations and procedures of the Authority, including those on operational requirements, financial contributions and the undertakings concerning the transfer of technology. If the proposed plans of work conform to these requirements, the Authority shall approve them provided that they are in accordance with the uniform and non-discriminatory requirements set forth in the rules, regulations and procedures of the Authority, unless:
 - (a) part or all of the area covered by the proposed plan of work is included in an approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority;
 - (b) part or all of the area covered by the proposed plan of work is disapproved by the Authority pursuant to article 162, paragraph 2(x); or
 - (c) the proposed plan of work has been submitted or sponsored by a State Party which already holds:
 - (i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved areas that, together with either part of the area covered by the application for a plan of work, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;
 - (ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved areas which, taken together, constitute 2 per cent of the total seabed area which is not reserved or disapproved for exploitation pursuant to article 162, paragraph (2)(x).
- (4) For the purpose of the standard set forth in paragraph 3(c), a plan of work submitted by a partnership or consortium shall be counted on a *pro rata* basis among the sponsoring States Parties involved in accordance with article 4, paragraph 3, of this Annex. The Authority may approve plans of work covered by paragraph 3(c) if it determines that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.
- (5) Notwithstanding paragraph 3(a), after the end of the interim period specified in article 151, paragraph 3, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

Article 7
Selection among applicants for production authorizations

- (1) Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration applications for production authorizations submitted during the immediately preceding period. The Authority shall issue the authorizations applied for if all such applications can be approved without exceeding the production limitation or contravening the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided in article 151.
- (2) When a selection must be made among applicants for production authorizations because of the production limitation set forth in article 151, paragraphs 2 to 7, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in its rules, regulations and procedures.
- (3) In the application of paragraph 2, the Authority shall give priority to those applicants which:
 - (a) give better assurance of performance, taking into account their financial and technical qualifications and their performance, if any, under previously approved plans of work;
 - (b) provide earlier prospective financial benefits to the Authority, taking into account when commercial production is scheduled to begin;
 - (c) have already invested the most resources and effort in prospecting or exploration.
- (4) Applicants which are not selected in any period shall have priority in subsequent periods until they receive a production authorization.
- (5) Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations so as to avoid discrimination against any State or system, to participate in activities in the Area and to prevent monopolization of those activities.
- (6) Whenever fewer reserved areas than non-reserved areas are under exploitation, applications for production authorizations with respect to reserved areas shall have priority.
- (7) The decisions referred to in this article shall be taken as soon as possible after the close of each period.

Article 8
Reservation of areas

Each application, other than those submitted by the Enterprise or by any other entities for reserved areas, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the coordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts. Without prejudice to the powers of the Authority pursuant to article 17 of this Annex, the data to be submitted concerning polymetallic nodules shall relate to mapping, sampling, the abundance of nodules, and their metal content. Within 45 days of receiving such data, the Authority shall designate which part is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.

Article 9
Activities in reserved areas

- (1) The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved area. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such areas in joint ventures with the interested State or entity.

- (2) The Enterprise may conclude contracts for the execution of part of its activities in accordance with Annex IV, article 12. It may also enter into joint ventures for the conduct of such activities with any entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2(b). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing States and their nationals the opportunity of effective participation.
- (3) The Authority may prescribe, in its rules, regulations and procedures, substantive and procedural requirements and conditions with respect to such contracts and joint ventures.
- (4) Any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 6 of this Annex with respect to a reserved area. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that area.

*Article 10
Preference and priority among applicants*

An operator who has an approved plan of work for exploration only, as provided in article 3, paragraph 4(c), of this Annex shall have a preference and a priority among applicants for a plan of work covering exploitation of the same area and resources. However, such preference or priority may be withdrawn if the operator's performance has not been satisfactory.

*Article 11
Joint arrangements*

- (1) Contracts may provide for joint arrangements between the contractor and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.
- (2) Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in article 13 of this Annex.
- (3) Partners in joint ventures with the Enterprise shall be liable for the payments required by article 13 of this Annex to the extent of their share in the joint ventures, subject to financial incentives as provided for in that article.

*Article 12
Activities carried out by the Enterprise*

- (1) Activities in the Area carried out by the Enterprise pursuant to article 153, paragraph 2(a), shall be governed by Part XI, the rules, regulations and procedures of the Authority and its relevant decisions.
- (2) Any plan of work submitted by the Enterprise shall be accompanied by evidence supporting its financial and technical capabilities.

*Article 13
Financial terms of contracts*

- (1) In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2(b), and in negotiating those financial terms in accordance with Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:
 - (a) to ensure optimum revenues for the Authority from the proceeds of commercial production;
 - (b) to attract investments and technology to the exploration and exploitation of the Area;
 - (c) to ensure equality of financial treatment and comparable financial obligations for contractors;
 - (d) to provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing States or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing States;

- (e) to enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2(b); and
- (f) to ensure that, as a result of the financial incentives provided to contractors under paragraph 14, under the terms of contracts reviewed in accordance with article 19 of this Annex or under the provisions of article 11 of this Annex with respect to joint ventures, contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

(2) A fee shall be levied for the administrative cost of processing an application for approval of a plan of work in the form of a contract and shall be fixed at an amount of \$US 500,000 per application. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost incurred. If such administrative cost incurred by the Authority in processing an application is less than the fixed amount, the Authority shall refund the difference to the applicant.

(3) A contractor shall pay an annual fixed fee of \$US 1 million from the date of entry into force of the contract. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorization, in accordance with article 151, the annual fixed fee shall be waived for the period of postponement. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

(4) Within a year of the date of commencement of commercial production, in conformity with paragraph 3, a contractor shall choose to make his financial contribution to the Authority by either:

- (a) paying a production charge only; or
- (b) paying a combination of a production charge and a share of net proceeds.

(5)

- (a) If a contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage of the market value of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract. This percentage shall be fixed as follows:
 - (i) years 1-10 of commercial production 5 per cent
 - (ii) years 11 to the end of commercial production 12 per cent
- (b) The said market value shall be the product of the quantity of the processed metals produced from the polymetallic nodules extracted from the area covered by the contract and the average price for those metals during the relevant accounting year, as defined in paragraphs 7 and 8.

(6) If a contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, such payments shall be determined as follows:

- (a) The production charge shall be fixed at a percentage of the market value, determined in accordance with subparagraph (b), of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract. This percentage shall be fixed as follows:
 - (i) first period of commercial production 2 per cent
 - (ii) second period of commercial production 4 per cent

If, in the second period of commercial production, as defined in subparagraph (d), the return on investment in any accounting year as defined in subparagraph (m) falls below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.
- (b) The said market value shall be the product of the quantity of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract and the average price for those metals during the relevant accounting year as defined in paragraphs 7 and 8.
- (c)
 - (i) The Authority's share of net proceeds shall be taken out of that portion of the contractor's net proceeds which is attributable to the mining of the resources of the area covered by the contract, referred to hereinafter as attributable net proceeds.

(ii) The Authority's share of attributable net proceeds shall be determined in accordance with the following incremental schedule:

<i>Portion of attributable net proceeds</i>	<i>First period of commercial production</i>	<i>First period of commercial production</i>
That portion representing a return on investment which is greater than 0 per cent, but less than 10 per cent	35 per cent	35 per cent
That portion representing a return on investment which is 10 per cent or greater, but less than 20 per cent	42.5 per cent	50 per cent
That portion representing a return on investment which is 20 per cent or greater	50 per cent	70 per cent

(d)

- (i) The first period of commercial production referred to in subparagraphs (a) and (c) shall commence in the first accounting year of commercial production and terminate in the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus, as follows:
 - (ii) In the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less cash surplus in that year. In each subsequent accounting year, unrecovered development costs shall equal the unrecovered development costs at the end of the preceding accounting year, plus interest thereon at the rate of 10 per cent per annum, plus development costs incurred in the current accounting year and less contractor's cash surplus in the current accounting year. The accounting year in which unrecovered development costs become zero for the first time shall be the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus. The contractor's cash surplus in any accounting year shall be his gross proceeds less his operating costs and less his payments to the Authority under subparagraph (c).
 - (iii) The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract.
- (e) "Attributable net proceeds" means the product of the contractor's net proceeds and the ratio of the development costs in the mining sector to the contractor's development costs. If the contractor engages in mining, transporting polymetallic nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the contractor's net proceeds. Subject to subparagraph (n), in all other cases, including those where the contractor engages in mining, transporting polymetallic nodules, and production primarily of four processed metals, namely, cobalt, copper, manganese and nickel, the Authority may, in its rules, regulations and procedures, prescribe appropriate floors which shall bear the same relationship to each case as the 25 per cent floor does to the three-metal case.
- (f) "Contractor's net proceeds" means the contractor's gross proceeds less his operating costs and less the recovery of his development costs as set out in subparagraph (j).

- (g)
 - (i) If the contractor engages in mining, transporting polymetallic nodules and production of processed metals, “contractor’s gross proceeds” means the gross revenues from the sale of the processed metals and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority.
 - (ii) In all cases other than those specified in subparagraphs (g)(i) and (n)(iii), “contractor’s gross proceeds” means the gross revenues from the sale of the semi-processed metals from the polymetallic nodules recovered from the area covered by the contract, and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority.
- (h) “Contractor’s development costs” means:
 - (i) all expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract in all cases other than that specified in subparagraph (n), in conformity with generally recognized accounting principles, including, *inter alia*, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, prospecting and exploration of the area covered by the contract, research and development, interest, required leases, licences and fees; and
 - (ii) (ii) expenditures similar to those set forth in (i) above incurred subsequent to the commencement of commercial production and necessary to carry out the plan of work, except those chargeable to operating costs.
- (i) The proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be deducted from the contractor’s development costs during the relevant accounting year. When these deductions exceed the contractor’s development costs the excess shall be added to the contractor’s gross proceeds.
- (j) The contractor’s development costs incurred prior to the commencement of commercial production referred to in subparagraphs (h)(i) and (n)(iv) shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The contractor’s development costs incurred subsequent to the commencement of commercial production referred to in subparagraphs (h)(ii) and (n)(iv) shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract.
- (k) “Contractor’s operating costs” means all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, in conformity with generally recognized accounting principles, including, *inter alia*, the annual fixed fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transporting, processing and marketing costs, interest, utilities, preservation of the marine environment, overhead and administrative costs specifically related to operations under the contract, and any net operating losses carried forward or backward as specified herein. Net operating losses may be carried forward for two consecutive years except in the last two years of the contract in which case they may be carried backward to the two preceding years.
- (l) If the contractor engages in mining, transporting of polymetallic nodules, and production of processed and semi-processed metals, “development costs of the mining sector” means the portion of the contractor’s development costs which is directly related to the mining of the resources of the area covered by the contract, in conformity with generally recognized accounting principles, and the financial rules, regulations and procedures of the Authority, including, *inter alia*, application fee, annual fixed fee and, where applicable, costs of prospecting and exploration of the area covered by the contract, and a portion of research and development costs.

- (m) “Return on investment” in any accounting year means the ratio of attributable net proceeds in that year to the development costs of the mining sector. For the purpose of computing this ratio the development costs of the mining sector shall include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced.
- (n) If the contractor engages in mining only:
 - (i) “attributable net proceeds” means the whole of the contractor’s net proceeds;
 - (ii) “contractor’s net proceeds” shall be as defined in subparagraph (f);
 - (iii) “contractor’s gross proceeds” means the gross revenues from the sale of the polymetallic nodules, and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority;
 - (iv) “contractor’s development costs” means all expenditures incurred prior to the commencement of commercial production as set forth in subparagraph (h)(i), and all expenditures incurred subsequent to the commencement of commercial production as set forth in subparagraph (h)(ii), which are directly related to the mining of the resources of the area covered by the contract, in conformity with generally recognized accounting principles;
 - (v) “contractor’s operating costs” means the contractor’s operating costs as in subparagraph (k) which are directly related to the mining of the resources of the area covered by the contract in conformity with generally recognized accounting principles;
 - (vi) “return on investment” in any accounting year means the ratio of the contractor’s net proceeds in that year to the contractor’s development costs. For the purpose of computing this ratio, the contractor’s development costs shall include expenditures on new or replacement equipment less the original cost of the equipment replaced.
- (o) The costs referred to in subparagraphs (h), (k), (l) and (n) in respect of interest paid by the contractor shall be allowed to the extent that, in all the circumstances, the Authority approves, pursuant to article 4, paragraph 1, of this Annex, the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice.
- (p) The costs referred to in this paragraph shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor.

(7)

- (a) “Processed metals”, referred to in paragraphs 5 and 6, means the metals in the most basic form in which they are customarily traded on international terminal markets. For this purpose, the Authority shall specify, in its financial rules, regulations and procedures, the relevant international terminal market. For the metals which are not traded on such markets, “processed metals” means the metals in the most basic form in which they are customarily traded in representative arm’s length transactions.
- (b) If the Authority cannot otherwise determine the quantity of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract referred to in paragraphs 5(b) and 6(b), the quantity shall be determined on the basis of the metal content of the nodules, processing recovery efficiency and other relevant factors, in accordance with the rules, regulations and procedures of the Authority and in conformity with generally recognized accounting principles.

(8) If an international terminal market provides a representative pricing mechanism for processed metals, polymetallic nodules and semi-processed metals from the nodules, the average price on that market shall be used. In all other cases, the Authority shall, after consulting the contractor, determine a fair price for the said products in accordance with paragraph 9.

(9)

- (a) All costs, expenditures, proceeds and revenues and all determinations of price and value referred to in this article shall be the result of free market or arm’s length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the contractor, as though they

were the result of free market or arm's length transactions, taking into account relevant transactions in other markets.

- (b) In order to ensure compliance with and enforcement of the provisions of this paragraph, the Authority shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the Commission on Transnational Corporations of the United Nations, the Group of Experts on Tax Treaties between Developing and Developed Countries and other international organizations, and shall, in its rules, regulations and procedures, specify uniform and internationally acceptable accounting rules and procedures, and the means of selection by the contractor of certified independent accountants acceptable to the Authority for the purpose of carrying out auditing in compliance with those rules, regulations and procedures.
- (10) The contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with this article.
- (11) All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article, shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.
- (12) Payments to the Authority under paragraphs 5 and 6 shall be made in freely usable currencies or currencies which are freely available and effectively usable on the major foreign exchange markets or, at the contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5(b). The freely usable currencies and currencies which are freely available and effectively usable on the major foreign exchange markets shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice.
- (13) All financial obligations of the contractor to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this article, shall be adjusted by expressing them in constant terms relative to a base year.
- (14) The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules, regulations and procedures that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1.
- (15) In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2.

Article 14
Transfer of data

- (1) The operator shall transfer to the Authority, in accordance with its rules, regulations and procedures and the terms and conditions of the plan of work, at time intervals determined by the Authority all data which are both necessary for and relevant to the effective exercise of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.
- (2) Transferred data in respect of the area covered by the plan of work, deemed proprietary, may only be used for the purposes set forth in this article. Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety, other than equipment design data, shall not be deemed proprietary.
- (3) Data transferred to the Authority by prospectors, applicants for contracts or contractors, deemed proprietary, shall not be disclosed by the Authority to the Enterprise or to anyone external to the Authority, but data on the reserved areas may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or to anyone external to the Authority.

Article 15
Training programmes

The contractor shall draw up practical programmes for the training of personnel of the Authority and developing States, including the participation of such personnel in all activities in the Area which are covered by the contract, in accordance with article 144, paragraph 2.

Article 16
Exclusive right to explore and exploit

The Authority shall, pursuant to Part XI and its rules, regulations and procedures, accord the operator the exclusive right to explore and exploit the area covered by the plan of work in respect of a specified category of resources and shall ensure that no other entity operates in the same area for a different category of resources in a manner which might interfere with the operations of the operator. The operator shall have security of tenure in accordance with article 153, paragraph 6.

Article 17
Rules, regulations and procedures of the Authority

- (1) The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(f)(ii), and article 162, paragraph 2(o)(ii), for the exercise of its functions as set forth in Part XI on, *inter alia*, the following matters:
 - (a) administrative procedures relating to prospecting, exploration and exploitation in the Area;
 - (b) operations:
 - (i) size of area;
 - (ii) duration of operations;
 - (iii) performance requirements including assurances pursuant to article 4, paragraph 6(c), of this Annex;
 - (iv) categories of resources;
 - (v) renunciation of areas;
 - (vi) progress reports;
 - (vii) submission of data;
 - (viii) inspection and supervision of operations;
 - (ix) prevention of interference with other activities in the marine environment;
 - (x) transfer of rights and obligations by a contractor;
 - (xi) procedures for transfer of technology to developing States in accordance with article 144 and for their direct participation;
 - (xii) mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment;
 - (xiii) definition of commercial production;
 - (xiv) qualification standards for applicants;
 - (c) financial matters:
 - (i) establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors;
 - (ii) apportionment of proceeds of operations;
 - (iii) the incentives referred to in article 13 of this Annex;
 - (d) implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2(d).

(2) Rules, regulations and procedures on the following items shall fully reflect the objective criteria set out below:

(a) Size of areas:

The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation in order to permit intensive exploration operations. The size of area shall be calculated to satisfy the requirements of article 8 of this Annex on reservation of areas as well as stated production requirements consistent with article 151 in accordance with the terms of the contract taking into account the state of the art of technology then available for seabed mining and the relevant physical characteristics of the areas. Areas shall be neither smaller nor larger than are necessary to satisfy this objective.

(b) Duration of operations:

- (i) Prospecting shall be without time-limit;
- (ii) Exploration should be of sufficient duration to permit a thorough survey of the specific area, the design and construction of mining equipment for the area and the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;
- (iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial-scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the plan of work at the time it considers renewal in accordance with rules, regulations and procedures which it has adopted subsequent to approving the plan of work.

(c) Performance requirements:

The Authority shall require that during the exploration stage periodic expenditures be made by the operator which are reasonably related to the size of the area covered by the plan of work and the expenditures which would be expected of a *bona fide* operator who intended to bring the area into commercial production within the time-limits established by the Authority. The required expenditures should not be established at a level which would discourage prospective operators with less costly technology than is prevalently in use. The Authority shall establish a maximum time interval, after the exploration stage is completed and the exploitation stage begins, to achieve commercial production. To determine this interval, the Authority should take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the termination of the exploration stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into commercial production should take into account the time necessary for this construction after the completion of the exploration stage and reasonable allowance should be made for unavoidable delays in the construction schedule. Once commercial production is achieved, the Authority shall within reasonable limits and taking into consideration all relevant factors require the operator to maintain commercial production throughout the period of the plan of work.

(d) Categories of resources:

In determining the category of resources in respect of which a plan of work may be approved, the Authority shall give emphasis *inter alia* to the following characteristics:

- (i) that certain resources require the use of similar mining methods; and
- (ii) that some resources can be developed simultaneously without undue interference between operators developing different resources in the same area.

Nothing in this subparagraph shall preclude the Authority from approving a plan of work with respect to more than one category of resources in the same area to the same applicant.

(e) Renunciation of areas:

The operator shall have the right at any time to renounce without penalty the whole or part of his rights in the area covered by a plan of work.

(f) Protection of the marine environment:

Rules, regulations and procedures shall be drawn up in order to secure effective protection of the marine environment from harmful effects directly resulting from activities in the Area or from shipboard processing immediately above a mine site of minerals derived from that mine site, taking into account the extent to which such harmful effects may directly result from drilling, dredging, coring and excavation and from disposal, dumping and discharge into the marine environment of sediment, wastes or other effluents.

(g) Commercial production:

Commercial production shall be deemed to have begun if an operator engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or the testing of equipment or plant.

*Article 18
Penalties*

- (1) A contractor's rights under the contract may be suspended or terminated only in the following cases:
 - (a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI and the rules, regulations and procedures of the Authority; or
 - (b) if the contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.
- (2) In the case of any violation of the contract not covered by paragraph 1(a), or in lieu of suspension or termination under paragraph 1(a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.
- (3) Except for emergency orders under article 162, paragraph 2(w), the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5.

*Article 19
Revision of contract*

- (1) When circumstances have arisen or are likely to arise which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI, the parties shall enter into negotiations to revise it accordingly.
- (2) Any contract entered into in accordance with article 153, paragraph 3, may be revised only with the consent of the parties.

*Article 20
Transfer of rights and obligations*

The rights and obligations arising under a contract may be transferred only with the consent of the Authority, and in accordance with its rules, regulations and procedures. The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant and assumes all of the obligations of the transferor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3(c), of this Annex.

Article 21
Applicable law

- (1) The contract shall be governed by the terms of the contract, the rules, regulations and procedures of the Authority, Part XI and other rules of international law not incompatible with this Convention.
- (2) Any final decision rendered by a court or tribunal having jurisdiction under this Convention relating to the rights and obligations of the Authority and of the contractor shall be enforceable in the territory of each State Party.
- (3) No State Party may impose conditions on a contractor that are inconsistent with Part XI. However, the application by a State Party to contractors sponsored by it, or to ships flying its flag, of environmental or other laws and regulations more stringent than those in the rules, regulations and procedures of the Authority adopted pursuant to article 17, paragraph 2(f), of this Annex shall not be deemed inconsistent with Part XI.

Article 22
Responsibility

The contractor shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations, account being taken of contributory acts or omissions by the Authority. Similarly, the Authority shall have responsibility or liability for any damage arising out of wrongful acts in the exercise of its powers and functions, including violations under article 168, paragraph 2, account being taken of contributory acts or omissions by the contractor. Liability in every case shall be for the actual amount of damage.

ANNEX IV.

STATUTE OF THE ENTERPRISE

Article 1 *Purposes*

- (1) The Enterprise is the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), as well as the transporting, processing and marketing of minerals recovered from the Area.
- (2) In carrying out its purposes and in the exercise of its functions, the Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority.
- (3) In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to this Convention, operate in accordance with sound commercial principles.

Article 2 *Relationship to the Authority*

- (1) Pursuant to article 170, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.
- (2) Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.
- (3) Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or make the Authority liable for the acts or obligations of the Enterprise.

Article 3 *Limitation of liability*

Without prejudice to article 11, paragraph 3, of this Annex, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4 *Structure*

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the exercise of its functions.

Article 5 *Governing Board*

- (1) The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2(c). In the election of the members of the Board, due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.
- (2) Members of the Board shall be elected for four years and may be re-elected; and due regard shall be paid to the principle of rotation of membership.
- (3) Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, in accordance with article 160, paragraph 2(c), elect a new member for the remainder of his predecessor's term.
- (4) Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any government or from any other source. Each member

of the Authority shall respect the independent character of the members of the Board and shall refrain from all attempts to influence any of them in the discharge of their duties.

- (5) Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.
- (6) The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.
- (7) Two thirds of the members of the Board shall constitute a quorum.
- (8) Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of its members. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on that matter.
- (9) Any member of the Authority may ask the Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 6

Powers and functions of the Governing Board

The Governing Board shall direct the operations of the Enterprise. Subject to this Convention, the Governing Board shall exercise the powers necessary to fulfil the purposes of the Enterprise, including powers:

- (a) to elect a Chairman from among its members;
- (b) to adopt its rules of procedure;
- (c) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3, and article 162, paragraph 2(j);
- (d) to develop plans of work and programmes for carrying out the activities specified in article 170;
- (e) to prepare and submit to the Council applications for production authorizations in accordance with article 151, paragraphs 2 to 7;
- (f) to authorize negotiations concerning the acquisition of technology, including those provided for in Annex III, article 5, paragraph 3(a), (c) and (d), and to approve the results of those negotiations;
- (g) to establish terms and conditions, and to authorize negotiations, concerning joint ventures and other forms of joint arrangements referred to in Annex III, articles 9 and 11, and to approve the results of such negotiations;
- (h) to recommend to the Assembly what portion of the net income of the Enterprise should be retained as its reserves in accordance with article 160, paragraph 2(f), and article 10 of this Annex;
- (i) to approve the annual budget of the Enterprise;
- (j) to authorize the procurement of goods and services in accordance with article 12, paragraph 3, of this Annex;
- (k) to submit an annual report to the Council in accordance with article 9 of this Annex;
- (l) to submit to the Council for the approval of the Assembly draft rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise and to adopt regulations to give effect to such rules;
- (m) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2, of this Annex;
- (n) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13 of this Annex;
- (o) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

Article 7
Director-General and staff of the Enterprise

- (1) The Assembly shall, upon the recommendation of the Council and the nomination of the Governing Board, elect the Director-General of the Enterprise who shall not be a member of the Board. The Director-General shall hold office for a fixed term, not exceeding five years, and may be re-elected for further terms.
- (2) The Director-General shall be the legal representative and chief executive of the Enterprise and shall be directly responsible to the Board for the conduct of the operations of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff of the Enterprise in accordance with the rules and regulations referred to in article 6, subparagraph (1), of this Annex. He shall participate, without the right to vote, in the meetings of the Board and may participate, without the right to vote, in the meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise.
- (3) The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency and of technical competence. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on an equitable geographical basis.
- (4) In the performance of their duties the Director-General and the staff shall not seek or receive instructions from any government or from any other source external to the Enterprise. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Director-General and the staff and not to seek to influence them in the discharge of their responsibilities.
- (5) The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

Article 8
Location

The Enterprise shall have its principal office at the seat of the Authority. The Enterprise may establish other offices and facilities in the territory of any State Party with the consent of that State Party.

Article 9
Reports and financial statements

- (1) The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.
- (2) The Enterprise shall publish its annual report and such other reports as it finds appropriate.
- (3) All reports and financial statements referred to in this article shall be distributed to the members of the Authority.

Article 10
Allocation of net income

- (1) Subject to paragraph 3, the Enterprise shall make payments to the Authority under Annex III, article 13, or their equivalent.
- (2) The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as reserves of the Enterprise. The remainder shall be transferred to the Authority.

(3) During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of commercial production by it, the Assembly shall exempt the Enterprise from the payments referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

Article 11
Finances

(1) The funds of the Enterprise shall include:

- (a) amounts received from the Authority in accordance with article 173, paragraph 2(b);
- (b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;
- (c) amounts borrowed by the Enterprise in accordance with paragraphs 2 and 3;
- (d) income of the Enterprise from its operations;
- (e) other funds made available to the Enterprise to enable it to commence operations as soon as possible and to carry out its functions.

(2)

- (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the financial markets or currency of a State Party, the Enterprise shall obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.
- (b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans on capital markets and from international financial institutions.

(3)

- (a) The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, and to transport, process and market the minerals recovered therefrom and the nickel, copper, cobalt and manganese obtained, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the Preparatory Commission in the draft rules, regulations and procedures of the Authority.
- (b) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the assessments are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale.
- (c) If the sum of the financial contributions of States Parties is less than the funds to be provided to the Enterprise under subparagraph (a), the Assembly shall, at its first session, consider the extent of the shortfall and adopt by consensus measures for dealing with this shortfall, taking into account the obligation of States Parties under subparagraphs (a) and (b) and any recommendations of the Preparatory Commission.
- (d)
 - (i) Each State Party shall, within 60 days after the entry into force of this Convention, or within 30 days after the deposit of its instrument of ratification or accession, whichever is later, deposit with the Enterprise irrevocable, non-negotiable, non-interest-bearing promissory notes in the amount of the share of such State Party of interest-free loans pursuant to subparagraph (b).
 - (ii) The Board shall prepare, at the earliest practicable date after this Convention enters into force, and thereafter at annual or other appropriate intervals, a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for ac-

tivities carried out by the Enterprise in accordance with article 170 and article 12 of this Annex.

