

UNITED NATIONS CONVENTION ON THE LAW OF  
THE SEA, WITH ANNEXES, AND THE AGREEMENT  
RELATING TO THE IMPLEMENTATION OF PART XI  
OF THE UNITED NATIONS CONVENTION ON THE  
LAW OF THE SEA, WITH ANNEX

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, WITH ANNEXES, DONE AT MONTEGO BAY, DECEMBER 10, 1982 (THE "CONVENTION"), AND THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982, WITH ANNEX, ADOPTED AT NEW YORK, JULY 28, 1994 (THE "AGREEMENT"), AND SIGNED BY THE UNITED STATES, SUBJECT TO RATIFICATION, ON JULY 29, 1994



OCTOBER 7, 1994.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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## LETTER OF TRANSMITTAL

THE WHITE HOUSE, October 7, 1994.

*To the Senate of the United States:*

I transmit herewith, for the advice and consent of the Senate to accession, the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the "Convention"), and, for the advice and consent of the Senate to ratification, the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the "Agreement"), and signed by the United States, subject to ratification, on July 29, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention and Agreement, as well as Resolution II of Annex I and Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea.

The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. Since the late 1960s, the basic U.S. strategy has been to conclude a comprehensive treaty on the law of the sea that will be respected by all countries. Each succeeding U.S. Administration has recognized this as the cornerstone of U.S. oceans policy. Following adoption of the Convention in 1982, it has been the policy of the United States to act in a manner consistent with its provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.

The primary benefits of the Convention to the United States include the following:

- The Convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond.
- The Convention advances the interests of the United States as a coastal State. It achieves this, *inter alia*, by providing for an exclusive economic zone out to 200 nautical miles from shore and by securing our rights regarding resources and artificial is-

lands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.

- As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping, and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.
- In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.
- The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions that respect the essential balance between our interests as both a coastal and a maritime nation.
- Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

Notwithstanding these beneficial provisions of the Convention and bipartisan support for them, the United States decided not to sign the Convention in 1982 because of flaws in the regime it would have established for managing the development of mineral resources of the seabed beyond national jurisdiction (Part XI). It has been the consistent view of successive U.S. Administrations that this deep seabed mining regime was inadequate and in need of reform if the United States was ever to become a Party to the Convention.

Such reform has now been achieved. The Agreement, signed by the United States on July 29, 1994, fundamentally changes the deep seabed mining regime of the Convention. As described in the report of the Secretary of State, the Agreement meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

Early adherence by the United States to the Convention and the Agreement is important to maintain a stable legal regime for all uses of the sea, which covers more than 70 percent of the surface of the globe. Maintenance of such stability is vital to U.S. national security and economic strength.

I therefore recommend that the Senate give early and favorable consideration to the Convention and to the Agreement and give its advice and consent to accession to the Convention and to ratification of the Agreement. Should the Senate give such advice and consent, I intend to exercise the options concerning dispute settlement recommended in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

## LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, September 23, 1994.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the Convention), and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the Agreement), and signed by the United States on July 29, 1994, subject to ratification. I recommend that the Convention and the Agreement be transmitted to the Senate for its advice and consent to accession and ratification, respectively.

The Convention sets forth a comprehensive framework governing uses of the oceans. It was adopted by the Third United Nations Conference on the Law of the Sea (the Conference), which met between 1973 and 1982 to negotiate a comprehensive treaty relating to the law of the sea.

The Agreement, adopted by United Nations General Assembly Resolution A/RES/48/263 on July 28, 1994, contains legally binding changes to that part of the Convention dealing with the mining of the seabed beyond the limits of national jurisdiction (Part XI and related Annexes) and is to be applied and interpreted together with the Convention as a single instrument. The Agreement promotes universal adherence to the Convention by removing obstacles to acceptance of the Convention by industrialized nations, including the United States.

I also recommend that Resolution II of Annex I, governing preparatory investment in pioneer activities relating to polymetallic nodules, and Annex II, a statement of understanding concerning a specific method to be used in establishing the outer edge of the continental margin, of the Final Act of the Third United Nations Conference on the Law of the Sea be transmitted to the Senate for its information.