- (iii) The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with subparagraph (b), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans.
- (iv) States Parties shall, upon receipt of the notification, make available their respective shares of debt guarantees for the Enterprise in accordance with subparagraph (b).

(e)

- (i) If the Enterprise so requests, State Parties may provide debt guarantees in addition to those provided in accordance with the scale referred to in subparagraph (b).
- (ii) In lieu of debt guarantees, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(f) Repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. Repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Board. In the exercise of this function the Board shall be guided by the relevant provisions of the rules, regulations and procedures of the Authority, which shall take into account the paramount importance of ensuring the effective functioning of the Enterprise and, in particular, ensuring its financial independence.

(g) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in paragraph 2, no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds.

(h) “Debt guarantee” means a promise of a State Party to creditors of the Enterprise to pay, pro rata in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.

(4) The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. This article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid by either on behalf of the other.

(5) The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Council.

Article 12
Operations

- (1) The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, and all such other information and data as may be required from time to time for its appraisal by the Legal and Technical Commission and approval by the Council.
- (2) Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

- (3)
 - (a) If the Enterprise does not possess the goods and services required for its operations it may procure them. For that purpose, it shall issue invitations to tender and award contracts to bidders offering the best combination of quality, price and delivery time.
 - (b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with:
 - (i) the principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency; and
 - (ii) guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in developing States, including the land-locked and geographically disadvantaged among them.
 - (c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may, in the best interests of the Enterprise, be dispensed with.
- (4) The Enterprise shall have title to all minerals and processed substances produced by it.
- (5) The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.
- (6) Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.
- (7) The Enterprise shall not interfere in the political affairs of any State Party; nor shall it be influenced in its decisions by the political character of the State Party concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1 of this Annex.

Article 13
Legal status, privileges and immunities

- (1) To enable the Enterprise to exercise its functions, the status, privileges and immunities set forth in this article shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.
- (2) The Enterprise shall have such legal capacity as is necessary for the exercise of its functions and the fulfilment of its purposes and, in particular, the capacity:
 - (a) to enter into contracts, joint arrangements or other arrangements, including agreements with States and international organizations;
 - (b) to acquire, lease, hold and dispose of immovable and movable property;
 - (c) to be a party to legal proceedings.
- (3)
 - (a) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territory of a State Party in which the Enterprise:
 - (i) has an office or facility;
 - (ii) has appointed an agent for the purpose of accepting service or notice of process;
 - (iii) has entered into a contract for goods or services;
 - (iv) has issued securities; or
 - (v) is otherwise engaged in commercial activity.
 - (b) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Enterprise.

(4)

- (a) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.
- (b) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.
- (c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.
- (d) States Parties shall ensure that the Enterprise enjoys all rights, privileges and immunities accorded by them to entities conducting commercial activities in their territories. These rights, privileges and immunities shall be accorded to the Enterprise on no less favourable a basis than that on which they are accorded to entities engaged in similar commercial activities. If special privileges are provided by States Parties for developing States or their commercial entities, the Enterprise shall enjoy those privileges on a similarly preferential basis.
- (e) States Parties may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges and immunities to other commercial entities.

(5) The Enterprise shall negotiate with the host countries in which its offices and facilities are located for exemption from direct and indirect taxation.

(6) Each State Party shall take such action as is necessary for giving effect in terms of its own law to the principles set forth in this Annex and shall inform the Enterprise of the specific action which it has taken.

(7) The Enterprise may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

ANNEX V.

CONCILIATION

SECTION 1. CONCILIATION PROCEDURE PURSUANT TO SECTION 1 OF PART XV

Article 1 Institution of proceedings

If the parties to a dispute have agreed, in accordance with article 284, to submit it to conciliation under this section, any such party may institute the proceedings by written notification addressed to the other party or parties to the dispute.

Article 2 List of conciliators

A list of conciliators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four conciliators, each of whom shall be a person enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list. If at any time the conciliators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary. The name of a conciliator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such conciliator shall continue to serve on any conciliation commission to which that conciliator has been appointed until the completion of the proceedings before that commission.

Article 3 Constitution of conciliation commission

The conciliation commission shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the conciliation commission shall consist of five members.
- (b) The party instituting the proceedings shall appoint two conciliators to be chosen preferably from the list referred to in article 2 of this Annex, one of whom may be its national, unless the parties otherwise agree. Such appointments shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall appoint two conciliators in the manner set forth in subparagraph (b) within 21 days of receipt of the notification referred to in article 1 of this Annex. If the appointments are not made within that period, the party instituting the proceedings may, within one week of the expiration of that period, either terminate the proceedings by notification addressed to the other party or request the Secretary-General of the United Nations to make the appointments in accordance with subparagraph (e).
- (d) Within 30 days after all four conciliators have been appointed, they shall appoint a fifth conciliator chosen from the list referred to in article 2 of this Annex, who shall be chairman. If the appointment is not made within that period, either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment in accordance with subparagraph (e).
- (e) Within 30 days of the receipt of a request under subparagraph (c) or (d), the Secretary-General of the United Nations shall make the necessary appointments from the list referred to in article 2 of this Annex in consultation with the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.

- (g) Two or more parties which determine by agreement that they are in the same interest shall appoint two conciliators jointly. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint conciliators separately.
- (h) In disputes involving more than two parties having separate interests, or where there is disagreement as to whether they are of the same interest, the parties shall apply subparagraphs (a) to (f) in so far as possible.

*Article 4
Procedure*

The conciliation commission shall, unless the parties otherwise agree, determine its own procedure. The commission may, with the consent of the parties to the dispute, invite any State Party to submit to it its views orally or in writing. Decisions of the commission regarding procedural matters, the report and recommendations shall be made by a majority vote of its members.

*Article 5
Amicable settlement*

The commission may draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute.

*Article 6
Functions of the commission*

The commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

*Article 7
Report*

- (1) The commission shall report within 12 months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement. The report shall be deposited with the Secretary-General of the United Nations and shall immediately be transmitted by him to the parties to the dispute.
- (2) The report of the commission, including its conclusions or recommendations, shall not be binding upon the parties.

*Article 8
Termination*

The conciliation proceedings are terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by written notification addressed to the Secretary-General of the United Nations, or when a period of three months has expired from the date of transmission of the report to the parties.

*Article 9
Fees and expenses*

The fees and expenses of the commission shall be borne by the parties to the dispute.

*Article 10
Right of parties to modify procedure*

The parties to the dispute may by agreement applicable solely to that dispute modify any provision of this Annex.

SECTION 2. COMPULSORY SUBMISSION TO CONCILIATION PROCEDURE PURSUANT TO SECTION 3 OF PART XV

Article 11 Institution of proceedings

- (1) Any party to a dispute which, in accordance with Part XV, section 3, may be submitted to conciliation under this section, may institute the proceedings by written notification addressed to the other party or parties to the dispute.
- (2) Any party to the dispute, notified under paragraph 1, shall be obliged to submit to such proceedings.

Article 12 Failure to reply or to submit to conciliation

The failure of a party or parties to the dispute to reply to notification of institution of proceedings or to submit to such proceedings shall not constitute a bar to the proceedings.

Article 13 Competence

A disagreement as to whether a conciliation commission acting under this section has competence shall be decided by the commission.

Article 14 Application of section 1

Articles 2 to 10 of section 1 of this Annex apply subject to this section.

ANNEX VI.

STATUTE OF THE INTERNATIONAL FOR THE LAW OF THE SEA

Article 1 *General provisions*

- (1) The International Tribunal for the Law of the Sea is constituted and shall function in accordance with the provisions of this Convention and this Statute.
- (2) The seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany.
- (3) The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.
- (4) A reference of a dispute to the Tribunal shall be governed by the provisions of Parts XI and XV.

SECTION 1. ORGANIZATION OF THE TRIBUNAL

Article 2 *Composition*

- (1) The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.
- (2) In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

Article 3 *Membership*

- (1) No two members of the Tribunal may be nationals of the same State. A person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.
- (2) There shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations.

Article 4 *Nominations and elections*

- (1) Each State Party may nominate not more than two persons having the qualifications prescribed in article 2 of this Annex. The members of the Tribunal shall be elected from the list of persons thus nominated.
- (2) At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.
- (3) The first election shall be held within six months of the date of entry into force of this Convention.
- (4) The members of the Tribunal shall be elected by secret ballot. Elections shall be held at a meeting of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by a procedure agreed to by the States Parties in the case of subsequent elections. Two thirds

of the States Parties shall constitute a quorum at that meeting. The persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties.

Article 5
Term of office

- (1) The members of the Tribunal shall be elected for nine years and may be re-elected; provided, however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years.
- (2) The members of the Tribunal whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of the United Nations immediately after the first election.
- (3) The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any proceedings which they may have begun before the date of their replacement.
- (4) In the case of the resignation of a member of the Tribunal, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of that letter.

Article 6
Vacancies

- (1) Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Registrar shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in article 4 of this Annex, and the date of the election shall be fixed by the President of the Tribunal after consultation with the States Parties.
- (2) A member of the Tribunal elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 7
Incompatible activities

- (1) No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the seabed or other commercial use of the sea or the seabed.
- (2) No member of the Tribunal may act as agent, counsel or advocate in any case.
- (3) Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

Article 8
Conditions relating to participation of members in a particular case

- (1) No member of the Tribunal may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity.
- (2) If, for some special reason, a member of the Tribunal considers that he should not take part in the decision of a particular case, he shall so inform the President of the Tribunal.
- (3) If the President considers that for some special reason one of the members of the Tribunal should not sit in a particular case, he shall give him notice accordingly.
- (4) Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

Article 9
Consequence of ceasing to fulfil required conditions

If, in the unanimous opinion of the other members of the Tribunal, a member has ceased to fulfil the required conditions, the President of the Tribunal shall declare the seat vacant.

Article 10
Privileges and immunities

The members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities.

Article 11
Solemn declaration by members

Every member of the Tribunal shall, before taking up his duties, make a solemn declaration in open session that he will exercise his powers impartially and conscientiously.

Article 12
President, Vice-President and Registrar

- (1) The Tribunal shall elect its President and Vice-President for three years; they may be re-elected.
- (2) The Tribunal shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.
- (3) The President and the Registrar shall reside at the seat of the Tribunal.

Article 13
Quorum

- (1) All available members of the Tribunal shall sit; a quorum of 11 elected members shall be required to constitute the Tribunal.
- (2) Subject to article 17 of this Annex, the Tribunal shall determine which members are available to constitute the Tribunal for the consideration of a particular dispute, having regard to the effective functioning of the chambers as provided for in articles 14 and 15 of this Annex.
- (3) All disputes and applications submitted to the Tribunal shall be heard and determined by the Tribunal, unless article 14 of this Annex applies, or the parties request that it shall be dealt with in accordance with article 15 of this Annex.

Article 14
Seabed Disputes Chamber

A Seabed Disputes Chamber shall be established in accordance with the provisions of section 4 of this Annex. Its jurisdiction, powers and functions shall be as provided for in Part XI, section 5.

Article 15
Special chambers

- (1) The Tribunal may form such chambers, composed of three or more of its elected members, as it considers necessary for dealing with particular categories of disputes.
- (2) The Tribunal shall form a chamber for dealing with a particular dispute submitted to it if the parties so request. The composition of such a chamber shall be determined by the Tribunal with the approval of the parties.
- (3) With a view to the speedy dispatch of business, the Tribunal shall form annually a chamber composed of five of its elected members which may hear and determine disputes by summary procedure. Two alternative members shall be selected for the purpose of replacing members who are unable to participate in a particular proceeding.

- (4) Disputes shall be heard and determined by the chambers provided for in this article if the parties so request.
- (5) A judgment given by any of the chambers provided for in this article and in article 14 of this Annex shall be considered as rendered by the Tribunal.

Article 16
Rules of the Tribunal

The Tribunal shall frame rules for carrying out its functions. In particular it shall lay down rules of procedure.

Article 17
Nationality of members

- (1) Members of the Tribunal of the nationality of any of the parties to a dispute shall retain their right to participate as members of the Tribunal.
- (2) If the Tribunal, when hearing a dispute, includes upon the bench a member of the nationality of one of the parties, any other party may choose a person to participate as a member of the Tribunal.
- (3) If the Tribunal, when hearing a dispute, does not include upon the bench a member of the nationality of the parties, each of those parties may choose a person to participate as a member of the Tribunal.
- (4) This article applies to the chambers referred to in articles 14 and 15 of this Annex. In such cases, the President, in consultation with the parties, shall request specified members of the Tribunal forming the chamber, as many as necessary, to give place to the members of the Tribunal of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the members specially chosen by the parties.
- (5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be considered as one party only. Any doubt on this point shall be settled by the decision of the Tribunal.
- (6) Members chosen in accordance with paragraphs 2, 3 and 4 shall fulfil the conditions required by articles 2, 8 and 11 of this Annex. They shall participate in the decision on terms of complete equality with their colleagues.

Article 18
Remuneration of members

- (1) Each elected member of the Tribunal shall receive an annual allowance and, for each day on which he exercises his functions, a special allowance, provided that in any year the total sum payable to any member as special allowance shall not exceed the amount of the annual allowance.
- (2) The President shall receive a special annual allowance.
- (3) The Vice-President shall receive a special allowance for each day on which he acts as President.
- (4) The members chosen under article 17 of this Annex, other than elected members of the Tribunal, shall receive compensation for each day on which they exercise their functions.
- (5) The salaries, allowances and compensation shall be determined from time to time at meetings of the States Parties, taking into account the workload of the Tribunal. They may not be decreased during the term of office.
- (6) The salary of the Registrar shall be determined at meetings of the States Parties, on the proposal of the Tribunal.
- (7) Regulations adopted at meetings of the States Parties shall determine the conditions under which retirement pensions may be given to members of the Tribunal and to the Registrar, and the conditions under which members of the Tribunal and Registrar shall have their travelling expenses refunded.
- (8) The salaries, allowances, and compensation shall be free of all taxation.

Article 19
Expenses of the Tribunal

- (1) The expenses of the Tribunal shall be borne by the States Parties and by the Authority on such terms and in such a manner as shall be decided at meetings of the States Parties.
- (2) When an entity other than a State Party or the Authority is a party to a case submitted to it, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal.

SECTION 2. COMPETENCE

Article 20
Access to the Tribunal

- (1) The Tribunal shall be open to States Parties.
- (2) The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.

Article 21
Jurisdiction

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Article 22
Reference of disputes subject to other agreements

If all the parties to a treaty or convention already in force and concerning the subject-matter covered by this Convention so agree, any disputes concerning the interpretation or application of such treaty or convention may, in accordance with such agreement, be submitted to the Tribunal.

Article 23
Applicable law

The Tribunal shall decide all disputes and applications in accordance with article 293.

SECTION 3. PROCEDURE

Article 24
Institution of proceedings

- (1) Disputes are submitted to the Tribunal, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated.
- (2) The Registrar shall forthwith notify the special agreement or the application to all concerned.
- (3) The Registrar shall also notify all States Parties.

Article 25
Provisional measures

- (1) In accordance with article 290, the Tribunal and its Seabed Disputes Chamber shall have the power to prescribe provisional measures.
- (2) If the Tribunal is not in session or a sufficient number of members is not available to constitute a quorum, the provisional measures shall be prescribed by the chamber of summary procedure formed

under article 15, paragraph 3, of this Annex. Notwithstanding article 15, paragraph 4, of this Annex, such provisional measures may be adopted at the request of any party to the dispute. They shall be subject to review and revision by the Tribunal.

Article 26
Hearing

- (1) The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President. If neither is able to preside, the senior judge present of the Tribunal shall preside.
- (2) The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted.

Article 27
Conduct of case

The Tribunal shall make orders for the conduct of the case, decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 28
Default

When one of the parties does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and make its decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its decision, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and law.

Article 29
Majority for decision

- (1) All questions shall be decided by a majority of the members of the Tribunal who are present.
- (2) In the event of an equality of votes, the President or the member of the Tribunal who acts in his place shall have a casting vote.

Article 30
Judgment

- (1) The judgment shall state the reasons on which it is based.
- (2) It shall contain the names of the members of the Tribunal who have taken part in the decision.
- (3) If the judgment does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion.
- (4) The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the parties to the dispute.

Article 31
Request to intervene

- (1) Should a State Party consider that it has an interest of a legal nature which may be affected by the decision in any dispute, it may submit a request to the Tribunal to be permitted to intervene.
- (2) It shall be for the Tribunal to decide upon this request.
- (3) If a request to intervene is granted, the decision of the Tribunal in respect of the dispute shall be binding upon the intervening State Party in so far as it relates to matters in respect of which that State Party intervened.

Article 32

Right to intervene in cases of interpretation or application

- (1) Whenever the interpretation or application of this Convention is in question, the Registrar shall notify all States Parties forthwith.
- (2) Whenever pursuant to article 21 or 22 of this Annex the interpretation or application of an international agreement is in question, the Registrar shall notify all the parties to the agreement.
- (3) Every party referred to in paragraphs 1 and 2 has the right to intervene in the proceedings; if it uses this right, the interpretation given by the judgment will be equally binding upon it.

Article 33

Finality and binding force of decisions

- (1) The decision of the Tribunal is final and shall be complied with by all the parties to the dispute.
- (2) The decision shall have no binding force except between the parties in respect of that particular dispute.
- (3) In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party.

Article 34

Costs

Unless otherwise decided by the Tribunal, each party shall bear its own costs.

SECTION 4. SEABED DISPUTES CHAMBER

Article 35

Composition

- (1) The Seabed Disputes Chamber referred to in article 14 of this Annex shall be composed of 11 members, selected by a majority of the elected members of the Tribunal from among them.
- (2) In the selection of the members of the Chamber, the representation of the principal legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt recommendations of a general nature relating to such representation and distribution.
- (3) The members of the Chamber shall be selected every three years and may be selected for a second term.
- (4) The Chamber shall elect its President from among its members, who shall serve for the term for which the Chamber has been selected.
- (5) If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.
- (6) If a vacancy occurs in the Chamber, the Tribunal shall select a successor from among its elected members, who shall hold office for the remainder of his predecessor's term.
- (7) A quorum of seven of the members selected by the Tribunal shall be required to constitute the Chamber.

Article 36

Ad hoc chambers

- (1) The Seabed Disputes Chamber shall form an ad hoc chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1(b). The composition of such a chamber shall be determined by the Seabed Disputes Chamber with the approval of the parties.
- (2) If the parties do not agree on the composition of an ad hoc chamber, each party to the dispute shall appoint one member, and the third member shall be appointed by them in agreement. If they disagree, or

if any party fails to make an appointment, the President of the Seabed Disputes Chamber shall promptly make the appointment or appointments from among its members, after consultation with the parties.

(3) Members of the ad hoc chamber must not be in the service of, or nationals of, any of the parties to the dispute.

Article 37
Access

The Chamber shall be open to the States Parties, the Authority and the other entities referred to in Part XI, section 5.

Article 38
Applicable law

In addition to the provisions of article 293, the Chamber shall apply:

(a) the rules, regulations and procedures of the Authority adopted in accordance with this Convention; and

(b) the terms of contracts concerning activities in the Area in matters relating to those contracts.

Article 39
Enforcement of decisions of the Chamber

The decisions of the Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought.

Article 40
Applicability of other sections of this Annex

(1) The other sections of this Annex which are not incompatible with this section apply to the Chamber.

(2) In the exercise of its functions relating to advisory opinions, the Chamber shall be guided by the provisions of this Annex relating to procedure before the Tribunal to the extent to which it recognizes them to be applicable.

SECTION 5. AMENDMENTS

Article 41
Amendments

(1) Amendments to this Annex, other than amendments to section 4, may be adopted only in accordance with article 313 or by consensus at a conference convened in accordance with this Convention.

(2) Amendments to section 4 may be adopted only in accordance with article 314.

(3) The Tribunal may propose such amendments to this Statute as it may consider necessary, by written communications to the States Parties for their consideration in conformity with paragraphs 1 and 2.

ANNEX VII.

ARBITRATION

Article 1 *Institution of proceedings*

Subject to the provisions of Part XV, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Article 2 *List of arbitrators*

- (1) A list of arbitrators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four arbitrators, each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list.
- (2) If at any time the arbitrators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary.
- (3) The name of an arbitrator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such arbitrator shall continue to serve on any arbitral tribunal to which that arbitrator has been appointed until the completion of the proceedings before that arbitral tribunal.

Article 3 *Constitution of arbitral tribunal*

For the purpose of proceedings under this Annex, the arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint one member to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national. The appointment shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint one member to be chosen preferably from the list, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointment be made in accordance with subparagraph (e).
- (d) The other three members shall be appointed by agreement between the parties. They shall be chosen preferably from the list and shall be nationals of third States unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 60 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 60-day period.
- (e) Unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments. If the President is unable to act under this subparagraph or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is

available and is not a national of one of the parties. The appointments referred to in this subparagraph shall be made from the list referred to in article 2 of this Annex within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.
- (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

*Article 4
Functions of arbitral tribunal*

An arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention.

*Article 5
Procedure*

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case.

*Article 6
Duties of parties to a dispute*

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

- (a) provide it with all relevant documents, facilities and information; and
- (b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

*Article 7
Expenses*

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

*Article 8
Required majority for decisions*

Decisions of the arbitral tribunal shall be taken by a majority vote of its members. The absence or abstention of less than half of the members shall not constitute a bar to the tribunal reaching a decision. In the event of an equality of votes, the President shall have a casting vote.

*Article 9
Default of appearance*

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

*Article 10
Award*

The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

*Article 11
Finality of award*

The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

*Article 12
Interpretation or implementation of award*

- (1) Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.
- (2) Any such controversy may be submitted to another court or tribunal under article 287 by agreement of all the parties to the dispute.

*Article 13
Application to entities other than States Parties*

The provisions of this Annex shall apply *mutatis mutandis* to any dispute involving entities other than States Parties.

ANNEX VIII.

SPECIAL ARBITRATION

Article 1 *Institution of proceedings*

Subject to Part XV, any party to a dispute concerning the interpretation or application of the articles of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may submit the dispute to the special arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Article 2 *Lists of experts*

- (1) A list of experts shall be established and maintained in respect of each of the fields of (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping.
- (2) The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the Intergovernmental Oceanographic Commission, in the field of navigation, including pollution from vessels and by dumping, by the International Maritime Organization, or in each case by the appropriate subsidiary body concerned to which such organization, programme or commission has delegated this function.
- (3) Every State Party shall be entitled to nominate two experts in each field whose competence in the legal, scientific or technical aspects of such field is established and generally recognized and who enjoy the highest reputation for fairness and integrity. The names of the persons so nominated in each field shall constitute the appropriate list.
- (4) If at any time the experts nominated by a State Party in the list so constituted shall be fewer than two, that State Party shall be entitled to make further nominations as necessary.
- (5) The name of an expert shall remain on the list until withdrawn by the State Party which made the nomination, provided that such expert shall continue to serve on any special arbitral tribunal to which that expert has been appointed until the completion of the proceedings before that special arbitral tribunal.

Article 3 *Constitution of special arbitral tribunal*

For the purpose of proceedings under this Annex, the special arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the special arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint two members to be chosen preferably from the appropriate list or lists referred to in article 2 of this Annex relating to the matters in dispute, one of whom may be its national. The appointments shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint two members to be chosen preferably from the appropriate list or lists relating to the matters in dispute, one of whom may be its national. If the appointments are not made within that period, the party instituting the proceedings may, within two weeks of

the expiration of that period, request that the appointments be made in accordance with subparagraph (e).

- (d) The parties to the dispute shall by agreement appoint the President of the special arbitral tribunal, chosen preferably from the appropriate list, who shall be a national of a third State, unless the parties otherwise agree. If, within 30 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of the President, the appointment shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 30-day period.
- (e) Unless the parties agree that the appointment be made by a person or a third State chosen by the parties, the Secretary-General of the United Nations shall make the necessary appointments within 30 days of receipt of a request under subparagraphs (c) and (d). The appointments referred to in this subparagraph shall be made from the appropriate list or lists of experts referred to in article 2 of this Annex and in consultation with the parties to the dispute and the appropriate international organization. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Parties in the same interest shall appoint two members of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal.
- (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

Article 4
General provisions

Annex VII, articles 4 to 13, apply *mutatis mutandis* to the special arbitration proceedings in accordance with this Annex.

Article 5
Fact finding

- (1) The parties to a dispute concerning the interpretation or application of the provisions of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may at any time agree to request a special arbitral tribunal constituted in accordance with article 3 of this Annex to carry out an inquiry and establish the facts giving rise to the dispute.
- (2) Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with paragraph 1, shall be considered as conclusive as between the parties.
- (3) If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute.
- (4) Subject to paragraph 2, the special arbitral tribunal shall act in accordance with the provisions of this Annex, unless the parties otherwise agree.

ANNEX IX.

PARTICIPATION BY INTERNATIONAL ORGANIZATIONS

Article 1 *Use of terms*

For the purposes of article 305 and of this Annex, “international organization” means an intergovernmental organization constituted by States to which its member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of those matters.

Article 2 *Signature*

An international organization may sign this Convention if a majority of its member States are signatories of this Convention. At the time of signature an international organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States which are signatories, and the nature and extent of that competence.

Article 3 *Formal confirmation and accession*

- (1) An international organization may deposit its instrument of formal confirmation or of accession if a majority of its member States deposit or have deposited their instruments of ratification or accession.
- (2) The instruments deposited by the international organization shall contain the undertakings and declarations required by articles 4 and 5 of this Annex.

Article 4 *Extent of participation and rights and obligations*

- (1) The instrument of formal confirmation or of accession of an international organization shall contain an undertaking to accept the rights and obligations of States under this Convention in respect of matters relating to which competence has been transferred to it by its member States which are Parties to this Convention.
- (2) An international organization shall be a Party to this Convention to the extent that it has competence in accordance with the declarations, communications of information or notifications referred to in article 5 of this Annex.
- (3) Such an international organization shall exercise the rights and perform the obligations which its member States which are Parties would otherwise have under this Convention, on matters relating to which competence has been transferred to it by those member States. The member States of that international organization shall not exercise competence which they have transferred to it.
- (4) Participation of such an international organization shall in no case entail an increase of the representation to which its member States which are States Parties would otherwise be entitled, including rights in decision-making.
- (5) Participation of such an international organization shall in no case confer any rights under this Convention on member States of the organization which are not States Parties to this Convention.
- (6) In the event of a conflict between the obligations of an international organization under this Convention and its obligations under the agreement establishing the organization or any acts relating to it, the obligations under this Convention shall prevail.

Article 5
Declarations, notifications and communications

- (1) The instrument of formal confirmation or of accession of an international organization shall contain a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to the organization by its member States which are Parties to this Convention.
- (2) A member State of an international organization shall, at the time it ratifies or accedes to this Convention or at the time when the organization deposits its instrument of formal confirmation or of accession, whichever is later, make a declaration specifying the matters governed by this Convention in respect of which it has transferred competence to the organization.
- (3) States Parties which are member States of an international organization which is a Party to this Convention shall be presumed to have competence over all matters governed by this Convention in respect of which transfers of competence to the organization have not been specifically declared, notified or communicated by those States under this article.
- (4) The international organization and its member States which are States Parties shall promptly notify the depositary of this Convention of any changes to the distribution of competence, including new transfers of competence, specified in the declarations under paragraphs 1 and 2.
- (5) Any State Party may request an international organization and its member States which are States Parties to provide information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. The organization and the member States concerned shall provide this information within a reasonable time. The international organization and the member States may also, on their own initiative, provide this information.
- (6) Declarations, notifications and communications of information under this article shall specify the nature and extent of the competence transferred.