### THE CONVENTION

The Convention provides a comprehensive framework with respect to uses of the oceans. It creates a structure for the governance and protection of all marine areas, including the airspace above and the seabed and subsoil below. After decades of dispute and negotiation, the Convention reflects consensus on the extent of

jurisdiction that States may exercise off their coasts and allocates rights and duties among States.

The Convention provides for a territorial sea of a maximum breadth of 12 nautical miles and coastal State sovereign rights over fisheries and other natural resources in an Exclusive Economic Zone (EEZ) that may extend to 200 nautical miles from the coast. In so doing, the Convention brings most fisheries under the jurisdiction of coastal States. (Some 90 percent of living marine resources are harvested within 200 nautical miles of the coast.) The Convention imposes on coastal States a duty to conserve these resources, as well as obligations upon all States to cooperate in the conservation of fisheries populations on the high seas and such populations that are found both on the high seas and within the EEZ (highly migratory stocks, such as tuna, as well as "straddling stocks"). In addition, it provides for special protective measures for anadromous species, such as salmon, and for marine mammals, such as whales.

The Convention also accords the coastal State sovereign rights over the exploration and development of non-living resources, including oil and gas, found in the seabed and subsoil of the continental shelf, which is defined to extend to 200 nautical miles from the coast or, where the continental margin extends beyond that limit, to the outer edge of the geological continental margin. It lays down specific criteria and procedures for determining the outer limit of the margin.

The Convention carefully balances the interests of States in controlling activities off their own coasts with those of all States in protecting the freedom to use ocean spaces without undue interference. It specifically preserves and elaborates the rights of military and commercial navigation and overflight in areas under coastal State jurisdiction and on the high seas beyond. It guarantees passage for all ships and aircraft through, under and over straits used for international navigation and archipelagos. It also guarantees the high seas freedoms of navigation, overflight and the laying and maintenance of submarine cables and pipelines in the EEZ and on the continental shelf.

For the non-living resources of the seabed beyond the limits of national jurisdiction (i.e., beyond the EEZ or continental margin, whichever is further seaward), the Convention establishes an international regime to govern exploration and exploitation of such resources. It defines the general conditions for access to deep seabed minerals by commercial entities and provides for the establishment of an international organization, the International Seabed Authority, to grant title to mine sites and establish necessary ground rules. The system was substantially modified by the 1994 Agreement, discussed below.

The Convention sets forth a comprehensive legal framework and basic obligations for protecting the marine environment from all sources of pollution, including pollution from vessels, from dumping, from seabed activities and from land-based activities. It creates a positive and unprecedented regime for marine environmental protection that will compel parties to come together to address issues of common and pressing concern. As such, the Convention is the

strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time.

The essential role of marine scientific research in understanding and managing the oceans is also secured. The Convention affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. It confirms the rights of coastal States to require consent for such research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that coastal States exercise the consent authority in a predictable and reasonable fashion to promote maximum access for research activities.

The Convention establishes a dispute settlement system to promote compliance with its provisions and the peaceful settlement of disputes. These procedures are flexible, in providing options as to the appropriate means and fora for resolution of disputes, and comprehensive, in subjecting the bulk of the Convention's provisions to enforcement through binding mechanisms. The system also provides Parties the means of excluding from binding dispute settlement certain sensitive political and defense matters.

Further analysis of provisions of the Convention's 17 Parts, comprising 320 articles and nine Annexes, is set forth in the Commentary that is enclosed as part of this Report.

#### THE AGREEMENT

The achievement of a widely accepted and comprehensive law of the sea convention—to which the United States can become a Party—has been a consistent objective of successive U.S. administrations for the past quarter century. However, the United States decided not to sign the Convention upon its adoption in 1982 because of objections to the regime it would have established for managing the development of seabed mineral resources beyond national jurisdiction. While the other Parts of the Convention were judged beneficial for U.S. ocean policy interests, the United States determined the deep seabed regime of Part XI to be inadequate and in need of reform before the United States could consider becoming Party to the Convention.