Article 6
Responsibility and liability

- (1) Parties which have competence under article 5 of this Annex shall have responsibility for failure to comply with obligations or for any other violation of this Convention.
- (2) Any State Party may request an international organization or its member States which are States Parties for information as to who has responsibility in respect of any specific matter. The organization and the member States concerned shall provide this information. Failure to provide this information within a reasonable time or the provision of contradictory information shall result in joint and several liability.

Article 7
Settlement of disputes

- (1) At the time of deposit of its instrument of formal confirmation or of accession, or at any time thereafter, an international organization shall be free to choose, by means of a written declaration, one or more of the means for the settlement of disputes concerning the interpretation or application of this Convention, referred to in article 287, paragraph 1(a), (c) or (d).
- (2) Part XV applies *mutatis mutandis* to any dispute between Parties to this Convention, one or more of which are international organizations.
- (3) When an international organization and one or more of its member States are joint parties to a dispute, or parties in the same interest, the organization shall be deemed to have accepted the same procedures for the settlement of disputes as the member States; when, however, a member State has chosen only the International Court of Justice under article 287, the organization and the member State concerned shall be deemed to have accepted arbitration in accordance with Annex VII, unless the parties to the dispute otherwise agree.

Article 8
Applicability of Part XVII

Part XVII applies *mutatis mutandis* to an international organization, except in respect of the following:

- (a) the instrument of formal confirmation or of accession of an international organization shall not be taken into account in the application of article 308, paragraph 1;
- (b)
 - (i) an international organization shall have exclusive capacity with respect to the application of articles 312 to 315, to the extent that it has competence under article 5 of this Annex over the entire subject-matter of the amendment;
 - (ii) the instrument of formal confirmation or of accession of an international organization to an amendment, the entire subject-matter over which the international organization has competence under article 5 of this Annex, shall be considered to be the instrument of ratification or accession of each of the member States which are States Parties, for the purposes of applying article 316, paragraphs 1, 2 and 3;
 - (iii) the instrument of formal confirmation or of accession of the international organization shall not be taken into account in the application of article 316, paragraphs 1 and 2, with regard to all other amendments;
- (c)
 - (i) an international organization may not denounce this Convention in accordance with article 317 if any of its member States is a State Party and if it continues to fulfil the qualifications specified in article 1 of this Annex;
 - (ii) an international organization shall denounce this Convention when none of its member States is a State Party or if the international organization no longer fulfils the qualifications specified in article 1 of this Annex. Such denunciation shall take effect immediately.

FINAL ACT OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (EXCERPTS)

	<i>Page</i>
ANNEX I	166
RESOLUTION I	166
RESOLUTION II	167
RESOLUTION III	172
RESOLUTION IV	173
ANNEX II	
STATEMENT OF UNDERSTANDING CONCERNING A SPECIFIC METHOD TO BE USED IN ESTABLISHING THE OUTER EDGE OF THE CONTINENTAL MARGIN	174
ANNEX VI	
RESOLUTION ON DEVELOPMENT OF NATIONAL MARINE SCIENCE, TECHNOLOGY AND OCEAN SERVICE INFRASTRUCTURES	175

ANNEX I

RESOLUTION I

ESTABLISHMENT OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The Third United Nations Conference on the Law of the Sea,

Having adopted the Convention on the Law of the Sea which provides for the establishment of the International Seabed Authority and the International Tribunal for the Law of the Sea,

Having decided to take all possible measures to ensure the entry into effective operation without undue delay of the Authority and the Tribunal and to make the necessary arrangements for the commencement of their functions,

Having decided that a Preparatory Commission should be established for the fulfilment of these purposes,

Decides as follows:

- (1) There is hereby established the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. Upon signature of or accession to the Convention by 50 States, the Secretary-General of the United Nations shall convene the Commission, and it shall meet no sooner than 60 days and no later than 90 days thereafter.
- (2) The Commission shall consist of the representatives of States and of Namibia, represented by the United Nations Council for Namibia, which have signed the Convention or acceded to it. The representatives of signatories of the Final Act may participate fully in the deliberations of the Commission as observers but shall not be entitled to participate in the taking of decisions.
- (3) The Commission shall elect its Chairman and other officers.
- (4) The Rules of Procedure of the Third United Nations Conference on the Law of the Sea shall apply *mutatis mutandis* to the adoption of the rules of procedure of the Commission.
- (5) The Commission shall:
 - (a) prepare the provisional agenda for the first session of the Assembly and of the Council and, as appropriate, make recommendations relating to items thereon;
 - (b) prepare draft rules of procedure of the Assembly and of the Council;
 - (c) make recommendations concerning the budget for the first financial period of the Authority;
 - (d) make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;
 - (e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;
 - (f) undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;
 - (g) prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority;
 - (h) exercise the powers and functions assigned to it by resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment;
 - (i) undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the

Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the Authority thereon.

- (6) The Commission shall have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as set forth in this resolution.
- (7) The Commission may establish such subsidiary bodies as are necessary for the exercise of its functions and shall determine their functions and rules of procedure. It may also make use, as appropriate, of outside sources of expertise in accordance with United Nations practice to facilitate the work of bodies so established.
- (8) The Commission shall establish a special commission for the Enterprise and entrust to it the functions referred to in paragraph 12 of resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment. The special commission shall take all measures necessary for the early entry into effective operation of the Enterprise.
- (9) The Commission shall establish a special commission on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area and entrust to it the functions referred to in paragraph 5(i).
- (10) The Commission shall prepare a report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.
- (11) The Commission shall prepare a final report on all matters within its mandate, except as provided in paragraph 10, for the presentation to the Assembly at its first session. Any action which may be taken on the basis of the report must be in conformity with the provisions of the Convention concerning the powers and functions entrusted to the respective organs of the Authority.
- (12) The Commission shall meet at the seat of the Authority if facilities are available; it shall meet as often as necessary for the expeditious exercise of its functions.
- (13) The Commission shall remain in existence until the conclusion of the first session of the Assembly, at which time its property and records shall be transferred to the Authority.
- (14) The expenses of the Commission shall be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.
- (15) The Secretary-General of the United Nations shall make available to the Commission such secretariat services as may be required.
- (16) The Secretary-General of the United Nations shall bring this resolution, in particular paragraphs 14 and 15, to the attention of the General Assembly for necessary action.

RESOLUTION II

GOVERNING PREPARATORY INVESTMENT IN PIONEER ACTIVITIES RELATING TO POLYMETALLIC NODULES

The Third United Nations Conference on the Law of the Sea,

Having adopted the Convention on the Law of the Sea (the “Convention”),

Having established by resolution I the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (the “Commission”) and directed it to prepare draft rules, regulations and procedures, as necessary to enable the Authority to commence its functions, as well as to make recommendations for the early entry into effective operation of the Enterprise,

Desirous of making provision for investments by States and other entities made in a manner compatible with the international regime set forth in Part XI of the Convention and the Annexes relating thereto, before the entry into force of the Convention,

Recognizing the need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with the States and other entities referred to in the preceding paragraph with respect to activities in the Area,

Decides as follows:

(1) For the purposes of this resolution:

(a) "pioneer investor" refers to:

- (i) France, India, Japan and the Union of Soviet Socialist Republics, or a state enterprise of each of those States or one natural or juridical person which possesses the nationality of or is effectively controlled by each of those States, or their nationals, provided that the State concerned signs the Convention and the State or state enterprise or natural or juridical person has expended, before 1 January 1983, an amount equivalent to at least \$US 30 million (United States dollars calculated in constant dollars relative to 1982) in pioneer activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in paragraph 3(a);
- (ii) four entities, whose components being natural or juridical persons¹ possess the nationality of one or more of the following States, or are effectively controlled by one or more of them or their nationals: Belgium, Canada, the Federal Republic of Germany, Italy, Japan, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, provided that the certifying State or States sign the Convention and the entity concerned has expended, before 1 January 1983, the levels of expenditure for the purpose stated in subparagraph (i);
- (iii) any developing State which signs the Convention or any state enterprise or natural or juridical person which possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing, which, before 1 January 1985, has expended the levels of expenditure for the purpose stated in subparagraph (i);

The rights of the pioneer investor may devolve upon its successor in interest.

- (b) "pioneer activities" means undertakings, commitments of financial and other assets, investigations, findings, research, engineering development and other activities relevant to the identification, discovery, and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation. Pioneer activities include:
 - (i) any at-sea observation and evaluation activity which has as its objective the establishment and documentation of the nature, shape, concentration, location and grade of polymetallic nodules and of the environmental, technical and other appropriate factors which must be taken into account before exploitation;
 - (ii) the recovery from the Area of polymetallic nodules with a view to the designing, fabricating and testing of equipment which is intended to be used in the exploitation of polymetallic nodules;
- (c) "certifying State" means a State which signs the Convention, standing in the same relation to a pioneer investor as would a sponsoring State pursuant to Annex III, article 4, of the Convention and which certifies the levels of expenditure specified in subparagraph (a);
- (d) "polymetallic nodules" means one of the resources of the Area consisting of any deposit or accretion of nodules, on or just below the surface of the deep seabed, which contain manganese, nickel, cobalt and copper;
- (e) "pioneer area" means an area allocated by the Commission to a pioneer investor for pioneer activities pursuant to this resolution. A pioneer area shall not exceed 150,000 square kilometres.

¹ For their identity and composition see "Seabed mineral resource development: recent activities of the international Consortia" and addendum, published by the Department of International Economic and Social Affairs of the United Nations (ST/ESA/107 and Add.1).

The pioneer investor shall relinquish portions of the pioneer area to revert to the Area, in accordance with the following schedule:

- (i) 20 per cent of the area allocated by the end of the third year from the date of the allocation;
- (ii) an additional 10 per cent of the area allocated by the end of the fifth year from the date of the allocation;
- (iii) an additional 20 per cent of the area allocated or such larger amount as would exceed the exploitation area decided upon by the Authority in its rules, regulations and procedures, after eight years from the date of the allocation of the area or the date of the award of a production authorization, whichever is earlier;

(f) "Area", "Authority", "activities in the Area" and "resources" have the meanings assigned to those terms in the Convention.

(2) As soon as the Commission begins to function, any State which has signed the Convention may apply to the Commission on its behalf or on behalf of any state enterprise or entity or natural or juridical person specified in paragraph 1(a) for registration as a pioneer investor. The Commission shall register the applicant as a pioneer investor if the application:

- (a) is accompanied, in the case of a State which has signed the Convention, by a statement certifying the level of expenditure made in accordance with paragraph 1(a), and, in all other cases, a certificate concerning such level of expenditure issued by a certifying State or States; and
- (b) is in conformity with the other provisions of this resolution, including paragraph 5.

(3)

- (a) Every application shall cover a total area which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The application shall indicate the coordinates of the area defining the total area and dividing it into two parts of equal estimated commercial value and shall contain all the data available to the applicant with respect to both parts of the area. Such data shall include, *inter alia*, information relating to mapping, testing, the density of polymetallic nodules and their metal content. In dealing with such data, the Commission and its staff shall act in accordance with the relevant provisions of the Convention and its Annexes concerning the confidentiality of data.
- (b) Within 45 days of receiving the data required by subparagraph (a), the Commission shall designate the part of the area which is to be reserved in accordance with the Convention for the conduct of activities in the Area by the Authority through the Enterprise or in association with developing States. The other part of the area shall be allocated to the pioneer investor as a pioneer area.

(4) No pioneer investor may be registered in respect of more than one pioneer area. In the case of a pioneer investor which is made up of two or more components, none of such components may apply to be registered as a pioneer investor in its own right or under paragraph 1(a)(iii).

(5)

- (a) (a) Any State which has signed the Convention and which is a prospective certifying State shall ensure, before making applications to the Commission under paragraph 2, that areas in respect of which applications are made do not overlap one another or areas previously allocated as pioneer areas. The States concerned shall keep the Commission currently and fully informed of any efforts to resolve conflicts with respect to overlapping claims and of the results thereof.
- (b) Certifying States shall ensure, before the entry into force of the Convention, that pioneer activities are conducted in a manner compatible with it.
- (c) The prospective certifying States, including all potential claimants, shall resolve their conflicts as required under subparagraph (a) by negotiations within a reasonable period. If such conflicts have not been resolved by 1 March 1983, the prospective certifying States shall arrange for the submission of all such claims to binding arbitration in accordance with UNCITRAL Arbitration Rules to commence not later than 1 May 1983 and to be completed by 1 December 1984. If one of the States concerned does not wish to participate in the arbitration, it shall arrange for

a juridical person of its nationality to represent it in the arbitration. The arbitral tribunal may, for good cause, extend the deadline for the making of the award for one or more 30-day periods.

- (d) In determining the issue as to which applicant involved in a conflict shall be awarded all or part of each area in conflict, the arbitral tribunal shall find a solution which is fair and equitable, having regard, with respect to each applicant involved in the conflict, to the following factors:
 - (i) the deposit of the list of relevant coordinates with the prospective certifying State or States not later than the date of adoption of the Final Act or 1 January 1983, whichever is earlier;
 - (ii) the continuity and extent of past activities relevant to each area in conflict and to the application area of which it is a part;
 - (iii) the date on which each pioneer investor concerned or predecessor in interest or component organization thereof commenced activities at sea in the application area;
 - (iv) the financial cost of activities measured in constant United States dollars relevant to each area in conflict and to the application area of which it is a part; and
 - (v) the time when those activities were carried out and the quality of activities.
- (6) A pioneer investor registered pursuant to this resolution shall, from the date of registration, have the exclusive right to carry out pioneer activities in the pioneer area allocated to it.
- (7)
 - (a) Every applicant for registration as a pioneer investor shall pay to the Commission a fee of \$US 250,000. When the pioneer investor applies to the Authority for a plan of work for exploration and exploitation the fee referred to in Annex III, article 13, paragraph 2, of the Convention shall be \$US 250,000.
 - (b) Every registered pioneer investor shall pay an annual fixed fee of \$US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon the approval of its plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of the payments made pursuant to this paragraph.
 - (c) Every registered pioneer investor shall agree to incur periodic expenditures, with respect to the pioneer area allocated to it, until approval of its plan of work pursuant to paragraph 8, of an amount to be determined by the Commission. The amount should be reasonably related to the size of the pioneer area and the expenditures which would be expected of a *bona fide* operator who intends to bring that area into commercial production within a reasonable time.
- (8)
 - (a) Within six months of the entry into force of the Convention and certification by the Commission in accordance with paragraph 11, of compliance with this resolution, the pioneer investor so registered shall apply to the Authority for approval of a plan of work for exploration and exploitation, in accordance with the Convention. The plan of work in respect of such application shall comply with and be governed by the relevant provisions of the Convention and the rules, regulations and procedures of the Authority, including those on the operational requirements, the financial requirements and the undertakings concerning the transfer of technology. Accordingly, the Authority shall approve such application.
 - (b) When an application for approval of a plan of work is submitted by an entity other than a State, pursuant to subparagraph (a), the certifying State or States shall be deemed to be the sponsoring State for the purposes of Annex III, article 4, of the Convention, and shall thereupon assume such obligations.
 - (c) No plan of work for exploration and exploitation shall be approved unless the certifying State is a Party to the Convention. In the case of the entities referred to in paragraph 1(a)(ii), the plan of work for exploration and exploitation shall not be approved unless all the States whose natural or juridical persons comprise those entities are Parties to the Convention. If any such State fails to ratify the Convention within six months after it has received a notification from the Authority that an application by it, or sponsored by it, is pending, its status as a pioneer in-

vestor or certifying State, as the case may be, shall terminate, unless the Council, by a majority of three fourths of its members present and voting, decides to postpone the terminal date for a period not exceeding six months.

(9)

- (a) In the allocation of production authorizations, in accordance with article 151 and Annex III, article 7, of the Convention, the pioneer investors who have obtained approval of plans of work for exploration and exploitation shall have priority over all applicants other than the Enterprise which shall be entitled to production authorizations for two mine sites including that referred to in article 151, paragraph 5, of the Convention. After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in Annex III, article 7, paragraph 6, of the Convention shall apply.
- (b) Production authorizations shall be issued to each pioneer investor within 30 days of the date on which that pioneer investor notifies the Authority that it will commence commercial production within five years. If a pioneer investor is unable to begin production within the period of five years for reasons beyond its control, it shall apply to the Legal and Technical Commission for an extension of time. That Commission shall grant the extension of time, for a period not exceeding five years and not subject to further extension, if it is satisfied that the pioneer investor cannot begin on an economically viable basis at the time originally planned. Nothing in this subparagraph shall prevent the Enterprise or any other pioneer applicant, who has notified the Authority that it will commence commercial production within five years, from being given a priority over any applicant who has obtained an extension of time under this subparagraph.
- (c) If the Authority, upon being given notice, pursuant to subparagraph (b), determines that the commencement of commercial production within five years would exceed the production ceiling in article 151, paragraphs 2 to 7, of the Convention, the applicant shall hold a priority over any other applicant for the award of the next production authorization allowed by the production ceiling.
- (d) If two or more pioneer investors apply for production authorizations to begin commercial production at the same time and article 151, paragraphs 2 to 7, of the Convention, would not permit all such production to commence simultaneously, the Authority shall notify the pioneer investors concerned. Within three months of such notification, they shall decide whether and, if so, to what extent they wish to apportion the allowable tonnage among themselves.
- (e) If, pursuant to subparagraph (d), the pioneer investors concerned decide not to apportion the available production among themselves they shall agree on an order of priority for production authorizations and all subsequent applications for production authorizations will be granted after those referred to in this subparagraph have been approved.
- (f) If, pursuant to subparagraph (d), the pioneer investors concerned decide to apportion the available production among themselves, the Authority shall award each of them a production authorization for such lesser quantity as they have agreed. In each case the stated production requirements of the applicant will be approved and their full production will be allowed as soon as the production ceiling admits of additional capacity sufficient for the applicants involved in the competition. All subsequent applications for production authorizations will only be granted after the requirements of this subparagraph have been met and the applicant is no longer subject to the reduction of production provided for in this subparagraph.
- (g) If the parties fail to reach agreement within the stated time period, the matter shall be decided immediately by the means provided for in paragraph 5(c) in accordance with the criteria set forth in Annex III, article 7, paragraphs 3 and 5, of the Convention.

(10)

- (a) Any rights acquired by entities or natural or juridical persons which possess the nationality of or are effectively controlled by a State or States whose status as certifying State has been terminated, shall lapse unless the pioneer investor changes its nationality and sponsorship within six months of the date of such termination, as provided for in subparagraph (b).

- (b) A pioneer investor may change its nationality and sponsorship from that existing at the time of its registration as a pioneer investor to that of any State Party to the Convention which has effective control over the pioneer investor in terms of paragraph 1(a).
- (c) Changes of nationality and sponsorship pursuant to this paragraph shall not affect any right or priority conferred on a pioneer investor pursuant to paragraphs 6 and 8.
- (11) The Commission shall:
 - (a) provide each pioneer investor with the certificate of compliance with the provisions of this resolution referred to in paragraph 8; and
 - (b) include in its final report required by paragraph 11 of resolution I of the Conference details of all registrations of pioneer investors and allocations of pioneer areas pursuant to this resolution.
- (12) In order to ensure that the Enterprise is able to carry out activities in the Area in such a manner as to keep pace with States and other entities:
 - (a) every registered pioneer investor shall:
 - (i) carry out exploration, at the request of the Commission, in the area reserved, pursuant to paragraph 3 in connection with its application, for activities in the Area by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;
 - (ii) provide training at all levels for personnel designated by the Commission;
 - (iii) undertake before the entry into force of the Convention, to perform the obligations prescribed in the Convention relating to transfer of technology;
 - (b) every certifying State shall:
 - (i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the Convention, upon its entry into force; and
 - (ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons.
- (13) The Authority and its organs shall recognize and honour the rights and obligations arising from this resolution and the decisions of the Commission taken pursuant to it.
- (14) Without prejudice to paragraph 13, this resolution shall have effect until the entry into force of the Convention.
- (15) Nothing in this resolution shall derogate from Annex III, article 6, paragraph 3(c), of the Convention.

RESOLUTION III

The Third United Nations Conference on the Law of the Sea, Having regard to the Convention on the Law of the Sea,

Bearing in mind the Charter of the United Nations, in particular Article 73,

- (1) *Declares that:*
 - (a) In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development.
 - (b) Where a dispute exists between States over the sovereignty of a territory to which this resolution applies, in respect of which the United Nations has recommended specific means of settlement, there shall be consultations between the parties to that dispute regarding the exercise of the rights referred to in subparagraph (a). In such consultations the interests of the people of the territory concerned shall be a fundamental consideration. Any exercise of those rights shall take into account the relevant resolutions of the United Nations and shall be without prejudice to the position of any party to the dispute. The States concerned shall make every effort to enter into

provisional arrangements of a practical nature and shall not jeopardize or hamper the reaching of a final settlement of the dispute.

(2) *Requests* the Secretary-General of the United Nations to bring this resolution to the attention of all Members of the United Nations and the other participants in the Conference, as well as the principal organs of the United Nations, and to request their compliance with it.

RESOLUTION IV

The Third United Nations Conference on the Law of the Sea,

Bearing in mind that national liberation movements have been invited to participate in the Conference as observers in accordance with rule 62 of its rules of procedure,

Decides that the national liberation movements, which have been participating in the Third United Nations Conference on the Law of the Sea, shall be entitled to sign the Final Act of the Conference, in their capacity as observers.

ANNEX II

STATEMENT OF UNDERSTANDING CONCERNING A SPECIFIC METHOD TO BE USED IN ESTABLISHING THE OUTER EDGE OF THE CONTINENTAL MARGIN

The Third United Nations Conference on the Law of the Sea,

Considering the special characteristics of a State's continental margin where: (1) the average distance at which the 200 metre isobath occurs is not more than 20 nautical miles; (2) the greater proportion of the sedimentary rock of the continental margin lies beneath the rise; and

Taking into account the inequity that would result to that State from the application to its continental margin of article 76 of the Convention, in that, the mathematical average of the thickness of sedimentary rock along a line established at the maximum distance permissible in accordance with the provisions of paragraph 4(a)(i) and (ii) of that article as representing the entire outer edge of the continental margin would not be less than 3.5 kilometres; and that more than half of the margin would be excluded thereby;

Recognizes that such State may, notwithstanding the provisions of article 76, establish the outer edge of its continental margin by straight lines not exceeding 60 nautical miles in length connecting fixed points, defined by latitude and longitude, at each of which the thickness of sedimentary rock is not less than 1 kilometre,

Where a State establishes the outer edge of its continental margin by applying the method set forth in the preceding paragraph of this statement, this method may also be utilized by a neighbouring State for delineating the outer edge of its continental margin on a common geological feature, where its outer edge would lie on such feature on a line established at the maximum distance permissible in accordance with article 76, paragraph 4(a)(i) and (ii), along which the mathematical average of the thickness of sedimentary rock is not less than 3.5 kilometres,

The Conference requests the Commission on the Limits of the Continental Shelf set up pursuant to Annex II of the Convention, to be governed by the terms of this Statement when making its recommendations on matters related to the establishment of the outer edge of the continental margins of these States in the southern part of the Bay of Bengal.

ANNEX VI

RESOLUTION ON DEVELOPMENT OF NATIONAL MARINE SCIENCE, TECHNOLOGY AND OCEAN SERVICE INFRASTRUCTURES

The Third United Nations Conference on the Law of the Sea,

Recognizing that the Convention on the Law of the Sea is intended to establish a new regime for the seas and oceans which will contribute to the realization of a just and equitable international economic order through making provision for the peaceful use of ocean space, the equitable and efficient management and utilization of its resources, and the study, protection and preservation of the marine environment,

Bearing in mind that the new regime must take into account, in particular, the special needs and interests of the developing countries, whether coastal, land-locked, or geographically disadvantaged,

Aware of the rapid advances being made in the field of marine science and technology, and the need for the developing countries, whether coastal, land-locked, or geographically disadvantaged, to share in these achievements if the aforementioned goals are to be met,

Convinced that, unless urgent measures are taken, the marine scientific and technological gap between the developed and the developing countries will widen further and thus endanger the very foundations of the new regime, *Believing* that optimum utilization of the new opportunities for social and economic development offered by the new regime will be facilitated through action at the national and international level aimed at strengthening national capabilities in marine science, technology and ocean services, particularly in the developing countries, with a view to ensuring the rapid absorption and efficient application of technology and scientific knowledge available to them,

Considering that national and regional marine scientific and technological centres would be the principal institutions through which States and, in particular, the developing countries, foster and conduct marine scientific research, and receive and disseminate marine technology,

Recognizing the special role of the competent international organizations envisaged by the Convention on the Law of the Sea, especially in relation to the establishment and development of national and regional marine scientific and technological centres,

Noting that present efforts undertaken within the United Nations system in training, education and assistance in the field of marine science and technology and ocean services are far below current requirements and would be particularly inadequate to meet the demands generated through operation of the Convention on the Law of the Sea,

Welcoming recent initiatives within international organizations to promote and coordinate their major international assistance programmes aimed at strengthening marine science infrastructures in developing countries,

- (1) *Calls upon* all Member States to determine appropriate priorities in their development plans for the strengthening of their marine science, technology and ocean services;
- (2) *Calls upon* the developing countries to establish programmes for the promotion of technical cooperation among themselves in the field of marine science, technology and ocean service development;
- (3) *Urges* the industrialized countries to assist the developing countries in the preparation and implementation of their marine science, technology and ocean service development programmes;
- (4) *Recommends* that the World Bank, the regional banks, the United Nations Development Programme, the United Nations Financing System for Science and Technology and other multilateral funding agencies augment and coordinate their operations for the provision of funds to developing countries for the preparation and implementation of major programmes of assistance in strengthening their marine science, technology and ocean services;
- (5) *Recommends* that all competent international organizations within the United Nations system expand programmes within their respective fields of competence for assistance to developing countries in the

field of marine science, technology and ocean services and coordinate their efforts on a system-wide basis in the implementation of such programmes, paying particular attention to the special needs of the developing countries, whether coastal, land-locked or geographically disadvantaged;

- (6) *Requests the Secretary-General of the United Nations to transmit this resolution to the General Assembly at its thirty-seventh session.*

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

INTRODUCTION

In July 1990 the Secretary-General of the United Nations, Mr. Javier Pérez de Cuéllar, took the initiative to convene informal consultations aimed at achieving universal participation in the United Nations Convention on the Law of the Sea.

The Secretary-General stressed the importance of securing general acceptance of the United Nations Convention on the Law of the Sea, an instrument which represented many years of negotiations and which had already made a significant contribution to the international legal maritime order. He pointed out that though he would continue to encourage all States which had not done so to ratify or accede to the Convention, it had to be acknowledged that there were problems with some aspects of the deep seabed mining provisions of the Convention which had prevented some States from ratifying or acceding to the Convention.

He noted that in the eight years that had elapsed since the Convention was adopted certain significant political and economic changes had occurred which had had a marked effect on the regime for deep seabed mining contained in the Convention. Prospects for the commercial mining of deep seabed minerals had receded into the next century, which was not what had been envisaged during the negotiations at the Third United Nations Conference on the Law of the Sea. The general economic climate had been transformed as a result of the changing perception with respect to the roles of the public and private sectors. There was a discernible shift towards a more market-oriented economy. In addition, the Secretary General made mention of the emergence of a new spirit of international cooperation in resolving outstanding problems of regional and global concern. These factors were to be taken into account in considering the problems with respect to deep seabed mining.

Thus began a series of informal consultations under the aegis of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea.

These informal consultations took place in the years 1990 to 1994, during which 15 meetings were convened. They can be conveniently divided into two phases. The first phase was devoted to the identification of issues of concern to some States, the approach to be taken in examining them and the search for solutions. During the second phase, more precision was given to the results reached so far; additional points were raised for consideration and participants directed their attention to an examination of consolidated texts embodying these solutions and on the procedure whereby they might be adopted.

The first phase

During the initial part of this phase the consultations identified nine issues as representing areas of difficulty: costs to States Parties; the Enterprise; decision-making; the Review Conference; transfer of technology; production limitation; compensation fund; financial terms of contract; and environmental considerations. Following an examination of the various approaches that might be taken in the examination of these issues, there was general agreement on an approach which enabled participants to examine all the outstanding issues with a view to resolving them and to decide how to deal with those that might remain unresolved.

Participants then began to review all of these issues *seriatim*. This review was based on information notes compiled by the Secretariat containing background information, questions that needed to be addressed and possible approaches for the resolution of these issues.

In the course of six informal consultations held during the years 1990 and 1991, participants completed the consideration of all the outstanding issues relating to the deep seabed mining provisions of the Convention. It can fairly be said that a certain measure of general agreement was emerging on these issues.

The results of the Secretary-General's informal consultations held in 1990 and 1991 were set out in the summary of informal consultations conducted by the Secretary-General on the law of the sea during 1990 and 1991, dated 31 January 1992, and in an information note dated 26 May 1992. These results fell under two categories. First, general agreement seemed to have been reached on relatively detailed solutions on: costs to States Parties, the Enterprise, decision-making, Review Conference and transfer of technology. Secondly, with respect to production limitation, the compensation fund and financial terms of contract, it was generally agreed that it was neither necessary nor prudent to formulate a new set of detailed rules for these items. Accordingly, for those items the information note set out general principles to be applied when commercial production of deep seabed minerals was imminent.

The second phase

In 1992, the new Secretary-General, Mr. Boutros Boutros-Ghali, continued the informal consultations initiated by his predecessor. During this phase the consultations were open to all delegations. Some 75 to 90 delegations attended these meetings. In the first three rounds of this phase, consideration was given to all nine issues in order to give more precision to the results reached so far in the consultations. Additional points were submitted for consideration on the following issues: costs to States Parties; the Enterprise; decision-making; Review Conference; and transfer of technology. During these consultations it was decided to remove the issue of environmental considerations from the list of issues, since it was no longer considered to be a controversial issue in the context of deep seabed mining.

At the informal consultations held on 28 and 29 January 1993, it was generally felt among participants that the stage had been reached where a text based on a more operational approach should be prepared in a form which could be the basis of an agreement.

In accordance with that request, an information note dated 8 April 1993 was prepared. This information note contained two parts:

- (a) Part A dealt with various procedural approaches with respect to the use to be made of the results of the consultations. The four approaches could be summarized as follows:
 - (i) A contractual instrument such as a protocol amending the Convention;
 - (ii) An interpretative agreement consisting of understandings on the interpretation and application of the Convention;
 - (iii) An interpretative agreement on the establishment of an initial Authority and an initial Enterprise during an interim regime accompanied by a procedural arrangement for the convening of a conference to establish the definitive regime for the commercial production of deep seabed minerals when such production became feasible;
 - (iv) An agreement additional to the Convention providing for the transition between the initial phase and the definitive regime; in particular, the Authority would be mandated to develop solutions for issues still outstanding on the entry into force of the Convention;
- (b) Part B set out an operationally directed formulation of the results reached so far in the consultations. It was divided into two sections:
 - (i) Arrangements following the entry into force of the Convention;
 - (ii) Draft texts concerning the definitive deep seabed mining regime.

The procedural approaches were reviewed during consultations held on 27 and 28 April 1993. Certain basic elements emerged from the review of these approaches. It was generally agreed that, whatever approach might be adopted, it must be of a legally binding nature. It was also pointed out that a duality of regimes must be avoided. Finally, as the position of States which had ratified or acceded to the Convention must be respected, it was considered useful to examine the role that the notion of implied or tacit consent might play in protecting their positions.

For the next round of consultations, held from 2 to 6 August 1993, an information note dated 4 June 1993 was circulated which updated parts A and B (i) of the information note of 8 April 1993 to reflect the observations made during the previous round of consultations. During the course of this round of consultations a paper dated 3 August 1993 prepared by representatives of several developed and developing

States was circulated among delegations as a contribution to the process of the consultations. It was understood that the paper, which was commonly known as the "boat paper", did not necessarily reflect the position of any of the delegations involved, but was considered to provide a useful basis for negotiation.

Thereafter, while addressing the substantive issues contained in the information note dated 4 June 1993, delegations also made cross-references to the relevant portions of the "boat paper". That paper was divided into three parts: (i) a draft resolution for adoption by the General Assembly; (ii) a draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea; and (iii) two annexes. Annex I contained the agreed conclusions of the Secretary-General's consultations and annex II was entitled "Consequential adjustments".

At the last round of consultations held in 1993 (812 November), participants had before them three documents: the information note dated 4 June 1993; a new version of the "boat paper" consolidating the two annexes to the original paper into one; and a paper entitled "Agreement on the Implementation of Part XI and Annexes III and IV of the United Nations Convention on the Law of the Sea", submitted by the delegation of Sierra Leone. At this November meeting participants completed the review of all the items contained in the information note dated 4 June 1993. After having completed consideration of those issues, delegations embarked upon a renewed examination of the issue of "Costs to States parties and institutional arrangements", but this time based essentially on the "boat paper".

On 16 November 1993, the Convention on the Law of the Sea received its sixtieth instrument of ratification or accession, which meant that, in accordance with its terms (article 308), it would enter into force on 16 November 1994. The General Assembly itself invited all States to participate in the consultations and to increase efforts to achieve universal participation in the Convention as early as possible (General Assembly resolution 48/28). The imminent entry into force of the Convention introduced a sense of urgency to the informal consultations.

During the first round held in 1994 (31 January-4 February), the consultations examined a revised version of the "boat paper", dated November 1993. This revision took into account the discussions which had taken place during the Secretary-General's informal consultations held in November 1993. The work of the current round of consultations focused on some crucial issues:

- (a) Decision-making, in particular the question of the relationship between the Authority and the Council, and the question as to which group of States in the Council should be considered chambers for the purposes of decision-making in the Council;
- (b) Whether the administrative expenses of the Authority should be met by assessed contributions of its members, including the provisional members of the Authority, or through the budget of the United Nations;
- (c) The issue of provisional application of the Agreement and of provisional membership in the Authority.

During this round of consultations progress was made on the latter two issues. A revised version of the document submitted by the delegation of Sierra Leone was submitted to this round of consultations.

The second round of the Secretary-General's informal consultations in 1994 was held from 4 to 8 April. The meeting had before it a further updated version of the "boat paper" entitled "Draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea", dated 14 February 1994.

Participants undertook an article-by-article review of the draft Agreement. Attention was then focused on the two most important issues facing the consultations: decision-making in the Council, and the Enterprise. These issues, which lay at the heart of the consultations, proved most difficult to resolve. From the outset of the consultations it was evident that these issues could only be resolved in the final stages of the process, when a clearer picture of the results of the consultations had emerged. With respect to decision-making, the debate was directed at the system of chambered voting, in particular whether the categories or groups of States, mainly developing States, should be treated as chambers for the purposes of decision-making in the Council. The discussion on the Enterprise centred on the type of mechanism which would trigger the commencement of its operations as well as its functions.

Revisions were made to the draft Agreement in the light of the debates on the various issues. This in fact was a unique feature of this round of consultations, reflecting the urgency of the situation. The revisions related to provisional application of the Agreement; provisional membership in the Authority; the treatment of the registered pioneer investors; and production policy.

Based on these revisions, the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea were revised in their entirety and a revised text was issued on 8 April 1994, the last day of the meeting.

During this round of consultations, according to many delegations, significant progress was achieved. It appeared that solutions were found to several important issues, including decision-making, the Enterprise and the treatment of the registered pioneer investors. However, some issues remained unresolved.

The last meeting of the Secretary-General's consultations was held from 31 May to 3 June 1994. The primary purpose of this final round was the harmonization of the text in the various language versions of the draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea. The meeting had before it the draft resolution and draft Agreement dated 15 April 1994 which had been revised on the basis of discussions in the previous round of consultations and a corrigendum to the document dated 23 May 1994. Two documents (SG/LOS/CRP.1 and SG/LOS/CRP.2), containing suggested amendments of a drafting nature prepared by the Secretariat, were also submitted to the meeting in order to facilitate the process of harmonizing the language versions of the text.

The first part of the meeting addressed the substantive issues that were still pending, and solutions were found for some of those issues. Delegations, however, continued their search for solutions on matters relating, *inter alia*, to the treatment of the registered pioneer investors and the issue of representation in the Council. The second part of the meeting was devoted to the task of harmonizing the language versions of the draft resolution and draft Agreement. The final part dealt with the decisions to be taken with regard to the convening of a resumed forty-eighth session of the General Assembly to adopt the draft resolution and draft Agreement.

At the close of the meeting, delegations were presented with a revised text (SG/LOS/CRP.1/Rev.1), dated 3 June 1994. That document elicited a few drafting comments which were reflected in the text of the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, contained in annex I to the report of the Secretary-General (A/48/950). A proposed solution to the question of the issue of representation in the Council was the informal understanding contained in annex II to that report.

At the conclusion of the informal consultations the delegation of the Russian Federation made a statement reserving its position in view of the fact that a number of proposals it had made had not been reflected in the draft Agreement. In reply, it was pointed out that all proposals made by delegations or groups had been thoroughly examined without exception but that it had not been possible to accept every one of them.

The consultations then indicated that Member States wished to convene a resumed forty-eighth session of the General Assembly of the United Nations from 27 to 29 July 1994, for adoption of the resolution. They further wished that, after the adoption of the resolution, the Agreement would be immediately opened for signature.

The Secretary-General recalled, in presenting his report to the General Assembly (A/48/950), that the objective of the consultations had been to achieve wider participation in the Convention from the major industrialized States in order to reach the goal of universality. Accordingly, he reported with satisfaction to the Assembly that those consultations, initiated by his predecessor and continued under his auspices, had led to a result which could form the basis of a general agreement on the issues that had been the subject of the consultations. In the light of the outcome, the Secretary-General considered that he had fulfilled his mandate.

**AGREEMENT RELATING TO THE
IMPLEMENTATION OF PART XI OF THE UNITED
NATIONS CONVENTION ON THE LAW OF THE
SEA OF 10 DECEMBER 1982**

CONTENTS

	<i>Page</i>
PREAMBLE	182
Article 1 Implementation of Part XI	182
Article 2 Relationship between this Agreement and Part XI	182
Article 3 Signature	182
Article 4 Consent to be bound	182
Article 5 Simplified procedure	183
Article 6 Entry into force	183
Article 7 Provisional application	183
Article 8 States Parties	184
Article 9 Depositary	184
Article 10 Authentic texts	184
ANNEX	185
Section 1. Costs to states parties and institutional arrangements	185
Section 2. The enterprise	189
Section 3. Decision-making	190
Section 4. Review conference	191
Section 5. Transfer of technology	191
Section 6. Production policy	192
Section 7. Economic assistance	193
Section 8. Financial terms of contracts	193
Section 9. The finance committee	194

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Convention") to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as "the Area"), as well as the resources of the Area, are the common heritage of mankind,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (hereinafter referred to as "Part XI"),

Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1 Implementation of Part XI

- (1) The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.
- (2) The Annex forms an integral part of this Agreement.

Article 2 Relationship between this Agreement and Part XI

- (1) The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.
- (2) Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3 Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1(a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4 Consent to be bound

- (1) After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

- (2) No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.
- (3) A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:
 - (a) Signature not subject to ratification, formal confirmation or the procedure set out in article 5;
 - (b) Signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;
 - (c) Signature subject to the procedure set out in article 5; or
 - (d) Accession.
- (4) Formal confirmation by the entities referred to in article 305, paragraph 1(f), of the Convention shall be in accordance with Annex IX of the Convention.
- (5) The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

*Article 5
Simplified procedure*

- (1) A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3(c), shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.
- (2) In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3(b).

*Article 6
Entry into force*

- (1) This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1(a) of resolution II of the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.
- (2) For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

*Article 7
Provisional application*

- (1) If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:
 - (a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;
 - (b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;
 - (c) States and entities which consent to its provisional application by so notifying the depositary in writing;
 - (d) States which accede to this Agreement.

- (2) All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.
- (3) Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1(a) of resolution II has not been fulfilled.

Article 8
States Parties

- (1) For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.
- (2) This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9
Depository

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE AT NEW YORK, this twenty-eighth day of July, one thousand nine hundred and ninety-four.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

- (1) The International Seabed Authority (hereinafter referred to as "the Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.
- (2) In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.
- (3) The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.
- (4) The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.
- (5) Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:
 - (a) Processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;
 - (b) Implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;
 - (c) Monitoring of compliance with plans of work for exploration approved in the form of contracts;
 - (d) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
 - (e) Study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;
 - (f) Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17, paragraph 2(b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
 - (g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;

- (h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;
- (i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
- (j) Assessment of available data relating to prospecting and exploration;
- (k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

(6)

- (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof, and this Agreement, and subject to the following:
 - (i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1(a)(ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US\$ 30 million in research and exploration activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;
 - (ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US\$ 250,000 paid pursuant to resolution II, paragraph 7(a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;
 - (iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a)(i) shall include arrangements which shall be similar to and no less favourable than those agreed with any registered pioneer investor referred to in subparagraph (a)(ii). If any of the States or entities or any components of such entities referred to in subparagraph (a)(i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a)(ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

- (iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a)(i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;
- (v) Resolution II, paragraph 8(c), shall be interpreted and applied in accordance with subparagraph (a)(iv).
- (b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.
- (7) An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.
- (8) An application for approval of a plan of work for exploration, subject to paragraph 6(a)(i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.
- (9) A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.
- (10) Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.
- (11) Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.
- (12) Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:
 - (a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;
 - (b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;
 - (c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

- (i) The obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;
- (ii) The right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;
- (d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c)(ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;
- (e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

(13) The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

(14) The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171, subparagraph (a), and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

(15) The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2(o)(ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

- (a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;
- (b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2(o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;
- (c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

(16) The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

(17) The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

(1) The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

- (a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
- (b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;
- (c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;
- (d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
- (e) Evaluation of information and data relating to areas reserved for the Authority;
- (f) Assessment of approaches to joint-venture operations;
- (g) Collection of information on the availability of trained manpower;
- (h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

(2) The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint-venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint-venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

(3) The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.

(4) The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

(5) A contractor which has contributed a particular area to the Authority as a reserved area has the right of first refusal to enter into a joint-venture arrangement with the Enterprise for exploration and exploitation of that area. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within 15 years of the commencement of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers in good faith to include the Enterprise as a joint-venture partner.

(6) Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this section.

SECTION 3. DECISION-MAKING

- (1) The general policies of the Authority shall be established by the Assembly in collaboration with the Council.
- (2) As a general rule, decision-making in the organs of the Authority should be by consensus.
- (3) If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.
- (4) Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.
- (5) If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.
- (6) The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.
- (7) Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.
- (8) The provisions of article 161, paragraph 8(b) and (c), of the Convention shall not apply.
- (9)
 - (a) Each group of States elected under paragraph 15(a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15(d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.
 - (b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15(a) to (d). If a State fulfills the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.
- (10) Each group of States in paragraph 15(a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15(a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.
- (11)
 - (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

- (b) The provisions of article 162, paragraph 2(j), of the Convention shall not apply.
- (12) Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.
- (13) Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.
- (14) Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.
- (15) The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:
 - (a) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;
 - (b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;
 - (c) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
 - (d) Six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;
 - (e) Eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.
- (16) The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

SECTION 5. TRANSFER OF TECHNOLOGY

- (1) In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:

- (a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;
- (b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;
- (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

(2) The provisions of Annex III, article 5, of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

- (1) The production policy of the Authority shall be based on the following principles:
 - (a) Development of the resources of the Area shall take place in accordance with sound commercial principles;
 - (b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;
 - (c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);
 - (d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:
 - (i) By the use of tariff or non-tariff barriers; and
 - (ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;
 - (e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;
 - (f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):
 - (i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;
 - (ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;
 - (g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

- (2) The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1(b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
- (3) The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.
- (4) Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1(f) or (g).
- (5) A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1(b) to (d).
- (6) The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.
- (7) The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2(q), article 165, paragraph 2(n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

- (1) The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:
 - (a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;
 - (b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;
 - (c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;
 - (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.
- (2) Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2(n), article 164, paragraph 2(d), article 171, subparagraph (f), and article 173, paragraph 2(c), of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACTS

- (1) The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contracts:

- (a) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;
- (b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;
- (c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;
- (d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;
- (e) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;
- (f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

- (2) The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.
- (3) With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US\$ 250,000.

SECTION 9. THE FINANCE COMMITTEE

- (1) There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.
- (2) No two members of the Finance Committee shall be nationals of the same State Party.
- (3) Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.
- (4) Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.
- (5) In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.
- (6) Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

- (7) Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:
 - (a) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;
 - (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2(e), of the Convention;
 - (c) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;
 - (d) The administrative budget;
 - (e) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;
 - (f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.
- (8) Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.
- (9) The requirement of article 162, paragraph 2(y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

INTRODUCTION

The 1982 United Nations Convention on the Law of the Sea (the “Convention”) sets out the overarching legal regime for the conservation and management of marine living resources within areas under national jurisdiction and on the high seas. It also contains specific provisions relating to straddling fish stocks and highly migratory fish stocks. In light of ongoing problems regarding the conservation and management of these stocks, Agenda 21 of the 1992 United Nations Conference on Environment and Development (UNCED) called for the convening of an intergovernmental conference under United Nations auspices to promote effective implementation of these provisions.

Pursuant to resolution 47/192 of the General Assembly,³ the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened in 1993. It completed its work in 1995 with the adoption of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (“the United Nations Fish Stocks Agreement” or “the Agreement”).

The United Nations Fish Stocks Agreement is the second implementing agreement to the 1982 United Nations Convention on the Law of the Sea (the Convention). It was adopted on 4 August 1995 and entered into force on 11 December 2001, 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

The Agreement consists of a preamble, 13 parts and 50 articles. It has two annexes dealing respectively with (1) standard requirements for the collection and sharing of data, and (2) guidelines for the application of precautionary reference points in the conservation and management of straddling fish stocks and highly migratory fish stocks.

The Agreement a cornerstone of international fisheries law, providing an international legally binding regime for the conservation and management of some of the world’s most commercially exploited fish stocks. Building on the provisions of the Convention, it establishes a framework for international cooperation among States fishing for the same fish stocks in areas under national jurisdiction and in areas beyond national jurisdiction including through regional fisheries management organizations and arrangements (RFMO/As).

The Agreement provides the international legal framework for the conservation and management of two categories of fish stocks which occur both on the high seas and in areas under national jurisdiction: straddling fish stocks and highly migratory fish stocks. Highly migratory fish stocks, such as tuna, swordfish and oceanic sharks, regularly travel long distances through both high seas areas and areas under national jurisdiction. Straddling stocks, such as cod, halibut, pollock, jack mackerel and squid, occur both within a country’s exclusive economic zone and in the adjacent high sea area. In addition, its provisions are relevant to the conservation and management of three other categories, namely associated species, dependent species and other high seas fish stocks (including discrete high seas fish stocks).

The Agreement elaborates on the fundamental principle established in the Convention that States should cooperate in taking the measures necessary for the conservation of these resources. Under the Agreement, RFMOs/As are the primary vehicle for cooperation between costal States and high seas fishing States in the conservation and management of straddling fish stocks and highly migratory fish stocks.

The Agreement also incorporated new principles, norms and rules that constitute a progressive development of the relevant provisions of the Convention and are aimed at addressing new challenges affecting high seas fisheries. Pursuant to the Agreement, the conservation and management of such stocks must be based on the precautionary approach and the best scientific evidence available. Conservation and management measures that are adopted for areas under national jurisdiction and established in the high seas are required to be compatible. In addition, mechanisms are provided for the compliance and enforcement of measures on the high seas. The Agreement also recognizes the special requirements of developing States, including in the development of their own fisheries and in their participation in high seas fisheries for straddling and highly migratory fish stocks.

PROCEDURAL HISTORY

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened pursuant to paragraph 1 of General Assembly resolution 47/192 of 22 December 1992 in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development.

The United Nations Conference on Environment and Development, held at Rio de Janeiro from 3 to 14 June 1992, adopted Agenda 21, paragraph 17.49 of which reads as follows:

“States should take effective action, including bilateral and multilateral cooperation, where appropriate at the subregional, regional and global levels, to ensure that high seas fisheries are managed in accordance with the provisions of the United Nations Convention on the Law of the Sea. In particular, they should:

[...]

“(e) Convene, as soon as possible, an intergovernmental conference under United Nations auspices, taking into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The conference, drawing, *inter alia*, on scientific and technical studies by the Food and Agriculture Organization of the United Nations (FAO), should identify and assess existing problems related to the conservation and management of such fish stocks, and consider means of improving cooperation on fisheries among States, and formulate appropriate recommendations. The work and the results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas.”¹

The General Assembly, in its resolution 47/192, recalled Agenda 21, in particular chapter 17, programme area C, relating to the sustainable use and conservation of marine living resources of the high seas, and decided that the Conference, in accordance with the mandate quoted above, should take into account relevant activities at the subregional,

Regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The Assembly further decided that the Conference, drawing *inter alia* on scientific and technical studies by the Food and Agriculture Organization of the United Nations (FAO), should (a) identify and assess existing problems related to conservation and management of such fish stocks; (b) consider means of improving fisheries cooperation among States; and (c) formulate appropriate recommendations.

The General Assembly also reaffirmed that the work and results of the Conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea in particular the rights and obligations of coastal States and States fishing on the high seas, and that States should give full effect to the high seas fisheries

¹ Report of the United Nations Conference on Environment and Development. Rio de Janeiro. 3-14 June 1992 (United Nations publication, Sales No. E.93.1.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II, para. 17.49.

provisions of the Convention with regard to fisheries populations whose ranges lay both within and beyond exclusive economic zones (straddling fish stocks) and highly migratory fish stocks.

By the same resolution, the General Assembly invited relevant specialized agencies, particularly the Food and Agriculture Organization of the United Nations, and other appropriate organs, organizations and programmes of the United Nations system, as well as regional and subregional fisheries organizations, to contribute relevant scientific and technical studies and reports. It also invited relevant non-governmental organizations from developed and developing countries to contribute to the Conference within the areas of their competence and expertise.

Pursuant to General Assembly resolutions 47/192, 48/194 of 21 December 1993 and 49/121 of 19 December 1994, the following sessions of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks were held at United Nations Headquarters in New York:²

- First session: 19 to 23 April 1993;
- Second session: 12 to 30 July 1993;
- Third session: 14 to 31 March 1994;
- Fourth session: 15 to 26 August 1994;
- Fifth session: 27 March to 12 April 1995;
- Sixth session: 24 July to 4 August 1995.

The representatives of the following States participated in the sessions of the Conference: Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kiribati, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Pakistan, Palau, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela, Viet Nam, Zambia and Zimbabwe. The representative of the European Community participated in the sessions without the right to vote.

The following associate members of a regional commission were represented as observers at the sessions: Montserrat and United States Virgin Islands.

The following national liberation movement was represented as observer at the first session: Pan Africanist Congress of Azania.

The following specialized agencies were represented as observers at the sessions: Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Bank.

The Intergovernmental Oceanographic Commission (IOC) of UNESCO, the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) were also present as observers at the sessions.

The following intergovernmental organizations were represented as observers at the sessions: Asian-African Legal Consultative Committee, Commission on the Indian Ocean, Inter-American Tropical

² Reports on each of the sessions are contained in A/CONF.164/9 (first (organizational) session), A/CONF.164/16 and Corr. I (second session), A/CONF.164/20 (third session), A/CONF.164/25 (fourth session), A/CONF.164/29 (fifth session) and A/CONF.164/36 (sixth session).

Tuna Commission, International Commission for the Conservation of Atlantic Tunas, International Council for the Exploration of the Sea, International Maritime Satellite Organization, International Whaling Commission, Latin American Organization for the Development of Fisheries, Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean, North Atlantic Salmon Conservation Organization, Northwest Atlantic Fisheries Organization, Organization of African Unity, Organisation for Economic Cooperation and Development, South Pacific Commission, South Pacific Permanent Commission and South Pacific Forum Fisheries Agency.

The following non-governmental organizations were represented as observers at the sessions: Alaska Marine Conservation Council, Alaska Public Interest Research Group, American Oceans Campaign, American Society of International Law, Association Algérienne pour la Protection de la Nature et de l'Environnement, Association Tunisienne pour la Protection de la Nature et de l'Environnement, Association of the Bar of the City of New York, Atlantic Salmon Federation, Bering Sea Fisherman's Association, Both Ends, Canadian Oceans Caucus, Center for Development of International Law, Center for Marine Conservation, Centre de Recherches pour le Développement des Technologies Intermédiaires de Pêche, Comité Catholique Contre la Faim et pour le Développement, Confederación de Trabajadores Portuarios, Gente de Mar y Pesqueros de Chile, Confederación Nacional de Pescadores Artesanales de Chile, Coordinadora de Tripulantes Pesqueros Industriales del Cono Sur de América Latina, Council on Ocean Law, Earth Council, Earth Island Institute, Earthtrust, Environmental Defense Fund, Federación Nacional de Cooperativas Pesqueras del Ecuador, Federation of Japan Tuna Fisheries Cooperative Associations, Fish, Food and Allied Workers, Fisheries Council of Canada, Four Directions Council, Friends of the Earth International, Friends World Committee for Consultations (Quaker United Nations Office), Fundación Hernandiana, Global Education Associates, Greenpeace International, Groupement d'Intérêt Économique, International Coalition of Fisheries Associations, International Coastal and Ocean Organization, International Collective in Support of Fishworkers, International Confederation of Free Trade Unions, International Institute for Sustainable Development, International Law Association, International Ocean Institute, International Union for the Conservation of Nature and Natural Resources (IUCN), Japan Fisheries Association, Kandune Self Help Water Project, Marine Environmental Research Institute, Namibian Food and Allied Workers Union, National Audubon Society, National Wildlife Federation, Nationwide Coalition of Fisherfolks for Aquatic Reform, Natural Resources Defense Council, Netherlands National Committee for IUCN, Newfoundland and Labrador Environmental Association, Newfoundland Inshore Fisheries Association, Oceans Institute of Canada, Ocean Trust, Overseas Fishery Cooperation Foundation, Pamalakaya (National United Movement of Fisherfolk - Philippines), Red Mexicana de Acción frente al Libre Comercio, Réserve Internationale Maritime en Méditerranée Occidentale, Samoan Association of Non-governmental Organizations, Sindicato de Obreros Marítimos Unidos, SONAR (Save Our Northwest Atlantic Resources), Trickle Up Program, United Nations Association in Canada, United Nations Association-United Kingdom, United Nations Environment and Development-United Kingdom Committee, Wildlife Conservation Society, Women and Fisheries Network, World Wide Fund for Nature, World Wide Fund Suisse.

At its first meeting, the Conference elected Mr. Satya N. Nandan (Fiji) as its Chairman. The Conference also elected as Vice-Chairmen the representatives of the following States: Chile, Italy and Mauritania.

The Conference adopted its agenda (A/CONF.164/5) and rules of procedure (A/CONF.164/6) at its first session.

At the second session, the Conference devoted the first three days to general debate, following which the Chairman outlined the key issues on which there was general agreement. At the same session, the Conference proceeded to examine the issues relating to straddling fish stocks and highly migratory fish stocks as contained in the document entitled "A guide to the issues before the Conference prepared by the Chairman" (A/CONF.164/10). At the end of the second session, the Chairman prepared a negotiating text (A/CONF.164/13), which the Conference considered at the third session.