Similar objections to Part XI also deterred all other major industrialized nations from adhering to the Convention. However, as a result of the important international political and economic changes of the last decade—including the end of the Cold War and growing reliance on free market principles—widespread recognition emerged that the seabed mining regime of the Convention required basic change in order to make it generally acceptable. As a result, informal negotiations were launched in 1990, under the auspices of the United Nations Secretary-General, that resulted in adoption of the Agreement on July 28, 1994.

The legally binding changes set forth in the Agreement meet the objections of the United States to Part XI of the Convention. The United States and all other major industrialized nations have signed the Agreement.

The provisions of the Agreement overhaul the decision-making procedures of Part XI to accord the United States, and others with major economic interests at stake, adequate influence over future decisions on possible deep seabed mining. The Agreement guaran-

tees a seat for the United States on the critical executive body and requires a consensus of major contributors for financial decisions.

The Agreement restructures the deep seabed mining regime along free market principles and meets the U.S. goal of guaranteed access by U.S. firms to deep seabed minerals on the basis of reasonable terms and conditions. It eliminates mandatory transfer of technology and production controls. It scales back the structure of the organization to administer the mining regime and links the activation and operation of institutions to the actual development of concrete commercial interest in seabed mining. A future decision, which the United States and a few of its allies can block, is required before the organization's potential operating arm (the Enterprise) may be activated, and any activities on its part are subject to the same requirements that apply to private mining companies. States have no obligation to finance the Enterprise, and subsidies inconsistent with GATT are prohibited.

The Agreement provides for grandfathering the seabed mine site claims established on the basis of the exploration work already conducted by companies holding U.S. licenses on the basis of arrangements "similar to and no less favorable than" the best terms granted to previous claimants; further, it strengthens the provisions requiring consideration of the potential environmental impacts of deep seabed mining.

The Agreement provides for its provisional application from November 16, 1994, pending its entry into force. Without such a provision, the Convention would enter into force on that date with its objectionable seabed mining provisions unchanged. Provisional application may continue only for a limited period, pending entry into force. Provisional application would terminate on November 16, 1998, if the Agreement has not entered into force due to failure of a sufficient number of industrialized States to become Parties. Further, the Agreement provides flexibility in allowing States to apply it provisionally in accordance with their domestic laws and regulations.

In signing the agreement on July 29, 1994, the United States indicated that it intends to apply the agreement provisionally pending ratification. Provisional application by the United States will permit the advancement of U.S. seabed mining interests by U.S. participation in the International Seabed Authority from the outset to ensure that the implementation of the regime is consistent with those interests, while doing so consistent with existing laws and regulations.

Further analysis of the Agreement and its Annex, including analysis of the provisions of Part XI of the Convention as modified by the Agreement, is also set forth in the Commentary that follows.

#### STATUS OF THE CONVENTION AND THE AGREEMENT

One hundred and fifty-two States signed the Convention during the two years it was open for signature. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention. The Convention will enter into force for these States on November 16, 1994, and thereafter for other States 30 days after deposit of their instruments of ratification or accession.

The United States joined 120 other States in voting for adoption of the Agreement on July 28, 1994; there were no negative votes and seven abstentions. As of September 8, 1994, 50 States and the European Community have signed the Agreement, of which 19 had previously ratified the Convention. Eighteen developed States have signed the Agreement, including the United States, all the members of the European Community, Japan, Canada and Australia, as well as major developing countries, such as Brazil, China and India.

#### RELATION TO THE 1958 GENEVA CONVENTIONS

Article 311(1) of the LOS Convention provides that the Convention will prevail, as between States Parties, over the four Geneva Conventions on the Law of the Sea of April 29, 1958, which are currently in force for the United States: the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 (entered into force September 10, 1964); the Convention on the High Seas, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force September 30, 1962); Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (entered into force June 10, 1964); and the Convention on Fishing and Conservation of Living Resources of the High Seas, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285 (entered into force March 20, 1966). Virtually all of the provisions of these Conventions are either repeated, modified, or replaced by the provisions of the LOS Convention.

#### DISPUTE SETTLEMENT

The Convention identifies four potential fora for binding dispute settlement:

- The International Tribunal for the Law of the Sea constituted under Annex VI;
- The International Court of Justice;
- An arbitral tribunal constituted in accordance with Annex VII; and
- A special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.