Also at the third session, the Conference established two open-ended working groups to consider the information papers, prepared by FAO at the request of the Conference, on the precautionary approach to fisheries management and on management reference points. Mr. Andrés Couve (Chile) and Mr. Andrew Rosenberg (United States of America) served as chairmen of the working groups. The results of the work of the two working groups are contained in documents A/CONF.164/WP.1 and WP.2. At the end of the third

session, the Chairman submitted a revision of his negotiating text (A/CONF.164/13/Rev.1), which reflected the work of the Working Groups.

At the fourth session, the Chairman prepared a new revision of his negotiating text in the form of a binding instrument, entitled “Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks” (A/CONF.164/22). At the end of the fifth session, the Chairman prepared a revised text of the Draft Agreement (A/CONF.164/22/Rev.1).

At the sixth session, the Conference considered the revised text of the Draft Agreement (A/CONF.164/22/Rev.1), as well as suggested drafting changes and editorial improvements (A/CONF.164/CRP.7). Following the deliberations of the Conference, the Chairman proposed for adoption a “Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks” (A/CONF.164/33).

On 4 August 1995, the Conference adopted without a vote the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as resolutions I and II (A/CONF.164/32, annex). The two resolutions are annexed to this Final Act. In doing so, the Conference discharged the mandate given to it by the General Assembly in its resolution 47/192. 31. The Conference decided to resume its sixth session on 4 December 1995 for a ceremony of signature of the Agreement and this Final Act. The Conference requested the Secretariat to prepare the final text of the Agreement, incorporating necessary editing and drafting changes and ensuring concordance among the six language versions.³

³ A/CONF.164/37.

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,

Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Use of terms and scope

- (1) For the purposes of this Agreement:
 - (a) “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;
 - (b) “conservation and management measures” means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;
 - (c) “fish” includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and
 - (d) “arrangement” means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, *inter alia*, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.
- (2)
 - (a) “States Parties” means States which have consented to be bound by this Agreement and for which the Agreement is in force.
 - (b) This Agreement applies *mutatis mutandis*:
 - (i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and
 - (ii) subject to article 47, to any entity referred to as an “international organization” in Annex IX, article 1, of the Convention which becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.
3. This Agreement applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas.

Article 2

Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3

Application

- (1) Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.
- (2) In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply *mutatis mutandis* the general principles enumerated in article 5.
- (3) States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies *mutatis mutandis* in respect of areas under national jurisdiction.

Article 4
Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II

CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5 *General principles*

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

- (a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;
- (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
- (c) apply the precautionary approach in accordance with article 6;
- (d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;
- (e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;
- (f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (g) protect biodiversity in the marine environment;
- (h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (i) take into account the interests of artisanal and subsistence fishers;
- (j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;
- (k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and
- (l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6
Application of the precautionary approach

- (1) States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.
- (2) States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- (3) In implementing the precautionary approach, States shall:
 - (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
 - (b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;
 - (c) take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and
 - (d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.
- (4) States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.
- (5) Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.
- (6) For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.
- (7) If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7
Compatibility of conservation and management measures

- (1) Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:
 - (a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the

appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

(2) Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

- (a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
- (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
- (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
- (e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and
- (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

(3) In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

(4) If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

(5) Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

(6) Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

(7) Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

- (8) States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8 *Cooperation for conservation and management*

- (1) Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.
- (2) States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.
- (3) Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.
- (4) Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.
- (5) Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.
- (6) Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9
Subregional and regional fisheries management organizations and arrangements

- (1) In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, *inter alia*, on:
 - (a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;
 - (b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;
 - (c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and
 - (d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.
- (2) States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

Article 10
Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

- (a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;
- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;

- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11
New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, *inter alia*:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12
Transparency in activities of subregional and regional fisheries management organizations and arrangements

- (1) States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.
- (2) Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13
Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14
Collection and provision of information and cooperation in scientific research

- (1) States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:
 - (a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

- (b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and
- (c) take appropriate measures to verify the accuracy of such data.

(2) States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

- (a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and
- (b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

(3) Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15
Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16
Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

- (1) States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.
- (2) Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

PART IV

NON-MEMBERS AND NON-PARTICIPANTS

Article 17

Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied *de facto* as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V

DUTIES OF THE FLAG STATE

Article 18
Duties of the flag State

- (1) A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.
- (2) A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.
- (3) Measures to be taken by a State in respect of vessels flying its flag shall include:
 - (a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;
 - (b) establishment of regulations:
 - (i) (i)to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;
 - (ii) (ii)to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;
 - (iii) (iii)to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and
 - (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
 - (c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;
 - (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
 - (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
 - (f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;
 - (g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, *inter alia*:
 - (i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;
 - (ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for

such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

- (iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;
- (h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and
- (i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

(4) Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI

COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement by the flag State

- (1) A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:
 - (a) enforce such measures irrespective of where violations occur;
 - (b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;
 - (c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
 - (d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and
 - (e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.
- (2) All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, *inter alia*, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20

International cooperation in enforcement

- (1) States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
- (2) A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.
- (3) A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.
- (4) States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
- (5) States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

- (6) Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.
- (7) States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

Article 21
Subregional and regional cooperation in enforcement

- (1) In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.
- (2) States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.
- (3) If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.
- (4) Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.
- (5) Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.
- (6) The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

- (a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or
- (b) authorize the inspecting State to investigate.

(7) Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

(8) Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

(9) The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

(10) The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

(11) For the purposes of this article, a serious violation means:

- (a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);
- (b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;
- (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;
- (d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (e) using prohibited fishing gear;
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (g) concealing, tampering with or disposing of evidence relating to an investigation;
- (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

(12) Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

- (13) This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.
- (14) This article applies *mutatis mutandis* to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.
- (15) Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.
- (16) Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.
- (17) Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.
- (18) States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article

Article 22

Basic procedures for boarding and inspection pursuant to article 21

- (1) The inspecting State shall ensure that its duly authorized inspectors:
 - (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
 - (b) initiate notice to the flag State at the time of the boarding and inspection;
 - (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
 - (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
 - (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
 - (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.
- (2) The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
- (3) The flag State shall ensure that vessel masters:
 - (a) accept and facilitate prompt and safe boarding by the inspectors;
 - (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
 - (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;

- (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
- (e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
- (f) facilitate safe disembarkation by the inspectors.

(4) In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23
Measures taken by a port State

- (1) A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.
- (2) A port State may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.
- (3) States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.
- (4) Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII

REQUIREMENTS OF DEVELOPING STATES

Article 24

Recognition of the special requirements of developing States

- (1) States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.
- (2) In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:
 - (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
 - (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and
 - (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25

Forms of cooperation with developing States

- (1) States shall cooperate, either directly or through subregional, regional or global organizations:
 - (a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;
 - (b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and
 - (c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.
- (2) Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.
- (3) Such assistance shall, *inter alia*, be directed specifically towards:
 - (a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;
 - (b) stock assessment and scientific research; and
 - (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26
Special assistance in the implementation of this Agreement

- (1) States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.
- (2) States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

Article 27 *Obligation to settle disputes by peaceful means*

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28 *Prevention of disputes*

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29 *Disputes of a technical nature*

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30 *Procedures for the settlement of disputes*

- (1) The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
- (2) The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.
- (3) Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.
- (4) A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.
- (5) Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of

living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31
Provisional measures

- (1) Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.
- (2) Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.
- (3) A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32
*Limitations on applicability of procedures
for the settlement of disputes*

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

Non-parties to this Agreement

- (1) States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.
- (2) States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

PART XI

RESPONSIBILITY AND LIABILITY

Article 35 *Responsibility and liability*

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII

REVIEW CONFERENCE

Article 36 *Review conference*

- (1) Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.
- (2) The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII

FINAL PROVISIONS

Article 37 *Signature*

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

Article 38 *Ratification*

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39 *Accession*

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40 *Entry into force*

- (1) This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.
- (2) For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41 *Provisional application*

- (1) This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
- (2) Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42 *Reservations and exceptions*

No reservations or exceptions may be made to this Agreement.

Article 43 *Declarations and statements*

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44
Relation to other agreements

- (1) This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.
- (2) Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.
- (3) States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 45
Amendment

- (1) A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.
- (2) The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.
- (3) Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.
- (4) Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.
- (5) Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.
- (6) An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.
- (7) A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:
 - (a) be considered as a Party to this Agreement as so amended; and
 - (b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 46
Denunciation

- (1) A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
- (2) The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 47
Participation by international organizations

- (1) In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:
 - (a) article 2, first sentence; and
 - (b) article 3, paragraph 1.
- (2) In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:
 - (a) at the time of signature or accession, such international organization shall make a declaration stating:
 - (i) that it has competence over all the matters governed by this Agreement;
 - (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
 - (iii) that it accepts the rights and obligations of States under this Agreement;
 - (b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;
 - (c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 48
Annexes

- (1) The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.
- (2) The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49
Depository

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

ANNEX I

STANDARD REQUIREMENTS FOR THE COLLECTION AND SHARING OF DATA

Article 1 *General principles*

- (1) The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.
- (2) Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

Article 2 *Principles of data collection, compilation and exchange*

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

- (a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;
- (b) States should ensure that fishery data are verified through an appropriate system;
- (c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;
- (d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;
- (e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and
- (f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

Article 3
Basic fishery data

- (1) States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:
 - (a) time series of catch and effort statistics by fishery and fleet;
 - (b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];
 - (c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;
 - (d) effort statistics appropriate to each fishing method; and
 - (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.
- (2) States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:
 - (a) composition of the catch according to length, weight and sex;
 - (b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and
 - (c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Article 4
Vessel data and information

- (3) States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:
 - (a) vessel identification, flag and port of registry;
 - (b) vessel type;
 - (c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and
 - (d) fishing gear description (e.g., types, gear specifications and quantity).
- (4) 2. The flag State will collect the following information:
 - (a) navigation and position fixing aids;
 - (b) communication equipment and international radio call sign; and
 - (c) crew size.

Article 5
Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

Article 6
Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transhipment reports; and
- (d) port sampling.

Article 7
Data exchange

- (1) Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.
- (2) At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

ANNEX II

GUIDELINES FOR THE APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

- (1) A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.
- (2) Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.
- (3) Precautionary reference points should be stock-specific to account, *inter alia*, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.
- (4) Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.
- (5) Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.
- (6) When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.
- (7) The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

AGREEMENT UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION

INTRODUCTION

The Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) was adopted, by consensus, on 19 June 2023, by the Intergovernmental Conference convened under the auspices of the United Nations pursuant to General Assembly resolution 72/249 of 24 December 2017.

This historic Agreement is the outcome of an iterative process that took place in different formats over nearly two decades. Discussions at the Intergovernmental Conference were extremely complex with participants comprising representatives of 164 States Members of the United Nations, members of the specialized agencies and parties to UNCLOS, each representing very diverse and sometimes conflicting interests and aspirations. The Conference was also open to participation by observers which included 32 organizations and other entities having received a standing invitation to participate as observers in the work of the General Assembly pursuant to its relevant resolutions, relevant specialized agencies and other organs, organizations, funds and programmes of the United Nations system, interested global and regional intergovernmental organizations and other interested international bodies, as well as one associate member of a regional commission and 91 non-governmental organizations.

The negotiations involved both developed and developing States from all regions of the world, including least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries. Despite differences, a shared sense of responsibility to improve the health and resilience of the ocean, and to ensure that its conservation and sustainable use benefit all humanity led to this significant achievement for the ocean and humankind. The preamble of the Agreement recognizes the need for the comprehensive global regime under the Convention to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. It also manifests the intention of the Agreement's drafters to act as stewards of the ocean in these areas on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and conserving the inherent value of biological diversity of areas beyond national jurisdiction.

Building on the legacy of the Convention, the BBNJ Agreement unequivocally represents a great victory for multilateralism and the United Nations. It contributes to reaffirming the role of the Organization as an effective forum for multilaterally agreed solutions to global challenges, including those facing the world's ocean.

In his remarks at the adoption of the Agreement, the Secretary-General of the United Nations, António Guterres, urged all States to spare no effort to ensure that the Agreement enters into force, and called on them to act without delay to sign and ratify it as soon as possible.

As the third implementing agreement to the Convention, the BBNJ Agreement shares the same foundation as the Agreement relating to the implementation of Part XI of the Convention and the United Nations Fish Stocks Agreement. Its relationship with the Convention is addressed in the Agreement itself which provides that it must be interpreted and applied in the context of and in a manner consistent with the Convention. At the same time, as a clear sign of its universality, the BBNJ Agreement is open for signature by all States, whether parties or non-parties to the Convention, and the legal status of non-parties is not affected by the Agreement, as expressly set out therein.

The BBNJ Agreement comprises 76 articles organized in twelve Parts, and two annexes. Like its parent treaty, the Agreement is drawn in all six official languages of the United Nations, which are also the authentic languages of the Agreement. The BBNJ Agreement addresses a package of issues with the overall objective of ensuring the conservation and sustainable use of marine biological diversity of areas beyond

national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination. The four main issues covered by the Agreement are marine genetic resources, including the fair and equitable sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. The Agreement sets out specific measures to achieve its objectives, as well as specific modalities to establish, implement and monitor those measures. It also addresses a number of cross-cutting issues, including the establishment of a Conference of the Parties as the governing body of the Agreement and several subsidiary bodies to assist with the implementation of the Agreement and the specific measures established thereunder.

Furthermore, among its general provisions, the Agreement provides for a suite of 14 general principles and approaches, including the principle of the common heritage of humankind, and the freedom of marine scientific research, together with other freedoms of the high seas. The Agreement also incorporates environmental principles and approaches, prominent references to the traditional knowledge of Indigenous Peoples and local communities, a strong focus on gender responsiveness of capacity-building activities and gender balance in the composition of the institutions established by the Agreement, as well as recognition of the ocean-climate-biodiversity nexus with references to climate resilience.

With a scope of application covering almost two thirds of the ocean, the BBNJ Agreement marks a major turning point in global efforts to tackle the triple planetary crisis of climate change, biodiversity loss and pollution and achieve ocean-related goals and targets, including those of the 2030 Agenda for Sustainable Development and the Kunming-Montreal Global Biodiversity Framework under the United Nations Convention on Biological Diversity. The Agreement is also the first comprehensive, cross-sectoral ocean treaty in decades after the Convention. By establishing specific mechanisms for cross-sectoral cooperation to implement its various provisions, the Agreement is anticipated to have a profound impact towards more integrated, holistic approaches to the management of ocean activities, as is called for in the preamble of the Convention. Furthermore, the Agreement includes several provisions which are aimed at addressing the uneven capacity of States, particularly developing States, to participate in and benefit from activities in areas beyond national jurisdiction. This should level the playing field and create opportunities for research and innovation for the benefit of all humanity.

Unsurprisingly, following its landmark adoption, the Agreement received an overwhelming number of expressions of support from States and other relevant stakeholders, which also played a pivotal role in supporting the negotiations, including the scientific community and civil society organizations.

THE HISTORY OF THE AGREEMENT

The process that led to the adoption of the BBNJ Agreement began in 2004 when the General Assembly in its annual resolution on Oceans and the law of the sea recognized the need to better address the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction, and decided that discussions at the fifth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea would focus on “New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction” (A/RES/58/240). This meeting was crucial in bringing together diverse stakeholders to discuss the scientific, technical, economic, legal, environmental, socio-economic and other aspects of those issues and explore ways to strengthen international cooperation and coordination for the conservation and sustainable use of marine biodiversity in these areas.

On the basis of these discussions, the General Assembly decided to establish an “Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction” (A/RES/59/24), with a mandate to: (a) survey the past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction; (b) examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues; (c) identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues; and (d) indicate, where appropriate, possible options and approaches

to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Between 2006 and 2015, the Working Group held nine sessions and was presided over by Juan Manuel Gómez-Robledo (Mexico) and Philip D. Burgess (Australia) in 2006, Juan Manuel Gómez-Robledo and Robert Hill (Australia) in 2008, and Palitha T. B. Kohona (Sri Lanka) and Liesbeth Lijnzaad (Netherlands) from 2010 to 2015.

The Working Group reached an important milestone in its work in 2011 with the adoption of a set of recommendations to the General Assembly on the establishment of a process within the Working Group to address a package of issues. On the basis of the recommendations of the Working Group, the General Assembly decided to establish such a process with a view to ensuring that the legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction effectively addresses those issues by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under the Convention. The General Assembly also decided that the process would address the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments, and capacity-building and the transfer of marine technology, and that it would take place in the Working Group and in the format of intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group (A/RES/66/231).

The United Nations Conference on Sustainable Development held in Rio de Janeiro, Brazil, in 2012 provided additional impetus to the efforts of the Working Group, as heads of States and Governments recognized the importance of conserving and sustainably using marine biodiversity of areas beyond national jurisdiction. They noted the ongoing work of the Working Group and, building on the work of that Group and before the end of the sixty-ninth session of the General Assembly, they committed to address this issue on an urgent basis, including by taking a decision on the development of an international instrument under the Convention.

In 2015, the Working Group completed its work with recommendations to the General Assembly on the scope, parameters and feasibility of an international instrument under the Convention, as mandated by the General Assembly.¹ The General Assembly endorsed the recommendations of the Working Group in resolution 69/292, in which it decided to develop an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and established a Preparatory Committee to make substantive recommendations on the elements of a draft text.

Between 2016 and 2017, the Preparatory Committee established by resolution 69/292 held four sessions at United Nations Headquarters in New York. It was successively chaired by Eden Charles (Trinidad and Tobago) for the first and second sessions and by Carlos Duarte (Brazil) for the third and fourth sessions. The Chair of the Committee was assisted in their work by a bureau consisting of two members from each regional group. In addition to plenary sessions, informal working group sessions were also convened and facilitated as follows: by Carlos Duarte (Brazil) at the first session, Eden Charles (Trinidad and Tobago) at the second session, and Janine Elizabeth Coye-Felson (Belize), at the third and fourth sessions, for the informal working group on marine genetic resources, including questions on the sharing of benefits; John Adank (New Zealand) at the first and second sessions, and Alice Revell (New Zealand) at the third and fourth sessions, for the informal working group on measures such as area-based management tools, including marine protected areas; René Lefeber (Netherlands) for the informal working group on environmental impact assessments; and Rena Lee (Singapore) for the informal working group on capacity-building and the transfer of marine technology. In addition, an informal working group on cross-cutting issues was also convened

¹ Letter dated 13 February 2015 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly (A/69/780), with Annex (Outcome of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and Co-Chairs' summary of discussions).

and facilitated, at the second session, by Eden Charles (Trinidad and Tobago) and, at the third and fourth sessions, by Carlos Duarte (Brazil).

At its fourth session, the Committee adopted its report,² which included recommendations to the General Assembly on the elements of a draft text of an international legally binding agreement under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The Committee also recommended that the General Assembly take a decision on the convening of an intergovernmental conference, under the auspices of the United Nations, to consider the Committee's recommendations on the elements and to elaborate the text of an international legally binding instrument under the Convention.

In December 2017, the General Assembly adopted resolution 72/249 in which it decided to convene an Intergovernmental Conference to consider the recommendations of the Preparatory Committee on the elements and to elaborate the text of an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity beyond national jurisdiction.

In resolution 72/249, the General Assembly also decided on a number of substantive and procedural issues, including that the negotiations should address the topics identified in the package agreed in 2011. It further emphasized that the work and results of the Intergovernmental Conference should be fully consistent with the provisions of the Convention, and recognized that the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. In addition, the General Assembly stressed the need to ensure the widest possible and effective participation in the Conference and recognized that neither participation in the negotiations nor their outcome may affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments, or the legal status of parties to the Convention or any other related agreements with regard to those instruments. Furthermore, the General Assembly decided that the Intergovernmental Conference should exhaust every effort in good faith to reach agreement on substantive matters by consensus and that the rules of procedure and established practice of the General Assembly should apply to the procedure of the Conference unless otherwise agreed by the Conference.

As mandated by General Assembly resolution 72/249, the Intergovernmental Conference held a three-day organizational meeting in New York, in April 2018 to discuss organizational matters, including the process for preparing the zero draft of the instrument. At the beginning of that meeting, Rena Lee of Singapore was elected President of the Conference. The organizational meeting also decided to establish a Bureau composed of the President and 15 Vice-Presidents (three from each of the regional groups).

Between 2018 and 2023, the Conference held five sessions at United Nations Headquarters in New York.³ Discussions took place in plenary as well as in the format of informal working groups and informal informals to address the four thematic issues of the package agreed in 2011, as well as cross-cutting issues. Discussions in the informal working groups and informal informals on the thematic issues were facilitated

² Report of the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/AC.287/2017/PC.4/2).

³ The first session of the Intergovernmental Conference was convened from 4 to 17 September 2018 pursuant to resolution 72/249. The second session was convened from 25 March to 5 April 2019, and the third session from 19 to 30 August 2019 pursuant to resolution 73/124. The fourth session, which was postponed twice by decisions 74/543 and 75/570 of the General Assembly owing to the coronavirus disease pandemic, was convened from 7 to 18 March 2022 in accordance with General Assembly decision 75/570. The fifth session was convened from 15 to 26 August 2022 pursuant to General Assembly decision 76/564. By decision of the Conference, the fifth session was suspended, and a resumed fifth session was convened from 20 February to 3 March 2023 pursuant to General Assembly resolution 77/248. At the end of that meeting the Conference decided to further resume the fifth session with a view to adopting the Agreement. Pursuant to General Assembly decision 77/556, the further resumed fifth session was convened on 19 and 20 June 2023. See Report of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/CONF.232/2022/4) and Report of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction at its fifth session (A/CONF.232/2023/5).

as follows: Facilitators of the discussions in the informal informals included the following representatives and the President of the Conference as following:

- marine genetic resources, including questions on the sharing of benefits, facilitated by Janine Elizabeth Coye-Felson (Belize) from the first to the third sessions and at the fifth session of the Conference, and by the President of the Conference at the fourth session;
- measures such as area-based management tools, including marine protected areas, facilitated by Alice Revell (New Zealand) from the first to the third sessions of the Conference, and by Renée Sauvé (Canada) at the fourth and fifth sessions;
- environmental impact assessments facilitated by René Lefeber (Netherlands) throughout the Conference;
- capacity-building and the transfer of marine technology facilitated by Ngédikes Olai Uludong (Palau) from the first to the third sessions of the Conference, by the President of the Conference at the fourth and the fifth session, and by Ligia Lorena Flores Soto (El Salvador) at the resumed fifth session of the Conference;

At the second session of the Conference, an informal working group on cross-cutting issues was also established. It was facilitated by the President of the Conference from the second to the fifth sessions, with the exception of: institutional arrangements facilitated by Thembile Joyini (South Africa) at the fourth and fifth sessions; implementation and compliance and dispute settlement facilitated by Victoria Hallum (New Zealand) at the fifth session; and general provisions, including the preamble, facilitated by Kurt Oliver Davis (Jamaica) at the fifth resumed session.

Following the decision of the Conference to suspend the fifth session and resume it at a later date, the resumed fifth session met from 20 February to 3 March 2023. At the end of that meeting, following nearly 36 hours of intensive and uninterrupted negotiations, the Intergovernmental Conference reached agreement on the draft text of the Agreement. At the close of that resumed session, the President of the Conference announced that “The ship has reached the shore”.

In order to allow for the necessary work to ensure the uniformity of terminology throughout the draft text of the Agreement and harmonize the versions in the six official languages of the United Nations, incorporating necessary editing and ensuring concordance among the six language versions, an open-ended informal working group, coordinated by Pablo Arrocha of Mexico, was convened intersessionally.

Following the completion of that work, pursuant to General Assembly resolution 77/556, the Conference further resumed its fifth session at United Nations Headquarters in New York on 19 and 20 June 2023. On 19 June, the Conference adopted the Agreement by consensus. The fifth session of the Conference was closed on 20 June 2023.

In August 2023, the General Assembly adopted resolution 77/321, in which it welcomed the adoption of the BBNJ Agreement and approved the assumption by the Secretary-General of the United Nations of the functions assigned to him under the Agreement, including the depositary functions and the performance, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations, of the secretariat functions under the Agreement until such time as the secretariat to be established under the Agreement commences its functions. In the resolution, the General Assembly also requested the Secretary-General to make proposals to strengthen the capacity of the Division to undertake activities to promote a better understanding of the Agreement and to prepare for its entry into force. In response to the request in the resolution, the Division developed a programme of capacity-building and technical assistance activities, implemented at the global, regional and national levels, with a view to assisting States in their efforts to become party to the Agreement and supporting its swift entry into force and effective implementation.

Pursuant to article 65 of the Agreement and General Assembly resolution 77/321, the Agreement was opened for signature at United Nations Headquarters in New York, on 20 September 2023, for two years, until 20 September 2025. On that day, it counted 68 signatories, a number which reached 80 over the following two days of the 2023 Treaty Event held on the sidelines of the United Nations General Assembly high-level general debate.

A significant step forward towards bringing the Agreement to life took place in April 2024, when the General Assembly, through resolution 78/272, emphasizing the importance of the early entry into force and effective implementation of the Agreement, decided to establish a Preparatory Commission to prepare for the entry into force of the Agreement and the convening of the first meeting of the Conference of the Parties to the Agreement.

In September 2024, on the first anniversary of its opening for signature, the Agreement counted over a hundred signatories and 10 ratifications.

AGREEMENT UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION

PREAMBLE

The Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, including the obligation to protect and preserve the marine environment,

Stressing the need to respect the balance of rights, obligations and interests set out in the Convention,

Recognizing the need to address, in a coherent and cooperative manner, biological diversity loss and degradation of ecosystems of the ocean, due, in particular, to climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use,

Conscious of the need for the comprehensive global regime under the Convention to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,

Recognizing the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, the special interests and needs of developing States, whether coastal or landlocked,

Recognizing also that support for developing States Parties through capacity-building and the development and transfer of marine technology are essential elements for the attainment of the objectives of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,

Recalling the United Nations Declaration on the Rights of Indigenous Peoples,

Affirming that nothing in this Agreement shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, or of, as appropriate, local communities,

Recognizing the obligation set out in the Convention to assess, as far as practicable, the potential effects on the marine environment of activities under a State's jurisdiction or control when the State has reasonable grounds for believing that such activities may cause substantial pollution of or significant and harmful changes to the marine environment,

Mindful of the obligation set out in the Convention to take all measures necessary to ensure that pollution arising from incidents or activities does not spread beyond the areas where sovereign rights are exercised in accordance with the Convention,

Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and conserving the inherent value of biological diversity of areas beyond national jurisdiction,

Acknowledging that the generation of, access to and utilization of digital sequence information on marine genetic resources of areas beyond national jurisdiction, together with the fair and equitable sharing of benefits arising from its utilization, contribute to research and innovation and to the general objective of this Agreement,

Respecting the sovereignty, territorial integrity and political independence of all States,

Recalling that the legal status of non-parties to the Convention or any other related agreements is governed by the rules of the law of treaties,

Recalling also that, as set out in the Convention, States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment and may be liable in accordance with international law,

Committed to achieving sustainable development,

Aspiring to achieve universal participation,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1 *Use of terms*

For the purposes of this Agreement:

- (1) “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement.
- (2) “Areas beyond national jurisdiction” means the high seas and the Area.
- (3) “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.
- (4) “Collection in situ”, in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.
- (5) “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.
- (6) “Cumulative impacts” means the combined and incremental impacts resulting from different activities, including known past and present and reasonably foreseeable activities, or from the repetition of similar activities over time, and the consequences of climate change, ocean acidification and related impacts.
- (7) “Environmental impact assessment” means a process to identify and evaluate the potential impacts of an activity to inform decision-making.
- (8) “Marine genetic resources” means any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.
- (9) “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives.
- (10) “Marine technology” includes, *inter alia*, information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards and reference materials; sampling and methodology equipment; observation facilities and equipment for in situ and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; related biotechnology; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to the conservation and sustainable use of marine biological diversity.
- (11) “Party” means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force.
- (12) “Regional economic integration organization” means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Agreement and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, approve, accept or accede to this Agreement.
- (13) “Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to a long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.
- (14) “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources, including through the application of biotechnology, as defined in paragraph 3 above.