A State, when adhering to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention. 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. If a Party has failed to announce its choice of forum, it is deemed to have accepted arbitration in accordance with Annex VII.

I recommend that the United States choose special arbitration for all the categories of disputes to which it may be applied and Annex VII arbitration for disputes not covered by the above, and thus that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of Article 287, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:

(A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping, and (B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in (A) above.

Subject to limited exceptions, the Convention excludes from binding dispute settlement disputes relating to the sovereign rights of coastal States with respect to the living resources in their EEZs. In addition, the Convention permits a State to opt out of binding dispute settlement procedures with respect to one or more enumerated categories of disputes, namely disputes regarding maritime boundaries between neighboring States, disputes concerning military activities and certain law enforcement activities, and disputes in respect of which the United Nations Security Council is exercising the functions assigned to it by the Charter of the United Nations.

I recommend that the United States elect to exclude all three of these categories of disputes from binding dispute settlement, and thus that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of Article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

#### RECOMMENDATION

The interested Federal agencies and departments of the United States have unanimously concluded that our interests would be best served by the United States becoming a Party to the Convention and the Agreement.

The primary benefits of the Convention to the United States include the following:

- The Convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the EEZ and the high seas beyond.

- The Convention advances the interests of the United States as a coastal State. It achieves this, *inter alia*, by providing for an EEZ out to 200 nautical miles from shore and by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.

- As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.

- In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.

- The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions which respect the essential balance between our interests as both a coastal and a maritime nation.

- Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

- The Agreement fundamentally changes the deep seabed mining regime of the Convention. It meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

The United States has been a leader in the international community's effort to develop a widely accepted international framework governing uses of the seas. As a Party to the Convention, the United States will be in a position to continue its role in this evolution and ensure solutions that respect our interests.

All interested agencies and departments, therefore, join the Department of State in unanimously recommending that the Convention and Agreement be transmitted to the Senate for its advice and consent to accession and ratification respectively. They further recommend that they be transmitted before the Senate adjourns *sine die* this fall.

The Department of State, along with other concerned agencies, stands ready to work with Congress toward enactment of legislation necessary to carry out the obligations assumed under the Convention and Agreement and to permit the United States to exercise rights granted by the Convention.

Respectfully submitted,

WARREN CHRISTOPHER.

**COMMENTARY—THE 1982 UNITED NATIONS CONVENTION ON THE  
LAW OF THE SEA AND THE AGREEMENT ON IMPLEMENTATION OF  
PART XI**

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**INTRODUCTION**

The United Nations Convention on the Law of the Sea, opened for signature on December 10, 1982 (the Convention or LOS Convention) creates a structure for the governance and protection of all of the sea, including the airspace above and the seabed and subsoil below. In particular, it provides a framework for the allocation of jurisdiction, rights and duties among States that carefully balances the interests of States in controlling activities off their own coasts and the interests of all States in protecting the freedom to use ocean spaces without undue interference.

This Commentary begins with a discussion of the maritime zones recognized by the Convention, emphasizing the rules regarding navigation and overflight in these areas. Next, the framework for the protection and preservation of the marine environment of these areas is examined. Thereafter, the Commentary reviews the regimes for dealing with the resources in these areas under the following headings:

living marine resources, including fishing;  
 nonliving resources, including those of the continental shelf  
 and the deep seabed beyond the limits of national jurisdiction;  
 and,  
 marine scientific research.

The various mechanisms for settling disputes regarding these provisions are next examined. Finally, the Commentary considers other provisions of the Convention, including those relating to maritime boundary delimitation, enclosed and semi-enclosed seas, landlocked and geographically disadvantaged States, and technology transfer, as well as the definitions and the general and final provisions of the Convention.

### MARITIME ZONES

The Convention addresses the balance of coastal and maritime interests with respect to all areas of the sea. From the absolute sovereignty that every State exercises over its land territory and superjacent airspace, the exclusive rights and control that the coastal State exercises over maritime areas off its coast diminish in stages as the distance from the coastal State increases. Conversely, the rights and freedoms of maritime States are at their maximum in regard to activities on the high seas and gradually diminish closer to the coastal State. The balance of interests between the coastal State and maritime States thus varies in each zone recognized by the Convention.

The location of these zones under the Convention may be summarized as follows (and is illustrated in Figure 1).

Internal waters are landward of the baselines along the coast. They include lakes, rivers and many bays.

Archipelagic waters are encircled by archipelagic baselines established by independent archipelagic States.

The territorial sea extends seaward from the baselines to a fixed distance. The Convention establishes 12 nautical miles as the maximum permissible breadth of the territorial sea. (One nautical mile equals 1,852 meters or 6,067 feet; all further references to miles in this Commentary are to nautical miles.)

The contiguous zone, exclusive economic zone (EEZ) and continental shelf all begin at the seaward limit of the territorial sea.

The contiguous zone may extend to a maximum distance of 24 miles from the baselines.

The EEZ may extend to a maximum distance of 200 miles from the baselines.

The continental shelf may extend to a distance of 200 miles from the baselines or, if the continental margin extends beyond that limit, to the outer edge of the continental margin as defined by the Convention. The regime of the continental shelf applies to the seabed and subsoil and does not affect the status of the superjacent waters or airspace.

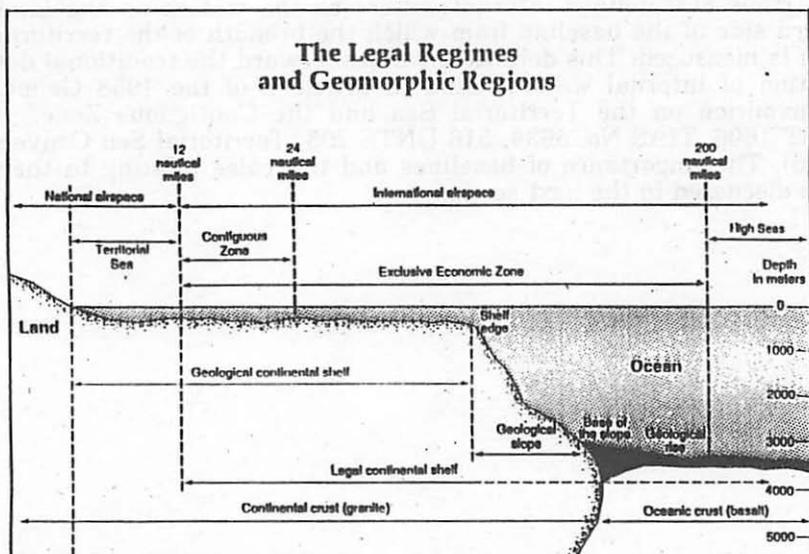
The regime of the high seas applies seaward of the EEZ; significant parts of that regime, including freedom of navigation and overflight, also apply within the EEZ.

The seabed beyond national jurisdiction, called the Area in the Convention, comprises the seabed and subsoil beyond the seaward limit of the continental shelf.

## INTERNAL WATERS

Article 8(1) defines internal waters as the waters on the landward side of the baseline from which the breadth of the territorial sea is measured. This definition carries forward the traditional definition of internal waters found in article 5 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, 15 UST 1606, TIAS No. 5639, 516 UNTS 205 (Territorial Sea Convention). The importance of baselines and the rules relating to them are discussed in the next section.

Figure 1



### TERRITORIAL SEA

Article 2 describes the territorial sea as a belt of ocean which is measured seaward from the baseline of the coastal State and subject to its sovereignty. This sovereignty also extends to the airspace above and to the seabed and subsoil. It is exercised subject to the Convention and other rules of international law relating to innocent passage, transit passage, archipelagic sea lanes passage and protection of the marine environment. Under article 3, the coastal State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 miles, measured from baselines determined in accordance with the Convention.

The adoption of the Convention has significantly influenced State practice. Prior to 1982, as many as 25 States claimed territorial seas broader than 12 miles (with attendant detriment to the freedoms of navigation and overflight essential to U.S. national security and commercial interests), while 30 States, including the United States, claimed a territorial sea of less than 12 miles. Since 1983, State practice in asserting territorial sea claims has largely coalesced around the 12 mile maximum breadth set by the Convention. As of January 1, 1994 128 States claim a territorial sea of 12 miles or less; only 17 States claim a territorial sea broader than 12 miles.