*Article 2
General objective*

The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.

*Article 3
Scope of application*

This Agreement applies to areas beyond national jurisdiction.

*Article 4
Exceptions*

This Agreement does not apply to any warship, military aircraft or naval auxiliary. Except for Part II, this Agreement does not apply to other vessels or aircraft owned or operated by a Party and used, for the time being, only on government noncommercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.

*Article 5
Relationship between this Agreement and the Convention and
relevant legal instruments and frameworks and relevant global,
regional, subregional and sectoral bodies*

- (1) This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention, including in respect of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles.
- (2) This Agreement shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies.
- (3) The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.

*Article 6
Without prejudice*

This Agreement, including any decision or recommendation of the Conference of the Parties or any of its subsidiary bodies, and any acts, measures or activities undertaken on the basis thereof, shall be without prejudice to, and shall not be relied upon as a basis for asserting or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto.

*Article 7
General principles and approaches*

In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches:

- (a) The polluter-pays principle;
- (b) The principle of the common heritage of humankind which is set out in the Convention;
- (c) The freedom of marine scientific research, together with other freedoms of the high seas;
- (d) The principle of equity and the fair and equitable sharing of benefits;

- (e) The precautionary principle or precautionary approach, as appropriate;
- (f) An ecosystem approach;
- (g) An integrated approach to ocean management;
- (h) An approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the role of the ocean in climate;
- (i) The use of the best available science and scientific information;
- (j) The use of relevant traditional knowledge of Indigenous Peoples and local communities, where available;
- (k) The respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (l) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another in taking measures to prevent, reduce and control pollution of the marine environment;
- (m) Full recognition of the special circumstances of small island developing States and of least developed countries;
- (n) Acknowledgement of the special interests and needs of landlocked developing countries.

Article 8
International cooperation

- (1) Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies in the achievement of the objectives of this Agreement.
- (2) Parties shall endeavour to promote, as appropriate, the objectives of this Agreement when participating in decision-making under other relevant legal instruments, frameworks, or global, regional, subregional or sectoral bodies.
- (3) Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objectives of this Agreement.

PART II

MARINE GENETIC RESOURCES, INCLUDING THE FAIR AND EQUITABLE SHARING OF BENEFITS

Article 9 *Objectives*

The objectives of this Part are:

- (a) The fair and equitable sharing of benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (b) The building and development of the capacity of Parties, particularly developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, to carry out activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction;
- (c) The generation of knowledge, scientific understanding and technological innovation, including through the development and conduct of marine scientific research, as fundamental contributions to the implementation of this Agreement;
- (d) The development and transfer of marine technology in accordance with this Agreement.

Article 10 *Application*

- (1) The provisions of this Agreement shall apply to activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected and generated after the entry into force of this Agreement for the respective Party. The application of the provisions of this Agreement shall extend to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected or generated before entry into force, unless a Party makes an exception in writing under article 70 when signing, ratifying, approving, accepting or acceding to this Agreement.
- (2) The provisions of this Part shall not apply to:
 - (a) Fishing regulated under relevant international law and fishing-related activities; or
 - (b) Fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under this Part.
- (3) The obligations in this Part shall not apply to a Party's military activities, including military activities by government vessels and aircraft engaged in noncommercial service. The obligations in this Part with respect to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall apply to a Party's non-military activities.

Article 11
Activities with respect to marine genetic resources
of areas beyond national jurisdiction

- (1) Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction may be carried out by all Parties, irrespective of their geographical location, and by natural or juridical persons under the jurisdiction of the Parties. Such activities shall be carried out in accordance with this Agreement.
- (2) Parties shall promote cooperation in all activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction.
- (3) Collection in situ of marine genetic resources of areas beyond national jurisdiction shall be carried out with due regard for the rights and legitimate interests of coastal States in areas within their national jurisdiction and with due regard for the interests of other States in areas beyond national jurisdiction, in accordance with the Convention. To this end, Parties shall endeavour to cooperate, as appropriate, including through specific modalities for the operation of the Clearing-House Mechanism determined under article 51, with a view to implementing this Agreement.
- (4) No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction. No such claim or exercise of sovereignty or sovereign rights shall be recognized.
- (5) Collection in situ of marine genetic resources of areas beyond national jurisdiction shall not constitute the legal basis for any claim to any part of the marine environment or its resources.
- (6) Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction are in the interests of all States and for the benefit of all humanity, particularly for the benefit of advancing the scientific knowledge of humanity and promoting the conservation and sustainable use of marine biological diversity, taking into particular consideration the interests and needs of developing States.
- (7) Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.

Article 12

*Notification on activities with respect to marine genetic resources
and digital sequence information on marine genetic resources of
areas beyond national jurisdiction*

- (1) Parties shall take the necessary legislative, administrative or policy measures to ensure that information is notified to the Clearing-House Mechanism in accordance with this Part.
- (2) The following information shall be notified to the Clearing-House Mechanism six months or as early as possible prior to the collection in situ of marine genetic resources of areas beyond national jurisdiction:
 - (a) The nature and objectives under which the collection is carried out, including, as appropriate, any programme(s) of which it forms part;
 - (b) The subject matter of the research or, if known, the marine genetic resources to be targeted or collected, and the purposes for which such resources will be collected;
 - (c) The geographical areas in which the collection is to be undertaken;
 - (d) A summary of the method and means to be used for collection, including the name, tonnage, type and class of vessels, scientific equipment and/or study methods employed;
 - (e) Information concerning any other contributions to proposed major programmes;
 - (f) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
 - (g) The name(s) of the sponsoring institution(s) and the person in charge of the project;
 - (h) Opportunities for scientists of all States, in particular scientists from developing States, to be involved in or associated with the project;
 - (i) The extent to which it is considered that States that may need and request technical assistance, in particular developing States, should be able to participate or to be represented in the project;
 - (j) A data management plan prepared according to open and responsible data governance, taking into account current international practice.
- (3) Upon notification referred to in paragraph 2 above, the Clearing-House Mechanism shall automatically generate a “BBNJ” standardized batch identifier.
- (4) Where there is a material change to the information provided to the Clearing-House Mechanism prior to the planned collection, updated information shall be notified to the Clearing-House Mechanism within a reasonable period of time and no later than the start of collection in situ, when practicable.
- (5) Parties shall ensure that the following information, along with the “BBNJ” standardized batch identifier, is notified to the Clearing-House Mechanism as soon as it becomes available, but no later than one year from the collection in situ of marine genetic resources of areas beyond national jurisdiction:
 - (a) The repository or database where digital sequence information on marine genetic resources is or will be deposited;
 - (b) Where all marine genetic resources collected in situ are or will be deposited or held;
 - (c) A report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude and depth of collection, and, to the extent available, the findings from the activity undertaken;
 - (d) Any necessary updates to the data management plan provided under paragraph (2) (j) above.
- (6) Parties shall ensure that samples of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction that are in repositories or databases under their jurisdiction can be identified as originating from areas beyond national jurisdiction, in accordance with current international practice and to the extent practicable.
- (7) Parties shall ensure that repositories, to the extent practicable, and databases under their jurisdiction prepare, on a biennial basis, an aggregate report on access to marine genetic resources and digital se-

quence information linked to their “BBNJ” standardized batch identifier, and make the report available to the access and benefit-sharing committee established under article 15.

(8) Where marine genetic resources of areas beyond national jurisdiction, and where practicable, the digital sequence information on such resources are subject to utilization, including commercialization, by natural or juridical persons under their jurisdiction, Parties shall ensure that the following information, including the “BBNJ” standardized batch identifier, if available, be notified to the Clearing-House Mechanism as soon as such information becomes available:

- (a) Where the results of the utilization, such as publications, patents granted, if available and to the extent possible, and products developed, can be found;
- (b) Where available, details of the post-collection notification to the Clearing-House Mechanism related to the marine genetic resources that were the subject of utilization;
- (c) Where the original sample that is the subject of utilization is held;
- (d) The modalities envisaged for access to marine genetic resources and digital sequence information on marine genetic resources being utilized, and a data management plan for the same;
- (e) Once marketed, information, if available, on sales of relevant products and any further development.

Article 13

Traditional knowledge of Indigenous Peoples and local communities associated with marine genetic resources in areas beyond national jurisdiction

Parties shall take legislative, administrative or policy measures, where relevant and as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples and local communities shall only be accessed with the free, prior and informed consent or approval and involvement of these Indigenous Peoples and local communities. Access to such traditional knowledge may be facilitated by the Clearing-House Mechanism. Access to and use of such traditional knowledge shall be on mutually agreed terms.

Article 14

Fair and equitable sharing of benefits

- (1) The benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner in accordance with this Part and contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
- (2) Non-monetary benefits shall be shared in accordance with this Agreement in the form of, *inter alia*:
 - (a) Access to samples and sample collections in accordance with current international practice;
 - (b) Access to digital sequence information in accordance with current international practice;
 - (c) Open access to findable, accessible, interoperable and reusable (FAIR) scientific data in accordance with current international practice and open and responsible data governance;
 - (d) Information contained in the notifications, along with “BBNJ” standardized batch identifiers, provided in accordance with article 12, in publicly searchable and accessible forms;
 - (e) Transfer of marine technology in line with relevant modalities provided under Part V of this Agreement;
 - (f) Capacity-building, including by financing research programmes, and partnership opportunities, particularly directly relevant and substantial ones, for scientists and researchers in research projects, as well as dedicated initiatives, in particular for developing States, taking into account the special circumstances of small island developing States and of least developed countries;
 - (g) Increased technical and scientific cooperation, in particular with scientists from and scientific institutions in developing States;

- (h) Other forms of benefits as determined by the Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee established under article 15.
- (3) Parties shall take the necessary legislative, administrative or policy measures to ensure that marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, together with their “BBNJ” standardized batch identifiers, subject to utilization by natural or juridical persons under their jurisdiction are deposited in publicly accessible repositories and databases, maintained either nationally or internationally, no later than three years from the start of such utilization, or as soon as they become available, taking into account current international practice.
- (4) Access to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in the repositories and databases under a Party’s jurisdiction may be subject to reasonable conditions, as follows:
 - (a) The need to preserve the physical integrity of marine genetic resources;
 - (b) The reasonable costs associated with maintaining the relevant gene bank, biorepository or database in which the sample, data or information is held;
 - (c) The reasonable costs associated with providing access to the marine genetic resource, data or information;
 - (d) Other reasonable conditions in line with the objectives of this Agreement; and opportunities for such access on fair and most favourable terms, including on concessional and preferential terms, may be provided to researchers and research institutions from developing States.
- (5) Monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, including commercialization, shall be shared fairly and equitably, through the financial mechanism established under article 52, for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
- (6) After the entry into force of this Agreement, developed Parties shall make annual contributions to the special fund referred to in article 52. A Party’s rate of contribution shall be 50 per cent of that Party’s assessed contribution to the budget adopted by the Conference of the Parties under article 47, paragraph 6 (e). Such payment shall continue until a decision is taken by the Conference of the Parties under paragraph 7 below.
- (7) The Conference of the Parties shall decide on the modalities for the sharing of monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, taking into account the recommendations of the access and benefit-sharing committee established under article 15. If all efforts to reach consensus have been exhausted, a decision shall be adopted by a three-fourths majority of the Parties present and voting. The payments shall be made through the special fund established under article 52. The modalities may include the following:
 - (a) Milestone payments;
 - (b) Payments or contributions related to the commercialization of products, including payment of a percentage of the revenue from sales of products;
 - (c) A tiered fee, paid on a periodic basis, based on a diversified set of indicators measuring the aggregate level of activities by a Party;
 - (d) Other forms as decided by the Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee.
- (8) A Party may make a declaration at the time the Conference of the Parties adopts the modalities stating that those modalities shall not take effect for that Party for a period of up to four years, in order to allow time for necessary implementation. A Party that makes such a declaration shall continue to make the payment set out in paragraph 6 above until the new modalities take effect.
- (9) In deciding on the modalities for the sharing of monetary benefits from the use of digital sequence information on marine genetic resources of areas beyond national jurisdiction under paragraph 7 above, the Conference of the Parties shall take into account the recommendations of the access and

benefit-sharing committee, recognizing that such modalities should be mutually supportive of and adaptable to other access and benefit-sharing instruments.

- (10) The Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee established under article 15, shall review and assess, on a biennial basis, the monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction. The first review shall take place no later than five years after the entry into force of this Agreement. The review shall include consideration of the annual contributions referred to in paragraph 6 above.
- (11) Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.

Article 15
Access and benefit-sharing committee

- (1) An access and benefit-sharing committee is hereby established. It shall serve, *inter alia*, as a means for establishing guidelines for benefit-sharing, in accordance with article 14, providing transparency and ensuring a fair and equitable sharing of both monetary and non-monetary benefits.
- (2) The access and benefit-sharing committee shall be composed of 15 members possessing appropriate qualifications in related fields, so as to ensure the effective exercise of the functions of the committee. The members shall be nominated by Parties and elected by the Conference of the Parties, taking into account gender balance and equitable geographical distribution and providing for representation on the committee from developing States, including from the least developed countries, from small island developing States and from landlocked developing countries. The terms of reference and modalities for the operation of the committee shall be determined by the Conference of the Parties.
- (3) The committee may make recommendations to the Conference of the Parties on matters relating to this Part, including on the following matters:
 - (a) Guidelines or a code of conduct for activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in accordance with this Part;
 - (b) Measures to implement decisions taken in accordance with this Part;
 - (c) Rates or mechanisms for the sharing of monetary benefits in accordance with article 14;
 - (d) Matters relating to this Part in relation to the Clearing-House Mechanism;
 - (e) Matters relating to this Part in relation to the financial mechanism established under article 52;
 - (f) Any other matters relating to this Part that the Conference of the Parties may request the access and benefit-sharing committee to address.
- (4) Each Party shall make available to the access and benefit-sharing committee, through the Clearing-House Mechanism, the information required under this Agreement, which shall include:
 - (a) Legislative, administrative and policy measures on access and benefit-sharing;
 - (b) Contact details and other relevant information on national focal points;
 - (c) Other information required pursuant to the decisions taken by the Conference of the Parties.
- (5) The access and benefit-sharing committee may consult and facilitate the exchange of information with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies on activities under its mandate, including benefit-sharing, the use of digital sequence information on marine genetic resources, best practices, tools and methodologies, data governance and lessons learned.
- (6) The access and benefit-sharing committee may make recommendations to the Conference of the Parties in relation to information obtained under paragraph 5 above.

Article 16
Monitoring and transparency

- (1) Monitoring and transparency of activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be achieved through notification to the Clearing-House Mechanism, through the use of “BBNJ” standardized batch identifiers in accordance with this Part and according to procedures adopted by the Conference of the Parties as recommended by the access and benefit-sharing committee.
- (2) Parties shall periodically submit reports to the access and benefit-sharing committee on their implementation of the provisions in this Part on activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction and the sharing of benefits therefrom, in accordance with this Part.
- (3) The access and benefit-sharing committee shall prepare a report based on the information received through the Clearing-House Mechanism and make it available to Parties, which may submit comments. The access and benefit-sharing committee shall submit the report, including comments received, for the consideration of the Conference of the Parties. The Conference of the Parties, taking into account the recommendation of the access and benefit-sharing committee, may determine appropriate guidelines for the implementation of this article, which shall take into account the national capabilities and circumstances of Parties.

PART III

MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 17 Objectives

The objectives of this Part are to:

- (a) Conserve and sustainably use areas requiring protection, including through the establishment of a comprehensive system of area-based management tools, with ecologically representative and well-connected networks of marine protected areas;
- (b) Strengthen cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;
- (c) Protect, preserve, restore and maintain biological diversity and ecosystems, including with a view to enhancing their productivity and health, and strengthen resilience to stressors, including those related to climate change, ocean acidification and marine pollution;
- (d) Support food security and other socioeconomic objectives, including the protection of cultural values;
- (e) Support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, taking into account the special circumstances of small island developing States, through capacity-building and the development and transfer of marine technology in developing, implementing, monitoring, managing and enforcing area-based management tools, including marine protected areas.

Article 18 Area of application

The establishment of area-based management tools, including marine protected areas, shall not include any areas within national jurisdiction and shall not be relied upon as a basis for asserting or denying any claims to sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto. The Conference of the Parties shall not consider for decision proposals for the establishment of such area-based management tools, including marine protected areas, and in no case shall such proposals be interpreted as recognition or nonrecognition of any claims to sovereignty, sovereign rights or jurisdiction.

Article 19 Proposals

- (1) Proposals regarding the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by Parties, individually or collectively, to the secretariat.
- (2) Parties shall collaborate and consult, as appropriate, with relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities, for the development of proposals, as set out in this Part.
- (3) Proposals shall be formulated on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, taking into account the precautionary approach and an ecosystem approach.
- (4) Proposals with regard to identified areas shall include the following key elements:

- (a) A geographic or spatial description of the area that is the subject of the proposal by reference to the indicative criteria specified in Annex I;
- (b) Information on any of the criteria specified in Annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 5 below applied in identifying the area;
- (c) Human activities in the area, including uses by Indigenous Peoples and local communities, and their possible impact, if any;
- (d) A description of the state of the marine environment and biological diversity in the identified area;
- (e) A description of the conservation and, where appropriate, sustainable use objectives that are to be applied to the area;
- (f) A draft management plan encompassing the proposed measures and outlining proposed monitoring, research and review activities to achieve the specified objectives;
- (g) The duration of the proposed area and measures, if any;
- (h) Information on any consultations undertaken with States, including adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies, if any;
- (i) Information on area-based management tools, including marine protected areas, implemented under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;
- (j) Relevant scientific input and, where available, traditional knowledge of Indigenous Peoples and local communities.

(5) Indicative criteria for the identification of such areas shall include, as relevant, those specified in Annex I and may be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.

(6) Further requirements regarding the contents of proposals, including the modalities for the application of indicative criteria as specified in paragraph 5 above, and guidance on proposals specified in paragraph 4 (b) above shall be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties.

Article 20
Publicity and preliminary review of proposals

Upon receipt of a proposal in writing, the secretariat shall make the proposal publicly available and transmit it to the Scientific and Technical Body for a preliminary review. The purpose of the review is to ascertain that the proposal contains the information required under article 19, including indicative criteria described in this Part and in Annex I. The outcome of that review shall be made publicly available and shall be conveyed to the proponent by the secretariat. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review by the Scientific and Technical Body. The secretariat shall notify the Parties and make that retransmitted proposal publicly available and facilitate consultations pursuant to article 21.

Article 21
Consultations on and assessment of proposals

- (1) Consultations on proposals submitted under article 19 shall be inclusive, transparent and open to all relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, Indigenous Peoples and local communities.
- (2) The secretariat shall facilitate consultations and gather input as follows:
 - (a) States, in particular adjacent coastal States, shall be notified and invited to submit, *inter alia*:
 - (i) Views on the merits and geographic scope of the proposal;
 - (ii) Any other relevant scientific input;

- (iii) Information regarding any existing measures or activities in adjacent or related areas within national jurisdiction and beyond national jurisdiction;
- (iv) Views on the potential implications of the proposal for areas within national jurisdiction;
- (v) Any other relevant information;
- (b) Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be notified and invited to submit, *inter alia*:
 - (i) Views on the merits of the proposal;
 - (ii) Any other relevant scientific input;
 - (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
 - (iv) Views regarding any aspects of the measures and other elements for a draft management plan identified in the proposal that fall within the competence of that body;
 - (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
 - (vi) Any other relevant information;
- (c) Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, *inter alia*:
 - (i) Views on the merits of the proposal;
 - (ii) Any other relevant scientific input;
 - (iii) Any relevant traditional knowledge of Indigenous Peoples and local communities;
 - (iv) Any other relevant information.
- (3) Contributions received pursuant to paragraph 2 above shall be made publicly available by the secretariat.
- (4) In cases where the proposed measure affects areas that are entirely surrounded by the exclusive economic zones of States, proponents shall:
 - (a) Undertake targeted and proactive consultations, including prior notification, with such States;
 - (b) Consider the views and comments of such States on the proposed measure and provide written responses specifically addressing such views and comments and, where appropriate, revise the proposed measure accordingly.
- (5) The proponent shall consider the contributions received during the consultation period, as well as the views of and information from the Scientific and Technical Body, and, as appropriate, revise the proposal accordingly or respond to substantive contributions not reflected in the proposal.
- (6) The consultation period shall be time-bound.
- (7) The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal and make recommendations to the Conference of the Parties.
- (8) The modalities for the consultation and assessment process, including duration, shall be further elaborated by the Scientific and Technical Body, as necessary, at its first meeting, for consideration and adoption by the Conference of the Parties, taking into account the special circumstances of small island developing States.

Article 22
Establishment of area-based management tools,
including marine protected areas

- (1) The Conference of the Parties, on the basis of the final proposal and the draft management plan, taking into account the contributions and scientific input received during the consultation process established under this Part, and the scientific advice and recommendations of the Scientific and Technical Body:

- (a) Shall take decisions on the establishment of area-based management tools, including marine protected areas, and related measures;
- (b) May take decisions on measures compatible with those adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in cooperation and coordination with those instruments, frameworks and bodies;
- (c) May, where proposed measures are within the competences of other global, regional, subregional or sectoral bodies, make recommendations to Parties to this Agreement and to global, regional, subregional and sectoral bodies to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates.

(2) In taking decisions under this article, the Conference of the Parties shall respect the competences of, and not undermine, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

(3) The Conference of the Parties shall make arrangements for regular consultations to enhance cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination with regard to related measures adopted under such instruments and frameworks and by such bodies.

(4) Where the achievement of the objectives and the implementation of this Part so requires, to further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, the Conference of the Parties may consider and, subject to paragraphs 1 and 2 above, may decide, as appropriate, to develop a mechanism regarding existing area-based management tools, including marine protected areas, adopted by relevant legal instruments and frameworks or relevant global, regional, subregional or sectoral bodies.

(5) Decisions and recommendations adopted by the Conference of the Parties in accordance with this Part shall not undermine the effectiveness of measures adopted in respect of areas within national jurisdiction and shall be made with due regard for the rights and duties of all States, in accordance with the Convention. In cases where measures proposed under this Part would affect or could reasonably be expected to affect the superjacent water above the seabed and subsoil of submarine areas over which a coastal State exercises sovereign rights in accordance with the Convention, such measures shall have due regard to the sovereign rights of such coastal States. Consultations shall be undertaken to that end, in accordance with the provisions of this Part.

(6) In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls, either wholly or in part, within the national jurisdiction of a coastal State, the part within national jurisdiction shall immediately cease to be in force. The part remaining in areas beyond national jurisdiction shall remain in force until the Conference of the Parties, at its following meeting, reviews and decides whether to amend or revoke the area-based management tool, including a marine protected area, as necessary.

(7) Upon the establishment of, or amendment to the competence of, a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body, any area-based management tool, including a marine protected area, or related measures adopted by the Conference of the Parties under this Part that subsequently falls within the competence of such instrument, framework or body, either wholly or in part, shall remain in force until the Conference of the Parties reviews and decides, in close cooperation and coordination with that instrument, framework or body, to maintain, amend or revoke the area-based management tool, including a marine protected area, and related measures, as appropriate.

Article 23
Decision-making

- (1) As a general rule, the decisions and recommendations under this Part shall be taken by consensus.
- (2) If no consensus is reached, decisions and recommendations under this Part shall be taken by a three-fourths majority of the Parties present and voting, before which the Conference of the Parties shall

decide, by a two-thirds majority of the Parties present and voting that all efforts to reach consensus have been exhausted.

- (3) Decisions taken under this Part shall enter into force 120 days after the meeting of the Conference of the Parties at which they were taken and shall be binding on all Parties.
- (4) During the period of 120 days provided for in paragraph 3 above, any Party may, by notification in writing to the secretariat, make an objection with respect to a decision adopted under this Part, and that decision shall not be binding on that Party. An objection to a decision may be withdrawn at any time by written notification to the secretariat and, thereupon, the decision shall be binding for that Party 90 days following the date of the notification stating that the objection is withdrawn.
- (5) A Party making an objection under paragraph 4 above shall provide to the secretariat, in writing, at the time of making its objection, the explanation of the grounds for its objection, which shall be based on one or more of the following grounds:
 - (a) The decision is inconsistent with this Agreement or the rights and duties of the objecting Party in accordance with the Convention;
 - (b) The decision unjustifiably discriminates in form or in fact against the objecting Party;
 - (c) The Party cannot practicably comply with the decision at the time of the objection after making all reasonable efforts to do so.
- (6) A Party making an objection under paragraph 4 above shall, to the extent practicable, adopt alternative measures or approaches that are equivalent in effect to the decision to which it has objected and shall not adopt measures nor take actions that would undermine the effectiveness of the decision to which it has objected unless such measures or actions are essential for the exercise of rights and duties of the objecting Party in accordance with the Convention.
- (7) The objecting Party shall report to the next ordinary meeting of the Conference of the Parties following its notification under paragraph 4 above, and periodically thereafter, on its implementation of paragraph 6 above, to inform the monitoring and review under article 26.
- (8) An objection to a decision made in accordance with paragraph 4 above may only be renewed if the objecting Party considers it still necessary, every three years after the entry into force of the decision, by written notification to the secretariat. Such written notification shall include an explanation of the grounds of its initial objection.
- (9) If no notification of renewal pursuant to paragraph 8 above is received, the objection shall be considered automatically withdrawn and, thereupon, the decision shall be binding for that Party 120 days after that objection is automatically withdrawn. The secretariat shall notify the Party 60 days prior to the date on which the objection will be automatically withdrawn.
- (10) Decisions of the Conference of the Parties adopted under this Part, and objections to those decisions, shall be made publicly available by the secretariat and shall be transmitted to all States and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

Article 24
Emergency measures

- (1) The Conference of the Parties shall take decisions to adopt measures in areas beyond national jurisdiction, to be applied on an emergency basis, if necessary, when a natural phenomenon or human-caused disaster has caused, or is likely to cause, serious or irreversible harm to marine biological diversity of areas beyond national jurisdiction, to ensure that the serious or irreversible harm is not exacerbated.
- (2) Measures adopted under this article shall be considered necessary only if, following consultation with relevant legal instruments or frameworks or relevant global, regional, subregional or sectoral bodies, the serious or irreversible harm cannot be managed in a timely manner through the application of the other articles of this Agreement or by a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body.
- (3) Measures adopted on an emergency basis shall be based on the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local com-

munities and shall take into account the precautionary approach. Such measures may be proposed by Parties or recommended by the Scientific and Technical Body and may be adopted intersessionally. The measures shall be temporary and must be reconsidered for decision at the next meeting of the Conference of the Parties following their adoption.

- (4) The measures shall terminate two years following their entry into force or shall be terminated earlier by the Conference of the Parties upon being replaced by area-based management tools, including marine protected areas, and related measures established in accordance with this Part, or by measures adopted by a relevant legal instrument or framework or relevant global, regional, subregional or sectoral body, or by a decision of the Conference of the Parties when the circumstances that necessitated the measure cease to exist.
- (5) Procedures and guidance for the establishment of emergency measures, including consultation procedures, shall be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties at its earliest opportunity. Such procedures shall be inclusive and transparent.