Since 1988, the United States has claimed a 12 mile territorial sea (Presidential Proclamation 5928, December 27, 1988). Since the President's Ocean Policy Statement of March 10, 1983, the United States has recognized territorial sea claims of other States up to a maximum breadth of 12 miles.

### CONTIGUOUS ZONE

Article 33 recognizes the contiguous zone as an area adjacent to the territorial sea in which the coastal State may exercise the limited control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occurs within its territory or territorial sea. Unlike the territorial sea, the contiguous zone is not subject to coastal State sovereignty; vessels and aircraft enjoy the same high seas freedom of navigation and overflight in the contiguous zone as in the EEZ. The maximum permissible breadth of the contiguous zone is 24 miles measured from the baseline from which the breadth of the territorial sea is measured.

In 1972, the United States claimed a contiguous zone beyond its territorial sea (historically claimed as 3 miles) out to 12 miles from the coastal baselines (Department of State Public Notice 358, 37 Federal Register 11,906). Since 1988, when the United States extended its territorial sea to 12 miles, the U.S. contiguous zone and territorial sea claims have thus been coterminous. Under the Convention, the United States could set the seaward limit of its contiguous zone at 24 miles, enhancing its ability to deal with illegal immigration, drug trafficking by sea and public health matters.

### EXCLUSIVE ECONOMIC ZONE (EEZ)

The establishment of the EEZ in the Convention represents a substantial change in the law of the sea. The underlying purpose

of the EEZ regime is to balance the rights of coastal States, such as the United States, to resources (e.g., fisheries and offshore oil and gas) and to protect the environment off their coasts with the interests of all States in preserving other high seas rights and freedoms.

Article 55 defines the EEZ as an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in Part V, which elaborates the jurisdiction, rights and duties of the coastal State and the rights, freedoms and duties of other States. Pursuant to article 56, the coastal State exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the EEZ, whether living or non-living. It also has significant rights in the EEZ with respect to scientific research and the protection and preservation of the marine environment. The coastal State does not have sovereignty over the EEZ, and all States enjoy the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses in the EEZ, compatible with other Convention provisions. However, all States have a duty, in the EEZ, to comply with the laws and regulations adopted by the coastal State in accordance with the Convention and other compatible rules of international law.

Article 57 requires the seaward limit of the EEZ to be no more than 200 miles from the baseline from which breadth of the territorial sea is measured. The United States declared its EEZ with this limit by Presidential Proclamation 5030 on March 10, 1983. Congress incorporated the claim in amending the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, Pub. L. 99-659.

As of March 1, 1994, 93 States claim an EEZ. No State claims an EEZ beyond the 200 miles from its coastal baselines, although, as discussed below in the section on navigation and overflight, several States claim the right to restrict activities within their EEZs beyond that which the Convention authorizes.

The EEZ of the United States is among the largest in the world, extending through considerable areas of the Atlantic, Pacific and Arctic Oceans, including those around U.S. insular territories. From the perspective of managing and conserving resources off its coasts, the United States gains more from the provisions on the EEZ in the Convention than perhaps any other State.

#### HIGH SEAS

Pursuant to article 86, the regime of the high seas applies seaward of the exclusive zone. The Convention elaborates the regime of the high seas, including the principles of the freedom of the high seas, as it developed over centuries, and supplements the regime with new safety and environmental requirements and express recognition of the freedom of scientific research. As discussed below in connection with living marine resources, the Convention makes the right to fish on the high seas subject to significant additional requirements relating to conservation and to certain rights, duties and interests of coastal States.

## CONTINENTAL SHELF

Pursuant to article 76, 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 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. The coastal State alone exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. The natural resources of the continental shelf consist of the mineral and other non-living resources of the seabed and subsoil together with the living organisms belonging to sedentary species. Substantial deposits of oil and gas are located in the continental shelf off the coasts of the United States and other countries.

### THE SEABED BEYOND NATIONAL JURISDICTION

The Convention defines as the Area the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. Possible exploration and development of the mineral resources found at or beneath the seabed of the Area are to be undertaken pursuant to the international regime established by the Convention, as revised by the Agreement, on the basis of the principle that these resources are the common heritage of mankind. The Area remains open to use by all States for the exercise of high seas freedoms for defense, scientific research, telecommunications and other purposes.