*Article 25
Implementation*

- (1) Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.
- (2) Nothing in this Agreement shall prevent a Party from adopting more stringent measures with respect to its nationals and vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in accordance with international law and in support of the objectives of the Agreement.
- (3) The implementation of the measures adopted under this Part should not impose a disproportionate burden on Parties that are small island developing States or least developed countries, directly or indirectly.
- (4) Parties shall promote, as appropriate, the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members, to support the implementation of the decisions and recommendations made by the Conference of the Parties under this Part.
- (5) Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels or nationals operate in an area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the decisions and recommendations of the Conference of the Parties on area-based management tools, including marine protected areas, established under this Part.
- (6) A Party that is not a party to or a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the measures established under such instruments and frameworks and by such bodies shall not be discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

*Article 26
Monitoring and review*

- (1) Parties shall, individually or collectively, report to the Conference of the Parties on the implementation of area-based management tools, including marine protected areas, established under this Part and related measures. Such reports, as well as the information and the review referred to in paragraphs 2 and 3 below, respectively, shall be made publicly available by the secretariat.
- (2) The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to provide information to the Conference of the Parties on the implementation

of measures that they have adopted to achieve the objectives of area-based management tools, including marine protected areas, established under this Part.

- (3) Area-based management tools, including marine protected areas, established under this Part, including related measures, shall be monitored and periodically reviewed by the Scientific and Technical Body, taking into account the reports and information referred to in paragraphs 1 and 2 above, respectively.
- (4) In the review referred to in paragraph 3 above, the Scientific and Technical Body shall assess the effectiveness of area-based management tools, including marine protected areas, established under this Part, including related measures and the progress made in achieving their objectives, and provide advice and recommendations to the Conference of the Parties.
- (5) Following the review, the Conference of the Parties shall, as necessary, take decisions or recommendations on the amendment, extension or revocation of area-based management tools, including marine protected areas, and any related measures adopted by the Conference of the Parties, on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, taking into account the precautionary approach and an ecosystem approach.

PART IV

ENVIRONMENTAL IMPACT ASSESSMENTS

Article 27 *Objectives*

The objectives of this Part are to:

- (a) Operationalize the provisions of the Convention on environmental impact assessment for areas beyond national jurisdiction by establishing processes, thresholds and other requirements for conducting and reporting assessments by Parties;
- (b) Ensure that activities covered by this Part are assessed and conducted to prevent, mitigate and manage significant adverse impacts for the purpose of protecting and preserving the marine environment;
- (c) Support the consideration of cumulative impacts and impacts in areas within national jurisdiction;
- (d) Provide for strategic environmental assessments;
- (e) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction;
- (f) Build and strengthen the capacity of Parties, particularly developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, to prepare, conduct and evaluate environmental impact assessments and strategic environmental assessments in support of the objectives of this Agreement.

Article 28 *Obligation to conduct environmental impact assessments*

- (1) Parties shall ensure that the potential impacts on the marine environment of planned activities under their jurisdiction or control that take place in areas beyond national jurisdiction are assessed as set out in this Part before they are authorized.
- (2) When a Party with jurisdiction or control over a planned activity that is to be conducted in marine areas within national jurisdiction determines that the activity may cause substantial pollution of or significant and harmful changes to the marine environment in areas beyond national jurisdiction, that Party shall ensure that an environmental impact assessment of such activity is conducted in accordance with this Part or that an environmental impact assessment is conducted under the Party's national process. A Party conducting such an assessment under its national process shall:
 - (a) Make relevant information available through the Clearing-House Mechanism, in a timely manner, during the national process;
 - (b) Ensure that the activity is monitored in a manner consistent with the requirements of its national process;
 - (c) Ensure that environmental impact assessment reports and any relevant monitoring reports are made available through the Clearing-House Mechanism as set out in this Agreement.
- (3) Upon receiving the information referred to in paragraph 2 (a) above, the Scientific and Technical Body may provide comments to the Party with jurisdiction or control over the planned activity.

Article 29

Relationship between this Agreement and environmental impact assessment processes under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

- (1) Parties shall promote the use of environmental impact assessments and the adoption and implementation of the standards and/or guidelines developed under article 38 in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.
- (2) The Conference of the Parties shall develop mechanisms under this Part for the Scientific and Technical Body to collaborate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies that regulate activities in areas beyond national jurisdiction or protect the marine environment.
- (3) When developing or updating standards or guidelines for the conduct of environmental impact assessments of activities in areas beyond national jurisdiction by Parties to this Agreement under article 38, the Scientific and Technical Body shall, as appropriate, collaborate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
- (4) It is not necessary to conduct a screening or an environmental impact assessment of a planned activity in areas beyond national jurisdiction, provided that the Party with jurisdiction or control over the planned activity determines:
 - (a) That the potential impacts of the planned activity or category of activity have been assessed in accordance with the requirements of other relevant legal instruments or frameworks or by relevant global, regional, subregional or sectoral bodies;
 - (b) That:
 - (i) the assessment already undertaken for the planned activity is equivalent to the one required under this Part, and the results of the assessment are taken into account; or
 - (ii) the regulations or standards of the relevant legal instruments or frameworks or relevant global, regional, subregional or sectoral bodies arising from the assessment were designed to prevent, mitigate or manage potential impacts below the threshold for environmental impact assessments under this Part, and they have been complied with.
- (5) When an environmental impact assessment for a planned activity in areas beyond national jurisdiction has been conducted under a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body, the Party concerned shall ensure that the environmental impact assessment report is published through the Clearing-House Mechanism.
- (6) Unless the planned activities that meet the criteria set out in paragraph 4 (b) (i) above are subject to monitoring and review under a relevant legal instrument or framework or relevant global, regional, subregional or sectoral body, Parties shall monitor and review the activities and ensure that the monitoring and review reports are published through the Clearing-House Mechanism.

Article 30

Thresholds and factors for conducting environmental impact assessments

- (1) When a planned activity may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood, the Party with jurisdiction or control of the activity shall conduct a screening of the activity under article 31, using the factors set out in paragraph 2 below, and:
 - (a) The screening shall be sufficiently detailed for the Party to assess whether it has reasonable grounds for believing that the planned activity may cause substantial pollution of or significant and harmful changes to the marine environment and shall include:
 - (i) A description of the planned activity, including its purpose, location, duration and intensity; and

- (ii) An initial analysis of the potential impacts, including consideration of cumulative impacts and, as appropriate, alternatives to the planned activity;
- (b) If it is determined on the basis of the screening that the Party has reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment, an environmental impact assessment shall be conducted in accordance with the provisions of this Part.

(2) When determining whether planned activities under their jurisdiction or control meet the threshold set out in paragraph 1 above, Parties shall consider the following non-exhaustive factors:

- (a) The type of and technology used for the activity and the manner in which it is to be conducted;
- (b) The duration of the activity;
- (c) The location of the activity;
- (d) The characteristics and ecosystem of the location (including areas of particular ecological or biological significance or vulnerability);
- (e) The potential impacts of the activity, including the potential cumulative impacts and the potential impacts in areas within national jurisdiction;
- (f) The extent to which the effects of the activity are unknown or poorly understood;
- (g) Other relevant ecological or biological criteria.

Article 31
Process for environmental impact assessments

(1) Parties shall ensure that the process for conducting an environmental impact assessment pursuant to this Part includes the following steps:

- (a) *Screening.* Parties shall undertake screening, in a timely manner, to determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control, in accordance with article 30, and make its determination publicly available:
 - (i) If a Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, it shall make relevant information, including under article 30, paragraph 1 (a), publicly available through the Clearing-House Mechanism under this Agreement;
 - (ii) On the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, a Party may register its views on the potential impacts of a planned activity on which a determination has been made in accordance with subparagraph (a) (i) above with the Party that made the determination and the Scientific and Technical Body, within 40 days of the publication thereof;
 - (iii) If the Party that registered its views expressed concerns on the potential impacts of a planned activity on which the determination was made, the Party that made that determination shall give consideration to such concerns and may review its determination;
 - (iv) Upon consideration of the concerns registered by a Party under subparagraph (a) (ii) above, the Scientific and Technical Body shall consider and may evaluate the potential impacts of the planned activity on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and, as appropriate, may make recommendations to the Party that made the determination after giving that Party an opportunity to respond to the concerns registered and taking into account such response;
 - (v) The Party that made the determination under subparagraph (a) (i) above shall give consideration to any recommendations of the Scientific and Technical Body;
 - (vi) The registration of views and the recommendations of the Scientific and Technical Body shall be made publicly available, including through the Clearing-House Mechanism;

- (b) *Scoping.* Parties shall ensure that key environmental and any associated impacts, such as economic, social, cultural and human health impacts, including potential cumulative impacts and impacts in areas within national jurisdiction, as well as alternatives to the planned activity, if any, to be included in the environmental impact assessments that shall be conducted under this Part, are identified. The scope shall be defined by using the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;
- (c) *Impact assessment and evaluation.* Parties shall ensure that the impacts of planned activities, including cumulative impacts and impacts in areas within national jurisdiction, are assessed and evaluated using the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;
- (d) *Prevention, mitigation and management of potential adverse effects.* Parties shall ensure that:
 - (i) Measures to prevent, mitigate and manage potential adverse effects of the planned activities under their jurisdiction or control are identified and analysed to avoid significant adverse impacts. Such measures may include the consideration of alternatives to the planned activity under their jurisdiction or control;
 - (ii) Where appropriate, these measures are incorporated into an environmental management plan;
- (e) Parties shall ensure public notification and consultation in accordance with article 32;
- (f) Parties shall ensure the preparation and publication of an environmental impact assessment report in accordance with article 33.

(2) Parties may conduct joint environmental impact assessments, in particular for planned activities under the jurisdiction or control of small island developing States.

(3) A roster of experts shall be created under the Scientific and Technical Body. Parties with capacity constraints may request advice and assistance from those experts to conduct and evaluate screenings and environmental impact assessments for a planned activity under their jurisdiction or control. The experts cannot be appointed to another part of the environmental impact assessment process of the same activity. The Party that requested the advice and assistance shall ensure that such environmental impact assessments are submitted to it for review and decision-making.

Article 32
Public notification and consultation

- (1) Parties shall ensure timely public notification of a planned activity, including by publication through the Clearing-House Mechanism and through the secretariat, and planned and effective time-bound opportunities, as far as practicable, for participation by all States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States, and stakeholders in the environmental impact assessment process. Notification and opportunities for participation, including through the submission of comments, shall take place throughout the environmental impact assessment process, as appropriate, including when identifying the scope of an environmental impact assessment under article 31, paragraph 1 (b), and when a draft environmental impact assessment report has been prepared under article 33, before a decision is made as to whether to authorize the activity.
- (2) Potentially most affected States shall be determined by taking into account the nature and potential effects on the marine environment of the planned activity and shall include:
 - (a) Coastal States whose exercise of sovereign rights for the purpose of exploring, exploiting, conserving or managing natural resources may reasonably be believed to be affected by the activity;
 - (b) States that carry out, in the area of the planned activity, human activities, including economic activities, that may reasonably be believed to be affected.

- (3) Stakeholders in this process include Indigenous Peoples and local communities with relevant traditional knowledge, relevant global, regional, subregional and sectoral bodies, civil society, the scientific community and the public.
- (4) Public notification and consultation shall, in accordance with article 48, paragraph 3, be inclusive and transparent, be conducted in a timely manner and be targeted and proactive when involving small island developing States.
- (5) Substantive comments received during the consultation process, including from adjacent coastal States and any other States adjacent to the planned activity when they are potentially most affected States, shall be considered and responded to or addressed by Parties. Parties shall give particular regard to comments concerning potential impacts in areas within national jurisdiction and provide written responses, as appropriate, specifically addressing such comments, including regarding any additional measures meant to address those potential impacts. Parties shall make public the comments received and the responses or descriptions of the manner in which they were addressed.
- (6) Where a planned activity affects areas of the high seas that are entirely surrounded by the exclusive economic zones of States, Parties shall:
 - (a) Undertake targeted and proactive consultations, including prior notification, with such surrounding States;
 - (b) Consider the views and comments of those surrounding States on the planned activity and provide written responses specifically addressing such views and comments and, as appropriate, revise the planned activity accordingly.
- (7) Parties shall ensure access to information related to the environmental impact assessment process under this Agreement. Notwithstanding this, Parties shall not be required to disclose confidential or proprietary information. The fact that confidential or proprietary information has been redacted shall be indicated in public documents.

Article 33
Environmental impact assessment reports

- (1) Parties shall ensure the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part.
- (2) The environmental impact assessment report shall include, at a minimum, the following information: a description of the planned activity, including its location; a description of the results of the scoping exercise; a baseline assessment of the marine environment likely to be affected; a description of potential impacts, including potential cumulative impacts and any impacts in areas within national jurisdiction; a description of potential prevention, mitigation and management measures; a description of uncertainties and gaps in knowledge; information on the public consultation process; a description of the consideration of reasonable alternatives to the planned activity; a description of follow-up actions, including an environmental management plan; and a non-technical summary.
- (3) The Party shall make the draft environmental impact assessment report available through the Clearing-House Mechanism during the public consultation process, to provide an opportunity for the Scientific and Technical Body to consider and evaluate the report.
- (4) The Scientific and Technical Body, as appropriate and in a timely manner, may make comments to the Party on the draft environmental impact assessment report. The Party shall give consideration to any comments made by the Scientific and Technical Body.
- (5) Parties shall publish the reports of the environmental impact assessments, including through the Clearing-House Mechanism. The secretariat shall ensure that all Parties are notified in a timely manner when reports are published through the Clearing-House Mechanism.
- (6) Final environmental impact assessment reports shall be considered by the Scientific and Technical Body, on the basis of relevant practices, procedures and knowledge under this Agreement, for the purpose of developing guidelines, including the identification of best practices.

(7) A selection of the published information used in the screening process to make decisions on whether to conduct an environmental impact assessment, in accordance with articles 30 and 31, shall be considered and reviewed by the Scientific and Technical Body, on the basis of relevant practices, procedures and knowledge under this Agreement, for the purpose of developing guidelines, including the identification of best practices.

Article 34
Decision-making

- (1) A Party under whose jurisdiction or control a planned activity falls shall be responsible for determining if it may proceed.
- (2) When determining whether the planned activity may proceed under this Part, full account shall be taken of an environmental impact assessment conducted in accordance with this Part. A decision to authorize the planned activity under the jurisdiction or control of a Party shall only be made when, taking into account mitigation or management measures, the Party has determined that it has made all reasonable efforts to ensure that the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment.
- (3) Decision documents shall clearly outline any conditions of approval related to mitigation measures and follow-up requirements. Decision documents shall be made public, including through the Clearing-House Mechanism.
- (4) At the request of a Party, the Conference of the Parties may provide advice and assistance to that Party when determining whether a planned activity under its jurisdiction or control may proceed.

Article 35
Monitoring of impacts of authorized activities

Parties shall, by using the best available science and scientific information and, where available, the relevant traditional knowledge of Indigenous Peoples and local communities, keep under surveillance the impacts of any activities in areas beyond national jurisdiction that they permit or in which they engage in order to determine whether these activities are likely to pollute or have adverse impacts on the marine environment. In particular, each Party shall monitor the environmental and any associated impacts, such as economic, social, cultural and human health impacts, of an authorized activity under their jurisdiction or control in accordance with the conditions set out in the approval of the activity.

Article 36
Reporting on impacts of authorized activities

- (1) Parties, whether acting individually or collectively, shall periodically report on the impacts of the authorized activity and the results of the monitoring required under article 35.
- (2) Monitoring reports shall be made public, including through the Clearing-House Mechanism, and the Scientific and Technical Body may consider and evaluate the monitoring reports.
- (3) Monitoring reports shall be considered by the Scientific and Technical Body, on the basis of relevant practices, procedures and knowledge under this Agreement, for the purpose of developing guidelines on the monitoring of impacts of authorized activities, including the identification of best practices.

Article 37
Review of authorized activities and their impacts

- (1) Parties shall ensure that the impacts of the authorized activity monitored pursuant to article 35 are reviewed.
- (2) Should the Party with jurisdiction or control over the activity identify significant adverse impacts that either were not foreseen in the environmental impact assessment, in nature or severity, or that arise from a breach of any of the conditions set out in the approval of the activity, the Party shall review its decision author-

izing the activity, notify the Conference of the Parties, other Parties and the public, including through the Clearing-House Mechanism, and:

- (a) Require that measures be proposed and implemented to prevent, mitigate and/or manage those impacts or take any other necessary action and/or halt the activity, as appropriate; and
- (b) Evaluate, in a timely manner, any measures implemented or actions taken under subparagraph (a) above.

(3) On the basis of the reports received under article 36, the Scientific and Technical Body may notify the Party that authorized the activity if it considers that the activity may have significant adverse impacts that were either not foreseen in the environmental impact assessment or that arise from a breach of any conditions of approval of the authorized activity and, as appropriate, may make recommendations to the Party.

(4)

- (a) On the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, a Party may register its concerns, with the Party that authorized the activity and with the Scientific and Technical Body, that the authorized activity may have significant adverse impacts that were either not foreseen in the environmental impact assessment, in nature or severity, or that arise from a breach of any conditions of approval of the authorized activity;
- (b) The Party that authorized the activity shall give consideration to such concerns;
- (c) Upon consideration of the concerns registered by a Party, the Scientific and Technical Body shall consider and may evaluate the matter based on the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and may notify the Party that authorized the activity, if it considers that such activity may have significant adverse impacts that were either not foreseen in the environmental impact assessment or that arise from a breach of any conditions of approval of the authorized activity and, after giving that Party an opportunity to respond to the concerns registered and taking into account such response and as appropriate, may make recommendations to the Party that authorized the activity;
- (d) The registration of concerns, any notifications issued and any recommendations made by the Scientific and Technical Body shall be made publicly available, including through the Clearing-House Mechanism;
- (e) The Party that authorized the activity shall give consideration to any notifications issued and any recommendations made by the Scientific and Technical Body.

(5) All States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States, and stakeholders shall be kept informed through the Clearing-House Mechanism and may be consulted in the monitoring, reporting and review processes in respect of an activity authorized under this Agreement.

(6) Parties shall publish, including through the Clearing-House Mechanism:

- (a) Reports on the review of the impacts of the authorized activity;
- (b) Decision documents, including a record of the reasons for the decision by the Party, when a Party has changed its decision authorizing the activity.

Article 38

Standards and/or guidelines to be developed by the Scientific and Technical Body related to environmental impact assessments

(1) The Scientific and Technical Body shall develop standards or guidelines for consideration and adoption by the Conference of the Parties on:

- (a) The determination of whether the thresholds for the conduct of a screening or an environmental impact assessment under article 30 have been met or exceeded for planned activities, including on the basis of the non-exhaustive factors set out in paragraph 2 of that article;
- (b) The assessment of cumulative impacts in areas beyond national jurisdiction and how those impacts should be taken into account in the environmental impact assessment process;
- (c) The assessment of impacts, in areas within national jurisdiction, of planned activities in areas beyond national jurisdiction and how those impacts should be taken into account in the environmental impact assessment process;
- (d) The public notification and consultation process under article 32, including the determination of what constitutes confidential or proprietary information;
- (e) The required content of environmental impact assessment reports and published information used in the screening process pursuant to article 33, including best practices;
- (f) The monitoring of and reporting on the impacts of authorized activities as set out in articles 35 and 36, including the identification of best practices;
- (g) The conduct of strategic environmental assessments.

(2) The Scientific and Technical Body may also develop standards and guidelines for consideration and adoption by the Conference of the Parties, including on:

- (a) An indicative non-exhaustive list of activities that require or do not require an environmental impact assessment, as well as any criteria related to those activities, which shall be periodically updated;
- (b) The conduct of environmental impact assessments by Parties to this Agreement in areas identified as requiring protection or special attention.

(3) Any standard shall be set out in an annex to this Agreement, in accordance with article 74.

Article 39
Strategic environmental assessments

- (1) Parties shall, individually or in cooperation with other Parties, consider conducting strategic environmental assessments for plans and programmes relating to activities under their jurisdiction or control, to be conducted in areas beyond national jurisdiction, in order to assess the potential effects of such plans or programmes, as well as of alternatives, on the marine environment.
- (2) The Conference of the Parties may conduct a strategic environmental assessment of an area or region to collate and synthesize the best available information about the area or region, assess current and potential future impacts and identify data gaps and research priorities.
- (3) When undertaking environmental impact assessments pursuant to this Part, Parties shall take into account the results of relevant strategic environmental assessments carried out under paragraphs 1 and 2 above, where available.
- (4) The Conference of the Parties shall develop guidance on the conduct of each category of strategic environmental assessment described in this article.

PART V

CAPACITY-BUILDING AND THE TRANSFER OF MARINE TECHNOLOGY

Article 40 Objectives

The objectives of this Part are to:

- (a) Assist Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;
- (b) Enable inclusive, equitable and effective cooperation and participation in the activities undertaken under this Agreement;
- (c) Develop the marine scientific and technological capacity, including with respect to research, of Parties, in particular developing States Parties, with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through access to marine technology by, and the transfer of marine technology to, developing States Parties;
- (d) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (e) More specifically, support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, through capacity-building and the development and transfer of marine technology under this Agreement, in achieving the objectives relating to:
 - (i) Marine genetic resources, including the sharing of benefits, as reflected in article 9;
 - (ii) Measures such as area-based management tools, including marine protected areas, as reflected in article 17;
 - (iii) Environmental impact assessments, as reflected in article 27.

Article 41 Cooperation in capacity-building and the transfer of marine technology

- (1) Parties shall cooperate, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, to assist Parties, in particular developing States Parties, in achieving the objectives of this Agreement through capacity-building and the development and transfer of marine science and marine technology.
- (2) In providing capacity-building and the transfer of marine technology under this Agreement, Parties shall cooperate at all levels and in all forms, including through partnerships with and involving all relevant stakeholders, such as, where appropriate, the private sector, civil society, and Indigenous Peoples and local communities as holders of traditional knowledge, as well as through strengthening co-operation and coordination between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
- (3) In giving effect to this Part, Parties shall give full recognition to the special requirements of developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries. Parties shall ensure that the provision of capacity-building and the transfer of marine technology is not conditional on onerous reporting requirements.

Article 42
Modalities for capacity-building and for the transfer of
marine technology

- (1) Parties, within their capabilities, shall ensure capacity-building for developing States Parties and shall cooperate to achieve the transfer of marine technology, in particular to developing States Parties that need and request it, taking into account the special circumstances of small island developing States and of least developed countries, in accordance with the provisions of this Agreement.
- (2) Parties shall provide, within their capabilities, resources to support such capacity-building and the development and transfer of marine technology and to facilitate access to other sources of support, taking into account their national policies, priorities, plans and programmes.
- (3) Capacity-building and the transfer of marine technology should be a country-driven, transparent, effective and iterative process that is participatory, cross-cutting and gender-responsive. It shall build upon, as appropriate, and not duplicate existing programmes and be guided by lessons learned, including those from capacity-building and transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. Insofar as possible, it shall take into account these activities with a view to maximizing efficiency and results.
- (4) Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, identified through needs assessments on an individual case-by-case, subregional or regional basis. Such needs and priorities may be self-assessed or facilitated through the capacity-building and transfer of marine technology committee and the Clearing-House Mechanism.

Article 43
Additional modalities for the transfer of marine technology

- (1) Parties share a long-term vision of the importance of fully realizing technology development and transfer for inclusive, equitable and effective cooperation and participation in the activities undertaken under this Agreement and in order to fully achieve its objectives.
- (2) The transfer of marine technology undertaken under this Agreement shall take place on fair and most favourable terms, including on concessional and preferential terms, and in accordance with mutually agreed terms and conditions as well as the objectives of this Agreement.
- (3) Parties shall promote and encourage economic and legal conditions for the transfer of marine technology to developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, which may include providing incentives to enterprises and institutions.
- (4) The transfer of marine technology shall take into account all rights over such technologies and be carried out with due regard for all legitimate interests, including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology and taking into particular consideration the interests and needs of developing States for the attainment of the objectives of this Agreement.
- (5) Marine technology transferred pursuant to this Part shall be appropriate, relevant and, to the extent possible, reliable, affordable, up to date, environmentally sound and available in an accessible form for developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries.

Article 44
Types of capacity-building and of the
transfer of marine technology

- (1) In support of the objectives set out in article 40, the types of capacity-building and of the transfer of marine technology may include, but are not limited to, support for the creation or enhancement of

the human, financial management, scientific, technological, organizational, institutional and other resource capabilities of Parties, such as:

- (a) The sharing and use of relevant data, information, knowledge and research results;
- (b) Information dissemination and awareness-raising, including with respect to relevant traditional knowledge of Indigenous Peoples and local communities, in line with the free, prior and informed consent of these Indigenous Peoples and, as appropriate, local communities;
- (c) The development and strengthening of relevant infrastructure, including equipment and capacity of personnel for its use and maintenance;
- (d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;
- (e) The development and strengthening of human and financial management resource capabilities and of technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of marine technology;
- (f) The development and sharing of manuals, guidelines and standards;
- (g) The development of technical, scientific and research and development programmes;
- (h) The development and strengthening of capacities and technological tools for effective monitoring, control and surveillance of activities within the scope of this Agreement.

(2) Further details concerning the types of capacity-building and of the transfer of marine technology identified in this article are elaborated in Annex II.

(3) The Conference of the Parties, taking account of the recommendations of the capacity-building and transfer of marine technology committee, shall periodically, as necessary, review, assess and further develop and provide guidance on the indicative and non-exhaustive list of types of capacity-building and of transfer of marine technology elaborated in Annex II, to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.

Article 45
Monitoring and review

- (1) Capacity-building and the transfer of marine technology undertaken in accordance with the provisions of this Part shall be monitored and reviewed periodically.
- (2) The monitoring and review referred to in paragraph 1 above shall be carried out by the capacity-building and transfer of marine technology committee under the authority of the Conference of the Parties and shall be aimed at:
 - (a) Assessing and reviewing the needs and priorities of developing States Parties in terms of capacity-building and the transfer of marine technology, paying particular attention to the special requirements of developing States Parties and to the special circumstances of small island developing States and of least developed countries, in accordance with article 42, paragraph 4;
 - (b) Reviewing the support required, provided and mobilized, as well as gaps in meeting the assessed needs of developing States Parties in relation to this Agreement;
 - (c) Identifying and mobilizing funds under the financial mechanism established under article 52 to develop and implement capacity-building and the transfer of marine technology, including for the conduct of needs assessments;
 - (d) Measuring performance on the basis of agreed indicators and reviewing results-based analyses, including on the output, outcomes, progress and effectiveness of capacity-building and transfer of marine technology under this Agreement, as well as successes and challenges;
 - (e) Making recommendations for follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, to strengthen their implementation of the Agreement in order to achieve its objectives.

(3) In supporting the monitoring and review of capacity-building and the transfer of marine technology, Parties shall submit reports to the capacity-building and transfer of marine technology committee. Those reports should be in a format and at intervals to be determined by the Conference of the Parties, taking into account the recommendations of the capacity-building and transfer of marine technology committee. In submitting their reports, Parties shall take into account, where applicable, input from regional and subregional bodies on capacity-building and the transfer of marine technology. The reports submitted by Parties, as well as any input from regional and subregional bodies on capacity-building and the transfer of marine technology, should be made publicly available. The Conference of the Parties shall ensure that reporting requirements should be streamlined and not onerous, in particular for developing States Parties, including in terms of costs and time requirements.

Article 46
Capacity-building and transfer of marine technology committee

(1) A capacity-building and transfer of marine technology committee is hereby established.

(2) The committee shall consist of members possessing appropriate qualifications and expertise, to serve objectively in the best interest of the Agreement, nominated by Parties and elected by the Conference of the Parties, taking into account gender balance and equitable geographical distribution and providing for representation on the committee from the least developed countries, from the small island developing States and from the landlocked developing countries. The terms of reference and modalities for the operation of the committee shall be decided by the Conference of the Parties at its first meeting.

(3) The committee shall submit reports and recommendations that the Conference of the Parties shall consider and take action on as appropriate.

PART VI

INSTITUTIONAL ARRANGEMENTS

Article 47
Conference of the Parties

- (1) A Conference of the Parties is hereby established.
- (2) The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the United Nations no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference of the Parties. Extraordinary meetings of the Conference of the Parties may be held at other times, in accordance with the rules of procedure.
- (3) The Conference of the Parties shall ordinarily meet at the seat of the secretariat or at United Nations Headquarters.
- (4) The Conference of the Parties shall by consensus adopt, at its first meeting, rules of procedure for itself and its subsidiary bodies, financial rules governing its funding and the funding of the secretariat and any subsidiary bodies and, thereafter, rules of procedure and financial rules for any further subsidiary body that it may establish. Until such time as the rules of procedure have been adopted, the rules of procedure of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction shall apply.
- (5) The Conference of the Parties shall make every effort to adopt decisions and recommendations by consensus. Except as otherwise provided in this Agreement, if all efforts to reach consensus have been exhausted, decisions and recommendations of the Conference of the Parties on questions of substance shall be adopted by a two-thirds majority of the Parties present and voting, and decisions on questions of procedure shall be adopted by a majority of the Parties present and voting.
- (6) The Conference of the Parties shall keep under review and evaluation the implementation of this Agreement and, for this purpose, shall:
 - (a) Adopt decisions and recommendations related to the implementation of this Agreement;
 - (b) Review and facilitate the exchange of information among Parties relevant to the implementation of this Agreement;
 - (c) Promote, including by establishing appropriate processes, cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
 - (d) Establish such subsidiary bodies as deemed necessary to support the implementation of this Agreement;
 - (e) Adopt a budget by a three-fourths majority of the Parties present and voting if all efforts to reach consensus have been exhausted, at such frequency and for such a financial period as it may determine;
 - (f) Undertake other functions identified in this Agreement or as may be required for its implementation.
- (7) The Conference of the Parties may decide to request the International Tribunal for the Law of the Sea to give an advisory opinion on a legal question on the conformity with this Agreement of a proposal before the Conference of the Parties on any matter within its competence. A request for an advisory opinion shall not be sought on a matter within the competences of other global, regional, subregional or sectoral bodies, or on a matter that necessarily involves the concurrent consideration of any dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto, or the legal status of an area as within national jurisdiction. The request shall indicate the scope of the

legal question on which the advisory opinion is sought. The Conference of the Parties may request that such opinion be given as a matter of urgency.

(8) The Conference of the Parties shall, within five years of the entry into force of this Agreement and thereafter at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Article 48
Transparency

(1) The Conference of the Parties shall promote transparency in decision-making processes and other activities carried out under this Agreement.

(2) All meetings of the Conference of the Parties and its subsidiary bodies shall be open to observers participating in accordance with the rules of procedure unless otherwise decided by the Conference of the Parties. The Conference of the Parties shall publish and maintain a public record of its decisions.

(3) The Conference of the Parties shall promote transparency in the implementation of this Agreement, including through the public dissemination of information and the facilitation of the participation of, and consultation with, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders, as appropriate and in accordance with the provisions of this Agreement.

(4) Representatives of States not party to this Agreement, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders with an interest in matters pertaining to the Conference of the Parties may request to participate as observers in the meetings of the Conference of the Parties and of its subsidiary bodies. The rules of procedure of the Conference of the Parties shall provide for modalities for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.

Article 49
Scientific and Technical Body

(1) A Scientific and Technical Body is hereby established.

(2) The Scientific and Technical Body shall be composed of members serving in their expert capacity and in the best interest of the Agreement, nominated by Parties and elected by the Conference of the Parties, with suitable qualifications, taking into account the need for multidisciplinary expertise, including relevant scientific and technical expertise and expertise in relevant traditional knowledge of Indigenous Peoples and local communities, gender balance and equitable geographical representation. The terms of reference and modalities for the operation of the Scientific and Technical Body, including its selection process and the terms of members' mandates, shall be determined by the Conference of the Parties at its first meeting.

(3) The Scientific and Technical Body may draw on appropriate advice emanating from relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as well as from other scientists and experts, as may be required.

(4) Under the authority and guidance of the Conference of the Parties, and taking into account the multidisciplinary expertise referenced in paragraph 2 above, the Scientific and Technical Body shall provide scientific and technical advice to the Conference of the Parties, perform the functions assigned to it under this Agreement and such other functions as may be determined by the Conference of the Parties and provide reports to the Conference of the Parties on its work.

Article 50
Secretariat

- (1) A secretariat is hereby established. The Conference of the Parties, at its first meeting, shall make arrangements for the functioning of the secretariat, including deciding on its seat.
- (2) Until such time as the secretariat commences its functions, the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat, shall perform the secretariat functions under this Agreement.
- (3) The secretariat and the host State may conclude a headquarters agreement. The secretariat shall enjoy legal capacity in the territory of the host State and be granted such privileges and immunities by the host State as are necessary for the exercise of its functions.
- (4) The secretariat shall:
 - (a) Provide administrative and logistical support to the Conference of the Parties and its subsidiary bodies for the purposes of the implementation of this Agreement;
 - (b) Arrange and service the meetings of the Conference of the Parties and of any other bodies as may be established under this Agreement or by the Conference of the Parties;
 - (c) Circulate information relating to the implementation of this Agreement in a timely manner, including making decisions of the Conference of the Parties publicly available and transmitting them to all Parties, as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;
 - (d) Facilitate cooperation and coordination, as appropriate, with the secretariats of other relevant international bodies and, in particular, enter into such administrative and contractual arrangements as may be required for that purpose and for the effective discharge of its functions, subject to approval by the Conference of the Parties;
 - (e) Prepare reports on the execution of its functions under this Agreement and submit them to the Conference of the Parties;
 - (f) Provide assistance with the implementation of this Agreement and perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

Article 51
Clearing-House Mechanism

- (1) A Clearing-House Mechanism is hereby established.
- (2) The Clearing-House Mechanism shall consist primarily of an open-access platform. The specific modalities for the operation of the Clearing-House Mechanism shall be determined by the Conference of the Parties.
- (3) The Clearing-House Mechanism shall:
 - (a) Serve as a centralized platform to enable Parties to access, provide and disseminate information with respect to activities taking place pursuant to the provisions of this Agreement, including information relating to:
 - (i) Marine genetic resources of areas beyond national jurisdiction, as set out in Part II of this Agreement;
 - (ii) The establishment and implementation of area-based management tools, including marine protected areas;
 - (iii) Environmental impact assessments;
 - (iv) Requests for capacity-building and the transfer of marine technology and opportunities with respect thereto, including research collaboration and training opportunities, information on sources and availability of technological information and data for the transfer

of marine technology, opportunities for facilitated access to marine technology and the availability of funding;

- (b) Facilitate the matching of capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and facilitate access to related know-how and expertise;
- (c) Provide links to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other gene banks, repositories and databases, including those pertaining to relevant traditional knowledge of Indigenous Peoples and local communities, and promote, where possible, links with publicly available private and non-governmental platforms for the exchange of information;
- (d) Build on global, regional and subregional clearing-house institutions, where applicable, when establishing regional and subregional mechanisms under the global mechanism;
- (e) Foster enhanced transparency, including by facilitating the sharing of environmental baseline data and information relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction between Parties and other relevant stakeholders;
- (f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration;
- (g) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

(4) The Clearing-House Mechanism shall be managed by the secretariat, without prejudice to possible cooperation with other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies as determined by the Conference of the Parties, including the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the International Seabed Authority, the International Maritime Organization and the Food and Agriculture Organization of the United Nations.

(5) In the management of the Clearing-House Mechanism, full recognition shall be given to the special requirements of developing States Parties, as well as the special circumstances of small island developing States Parties, and their access to the mechanism shall be facilitated to enable those States to utilize it without undue obstacles or administrative burdens. Information shall be included on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as to provide specific programmes for those States.

(6) The confidentiality of information provided under this Agreement and rights thereto shall be respected. Nothing under this Agreement shall be interpreted as requiring the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law.

PART VII

FINANCIAL RESOURCES AND MECHANISM

Article 52 *Funding*

- (1) Each Party shall provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, taking into account its national policies, priorities, plans and programmes.
- (2) The institutions established under this Agreement shall be funded through assessed contributions of the Parties.
- (3) A mechanism for the provision of adequate, accessible, new and additional and predictable financial resources under this Agreement is hereby established. The mechanism shall assist developing States Parties in implementing this Agreement, including through funding in support of capacity-building and the transfer of marine technology, and perform other functions as set out in this article for the conservation and sustainable use of marine biological diversity.
- (4) The mechanism shall include:
 - (a) A voluntary trust fund established by the Conference of the Parties to facilitate the participation of representatives of developing States Parties, in particular least developed countries, landlocked developing countries and small island developing States, in the meetings of the bodies established under this Agreement;
 - (b) A special fund that shall be funded through the following sources:
 - (i) Annual contributions in accordance with article 14, paragraph 6;
 - (ii) Payments in accordance with article 14, paragraph 7;
 - (iii) Additional contributions from Parties and private entities wishing to provide financial resources to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
 - (c) The Global Environment Facility trust fund.
- (5) The Conference of the Parties may consider the possibility of establishing additional funds, as part of the financial mechanism, to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, to finance rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction.
- (6) The special fund and the Global Environment Facility trust fund shall be utilized in order to:
 - (a) Fund capacity-building projects under this Agreement, including effective projects on the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology;
 - (b) Assist developing States Parties in implementing this Agreement;
 - (c) Support conservation and sustainable use programmes by Indigenous Peoples and local communities as holders of traditional knowledge;
 - (d) Support public consultations at the national, subregional and regional levels;
 - (e) Fund the undertaking of any other activities as decided by the Conference of the Parties.
- (7) The financial mechanism should seek to ensure that duplication is avoided, and complementarity and coherence promoted, among the utilization of the funds within the mechanism.
- (8) Financial resources mobilized in support of the implementation of this Agreement may include funding provided through public and private sources, both national and international, including, but not limited to, contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-

governmental organizations and natural and juridical persons, and through public-private partnerships.

- (9) For the purposes of this Agreement, the mechanism shall function under the authority, where appropriate, and guidance of the Conference of the Parties and shall be accountable thereto. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources.
- (10) The Conference of the Parties and the Global Environment Facility shall agree upon arrangements to give effect to the above paragraphs at the first meeting of the Conference of the Parties.
- (11) In recognition of the urgency to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, the Conference of the Parties shall determine an initial resource mobilization goal through 2030 for the special fund from all sources, taking into account, *inter alia*, the institutional modalities of the special fund and the information provided through the capacity-building and transfer of marine technology committee.
- (12) Eligibility for access to funding under this Agreement shall be open to developing States Parties on the basis of need. Funding under the special fund shall be distributed according to equitable sharing criteria, taking into account the needs for assistance of Parties with special requirements, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States and coastal African States, archipelagic States and developing middle-income countries, and taking into account the special circumstances of small island developing States and of least developed countries. The special fund shall be aimed at ensuring efficient access to funding through simplified application and approval procedures and enhanced readiness of support for such developing States Parties.
- (13) In the light of capacity constraints, Parties shall encourage international organizations to grant preferential treatment to, and consider the specific needs and special requirements of developing States Parties, in particular the least developed countries, landlocked developing countries and small island developing States, and taking into account the special circumstances of small island developing States and of least developed countries, in the allocation of appropriate funds and technical assistance and the utilization of their specialized services for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
- (14) The Conference of the Parties shall establish a finance committee on financial resources. It shall be composed of members possessing appropriate qualifications and expertise, taking into account gender balance and equitable geographical distribution. The terms of reference and modalities for the operation of the committee shall be decided by the Conference of the Parties. The committee shall periodically report and make recommendations on the identification and mobilization of funds under the mechanism. It shall also collect information and report on funding under other mechanisms and instruments contributing directly or indirectly to the achievement of the objectives of this Agreement. In addition to the considerations provided in this article, the committee shall consider, *inter alia*:
 - (a) The assessment of the needs of the Parties, in particular developing States Parties;
 - (b) The availability and timely disbursement of funds;
 - (c) The transparency of decision-making and management processes concerning fundraising and allocations;
 - (d) The accountability of the recipient developing States Parties with respect to the agreed use of funds.
- (15) The Conference of the Parties shall consider the reports and recommendations of the finance committee and take appropriate action.
- (16) The Conference of the Parties shall, in addition, undertake a periodic review of the financial mechanism to assess the adequacy, effectiveness and accessibility of financial resources, including for the delivery of capacity-building and the transfer of marine technology, in particular for developing States Parties.

PART VIII

IMPLEMENTATION AND COMPLIANCE

Article 53 *Implementation*

Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.

Article 54 *Monitoring of implementation*

Each Party shall monitor the implementation of its obligations under this Agreement and shall, in a format and at intervals to be determined by the Conference of the Parties, report to the Conference on measures that it has taken to implement this Agreement.

Article 55 *Implementation and Compliance Committee*

- (1) An Implementation and Compliance Committee to facilitate and consider the implementation of and promote compliance with the provisions of this Agreement is hereby established. The Implementation and Compliance Committee shall be facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.
- (2) The Implementation and Compliance Committee shall consist of members possessing appropriate qualifications and experience nominated by Parties and elected by the Conference of the Parties, with due consideration given to gender balance and equitable geographical representation.
- (3) The Implementation and Compliance Committee shall operate under the modalities and rules of procedure adopted by the Conference of the Parties at its first meeting. The Implementation and Compliance Committee shall consider issues of implementation and compliance at the individual and systemic levels, *inter alia*, and report periodically and make recommendations, as appropriate while cognizant of respective national circumstances, to the Conference of the Parties.
- (4) In the course of its work, the Implementation and Compliance Committee may draw on appropriate information from bodies established under this Agreement, as well as relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as may be required.

PART IX

SETTLEMENT OF DISPUTES

Article 56 *Prevention of disputes*

Parties shall cooperate in order to prevent disputes.

Article 57 *Obligation to settle disputes by peaceful means*

Parties have the obligation to settle their disputes concerning the interpretation or application of this Agreement by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 58 *Settlement of disputes by any peaceful means* *chosen by the Parties*

Nothing in this Part impairs the right of any Party to this Agreement to agree at any time to settle a dispute between them concerning the interpretation or application of this Agreement by any peaceful means of their own choice.

Article 59 *Disputes of a technical nature*

Where a dispute concerns a matter of a technical nature, the Parties concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes under article 60 of this Agreement.

Article 60 *Procedures for the settlement of disputes*

- (1) Disputes concerning the interpretation or application of this Agreement shall be settled in accordance with the provisions for the settlement of disputes provided for in Part XV of the Convention.
- (2) The provisions of Part XV of and Annexes V, VI, VII and VIII to the Convention shall be deemed to be replicated for the purpose of the settlement of disputes involving a Party to this Agreement that is not a Party to the Convention.
- (3) Any procedure accepted by a Party to this Agreement that is also a Party to the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that Party, when signing, ratifying, approving, accepting or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 of the Convention for the settlement of disputes under this Part.
- (4) Any declaration made by a Party to this Agreement that is also a Party to the Convention pursuant to article 298 of the Convention shall apply to the settlement of disputes under this Part, unless that Party, when signing, ratifying, approving, accepting or acceding to this Agreement, or at any time thereafter, has made a different declaration pursuant to article 298 of the Convention for the settlement of disputes under this Part.
- (5) Pursuant to paragraph 2 above, a Party to this Agreement that is not a Party to the Convention, when signing, ratifying, approving, accepting or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, submitted to the depositary, one or more of the

following means for the settlement of disputes concerning the interpretation or application of this Agreement:

- (a) The International Tribunal for the Law of the Sea;
- (b) The International Court of Justice;
- (c) An Annex VII arbitral tribunal;
- (d) An Annex VIII special arbitral tribunal for one or more of the categories of disputes specified in said Annex.

(6) A Party to this Agreement that is not a Party to the Convention that has not issued a declaration shall be deemed to have accepted the option in paragraph 5 (c) above. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration under Annex VII to the Convention, unless the parties otherwise agree. Article 287, paragraphs 6 to 8, of the Convention shall apply to declarations made under paragraph 5 above.

(7) A Party to this Agreement that is not a Party to the Convention may, when signing, ratifying, approving, accepting or acceding to this Agreement, or at any time thereafter, without prejudice to the obligations arising under this Part, declare in writing that it does not accept any or more of the procedures provided for in Part XV, section 2, of the Convention with respect to one or more of the categories of disputes set out in article 298 of the Convention for the settlement of disputes under this Part. Article 298 of the Convention shall apply to such a declaration.

(8) The provisions of this article shall be without prejudice to the procedures on the settlement of disputes to which Parties have agreed as participants in a relevant legal instrument or framework, or as members of a relevant global, regional, subregional or sectoral body concerning the interpretation or application of such instruments and frameworks.

(9) Nothing in this Agreement shall be interpreted as conferring jurisdiction upon a court or tribunal over any dispute that concerns or necessarily involves the concurrent consideration of the legal status of an area as within national jurisdiction, nor over any dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto of a Party to this Agreement, provided that nothing in this paragraph shall be interpreted as limiting the jurisdiction of a court or tribunal under Part XV, section 2, of the Convention.

(10) For the avoidance of doubt, nothing in this Agreement shall be relied upon as a basis for asserting or denying any claims to sovereignty, sovereign rights or jurisdiction over land or maritime areas, including in respect to any disputes relating thereto.

Article 61
Provisional arrangements

Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

PART X

NON-PARTIES TO THIS AGREEMENT

Article 62

Non-parties to this Agreement

Parties shall encourage non-parties to this Agreement to become Parties thereto and to adopt laws and regulations consistent with its provisions.

PART XI

GOOD FAITH AND ABUSE OF RIGHTS

Article 63

Good faith and abuse of rights

Parties shall fulfil in good faith the obligations assumed under this Agreement and exercise the rights recognized therein in a manner that would not constitute an abuse of right.

PART XII

FINAL PROVISIONS

Article 64 *Right to vote*

- (1) Each Party to this Agreement shall have one vote, except as provided for in paragraph 2 below.
- (2) A regional economic integration organization Party to this Agreement, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

Article 65 *Signature*

This Agreement shall be open for signature by all States and regional economic integration organizations from 20 September 2023 and shall remain open for signature at United Nations Headquarters in New York until 20 September 2025.

Article 66 *Ratification, approval, acceptance and accession*

This Agreement shall be subject to ratification, approval or acceptance by States and regional economic integration organizations. It shall be open for accession by States and regional economic integration organizations from the day after the date on which the Agreement is closed for signature. Instruments of ratification, approval, acceptance and accession shall be deposited with the Secretary-General of the United Nations.

Article 67 *Division of the competence of regional economic integration organizations and their member States in respect of the matters governed by this Agreement*

- (1) Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of such organizations, one or more of whose member States is a Party to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.
- (2) In its instrument of ratification, approval, acceptance or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Agreement. Any such organization shall also inform the depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.

Article 68 *Entry into force*

- (1) This Agreement shall enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession.
- (2) For each State or regional economic integration organization that ratifies, approves or accepts this Agreement or accedes thereto after the deposit of the sixtieth instrument of ratification, approval, acceptance or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession, subject to paragraph 1 above.

(3) For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.

Article 69
Provisional application

(1) This Agreement may be applied provisionally by a State or regional economic integration organization that consents to its provisional application by so notifying the depositary in writing at the time of signature or deposit of its instrument of ratification, approval, acceptance or accession. Such provisional application shall become effective from the date of receipt of the notification by the depositary.

(2) Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the depositary in writing of its intention to terminate its provisional application.

Article 70
Reservations and exceptions

No reservations or exceptions may be made to this Agreement, unless expressly permitted by other articles of this Agreement.

Article 71
Declarations and statements

Article 70 does not preclude a State or regional economic integration organization, when signing, ratifying, approving, accepting or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or regional economic integration organization.

Article 72
Amendment

(1) A Party may, by written communication addressed to the secretariat, propose amendments to this Agreement. The secretariat shall circulate such a communication to all Parties. If, within six months from the date of the circulation of the communication, not less than one half of the Parties reply favourably to the request, the proposed amendment shall be considered at the following meeting of the Conference of the Parties.

(2) An amendment to this Agreement adopted in accordance with article 47 shall be communicated by the depositary to all Parties for ratification, approval or acceptance.

(3) Amendments to this Agreement shall enter into force for the Parties ratifying, approving or accepting them on the thirtieth day following the deposit of instruments of ratification, approval or acceptance by two thirds of the number of Parties to this Agreement as at the time of adoption of the amendment. Thereafter, for each Party depositing its instrument of ratification, approval or acceptance of an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval or acceptance.

(4) An amendment may provide, at the time of its adoption, that a smaller or larger number of ratifications, approvals or acceptances shall be required for its entry into force than required under this article.

- (5) For the purposes of paragraphs 3 and 4 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.
- (6) A State or regional economic integration organization that becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 3 above shall, failing an expression of a different intention by that State or regional economic integration organization:
 - (a) Be considered as a Party to this Agreement as so amended;
 - (b) Be considered as a Party to the unamended Agreement in relation to any Party not bound by the amendment.

Article 73
Denunciation

- (1) A Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
- (2) The denunciation shall not in any way affect the duty of any Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 74
Annexes

- (1) The annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its parts includes a reference to the annexes relating thereto.
- (2) The provisions of article 72 relating to the amendment of this Agreement shall also apply to the proposal, adoption and entry into force of a new annex to the Agreement.
- (3) Any Party may propose an amendment to any annex to this Agreement for consideration at the next meeting of the Conference of the Parties. The annexes may be amended by the Conference of the Parties. Notwithstanding the provisions of article 72, the following provisions shall apply in relation to amendments to annexes to this Agreement:
 - (a) The text of the proposed amendment shall be communicated to the secretariat at least 150 days before the meeting. The secretariat shall, upon receiving the text of the proposed amendment, communicate it to the Parties. The secretariat shall consult relevant subsidiary bodies, as required, and shall communicate any response to all Parties not later than 30 days before the meeting;
 - (b) Amendments adopted at a meeting shall enter into force 180 days after the close of that meeting for all Parties, except those that make an objection in accordance with paragraph 4 below.
- (4) During the period of 180 days provided for in paragraph 3 (b) above, any Party may, by notification in writing to the depositary, make an objection with respect to the amendment. Such objection may be withdrawn at any time by written notification to the depositary and, thereupon, the amendment to the annex shall enter into force for that Party on the thirtieth day after the date of withdrawal of the objection.

Article 75
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 76
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

ANNEX I

Indicative criteria for identification of areas

- (a) Uniqueness;
- (b) Rarity;
- (c) Special importance for the life history stages of species;
- (d) Special importance of the species found therein;
- (e) The importance for threatened, endangered or declining species or habitats;
- (f) Vulnerability, including to climate change and ocean acidification;
- (g) Fragility;
- (h) Sensitivity;
- (i) Biological diversity and productivity;
- (j) Representativeness;
- (k) Dependency;
- (l) Naturalness;
- (m) Ecological connectivity;
- (n) Important ecological processes occurring therein;
- (o) Economic and social factors;
- (p) Cultural factors;
- (q) Cumulative and transboundary impacts;
- (r) Slow recovery and resilience;
- (s) Adequacy and viability;
- (t) Replication;
- (u) Sustainability of reproduction;
- (v) Existence of conservation and management measures.

ANNEX II

Types of capacity-building and of the transfer of marine technology

Under this Agreement, capacity-building and transfer of marine technology initiatives may include but are not limited to:

- (a) The sharing of relevant data, information, knowledge and research, in user-friendly formats, including:
 - (i) The sharing of marine scientific and technological knowledge;
 - (ii) The exchange of information on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
 - (iii) The sharing of research and development results;
- (b) Information dissemination and awareness-raising, including with regard to:
 - (i) Marine scientific research, marine sciences and related marine operations and services;
 - (ii) Environmental and biological information collected through research conducted in areas beyond national jurisdiction;
 - (iii) Relevant traditional knowledge in line with the free, prior and informed consent of the holders of such knowledge;
 - (iv) Stressors on the ocean that affect marine biological diversity of areas beyond national jurisdiction, including the adverse effects of climate change, such as warming and ocean deoxygenation, as well as ocean acidification;
 - (v) Measures such as area-based management tools, including marine protected areas;
 - (vi) Environmental impact assessments;
- (c) The development and strengthening of relevant infrastructure, including equipment, such as:
 - (i) The development and establishment of necessary infrastructure;
 - (ii) The provision of technology, including sampling and methodology equipment (e.g., for water, geological, biological or chemical samples);
 - (iii) The acquisition of the equipment necessary to support and further develop research and development capabilities, including in data management, in the context of activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, measures such as area-based management tools, including marine protected areas, and the conduct of environmental impact assessments;
- (d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms, including:
 - (i) Governance, policy and legal frameworks and mechanisms;
 - (ii) Assistance in the development, implementation and enforcement of national legislative, administrative or policy measures, including associated regulatory, scientific and technical requirements at the national, subregional or regional level;
 - (iii) Technical support for the implementation of the provisions of this Agreement, including for data monitoring and reporting;
 - (iv) Capacity to translate information and data into effective and efficient policies, including by facilitating access to and the acquisition of knowledge necessary to inform decision makers in developing States Parties;
 - (v) The establishment or strengthening of the institutional capacities of relevant national and regional organizations and institutions;

- (vi) The establishment of national and regional scientific centres, including as data repositories;
- (vii) The development of regional centres of excellence;
- (viii) The development of regional centres for skills development;
- (ix) Increasing cooperative links between regional institutions, for example, North-South and South-South collaboration and collaboration among regional seas organizations and regional fisheries management organizations;
- (e) The development and strengthening of human and financial management resource capabilities and of technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of marine technology, such as:
 - (i) Collaboration and cooperation in marine science, including through data collection, technical exchange, scientific research projects and programmes, and the development of joint scientific research projects in cooperation with institutions in developing States;
 - (ii) Education and training in:
 - a. The natural and social sciences, both basic and applied, to develop scientific and research capacity;
 - b. Technology, and the application of marine science and technology, to develop scientific and research capacities;
 - c. Policy and governance;
 - d. The relevance and application of traditional knowledge;
 - (iii) The exchange of experts, including experts on traditional knowledge;
 - (iv) The provision of funding for the development of human resources and technical expertise, including through:
 - a. The provision of scholarships or other grants for representatives of small island developing States Parties in workshops, training programmes or other relevant programmes to develop their specific capacities;
 - b. The provision of financial and technical expertise and resources, in particular for small island developing States, concerning environmental impact assessments;
 - (v) The establishment of a networking mechanism among trained human resources;
- (f) The development and sharing of manuals, guidelines and standards, including:
 - (i) Criteria and reference materials;
 - (ii) Technology standards and rules;
 - (iii) A repository for manuals and relevant information to share knowledge and capacity on how to conduct environmental impact assessments, lessons learned and best practices;
- (g) The development of technical, scientific and research and development programmes, including biotechnological research activities.

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