### AIRSPACE

The Convention does not treat airspace as distinct zones. However, its provisions affirm that the sovereignty of a coastal State extends to the airspace over its land territory, internal waters and territorial sea. The breadth of territorial airspace is necessarily the same as the breadth of the underlying territorial sea. International airspace begins at the outer limit of the territorial sea.

### BASELINES

A State's maritime zones are measured from the baseline. The rules for drawing baselines are contained in articles 5 through 11, 13 and 14 of the Convention. These rules distinguish between normal baselines (following the low-water mark along the coast) and straight baselines (which can be employed only in specified geographical situations). The baseline rules take into account most of the wide variety of geographical conditions existing along the coastlines of the world.

Baseline claims can extend maritime jurisdiction significantly seaward in a manner that prejudices navigation, overflight and other interests. Objective application of baseline rules contained in the Convention can help prevent excessive claims in the future and encourage governments to revise existing claims to conform to the relevant criteria.

## NORMAL BASELINE

Pursuant to article 5, the normal baseline used for measuring the breadth of the territorial sea is the low-water line along the coast. U.S. practice is consistent with this rule.

*Reefs*

In accordance with article 6, in the case of islands situated on atolls or of islands having fringing reefs, the normal baseline is the seaward low-water line on the drying reef charted as being above the level of chart datum. While the Convention does not address reef closing lines, any such line is not to adversely affect rights of passage, freedom of navigation, and other rights for which the Convention provides.

## STRAIGHT BASELINES

*Purpose*

The purpose of authorizing the use of straight baselines is to allow the coastal State, at its discretion, to enclose those waters which, as a result of their close interrelationship with the land, have the character of internal waters. By using straight baselines, a State may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result from the use of normal baselines in accordance with article 5. Properly drawn straight baselines do not result in extending the limits of the territorial sea significantly seaward from those that would result from the use of normal baselines.

With the advent of the EEZ, the original reason for straight baselines (protection of coastal fishing interests) has all but disappeared. Their use in a manner that prejudices international navigation, overflight, and communications interests runs counter to the thrust of the Convention's strong protection of these interests. In light of the modernization of the law of the sea in the Convention, it is reasonable to conclude that, as the Convention states, straight baselines are not normal baselines, straight baselines should be used sparingly, and, where they are used, they should be drawn conservatively to reflect the one rationale for their use that is consistent with the Convention, namely the simplification and rationalization of the measurement of the territorial sea and other maritime zones off highly irregular coasts.

*Areas of application*

Straight baselines, in accordance with article 7, may be used only in two specific geographic circumstances, that is, (a) in localities where the coastline is deeply indented and cut into, or (b) if there is a fringe of islands along the coast in the immediate vicinity of the coast. Even if these basic geographic criteria exist in any particular locality, the coastal State is not obliged to employ the method of straight baselines, but may (like the United States and other countries) instead continue to use the normal baseline and permissible closing lines across the mouths of rivers and bays.

*Localities where the coastline is deeply indented and cut into*

"Deeply indented and cut into" refers to a very distinctive coastal configuration. The United States has taken the position that such a configuration must fulfill all of the following characteristics:

in a locality where the coastline is deeply indented and cut into, there exist at least three deep indentations;

the deep indentations are in close proximity to one another; and

the depth of penetration of each deep indentation from the proposed straight baseline enclosing the indentation at its entrance to the sea is, as a rule, greater than half the length of that baseline segment.

The term "coastline" is the mean low-water line along the coast; the term "localities" refers to particular segments of the coastline.

*Fringe of islands along the coast in the immediate vicinity of the coast*

"Fringe of islands along the coast in the immediate vicinity of the coast" refers to a number of islands, within the meaning of article 121(1). The United States has taken the position that a such a fringe of islands must meet all of the following requirements:

the most landward point of each island lies no more than 24 miles from the mainland coastline;

each island to which a straight baseline is to be drawn is not more than 24 miles apart from the island from which the straight baseline is drawn; and

the islands, as a whole, mask at least 50% of the mainland coastline in any given locality.

*Criteria for drawing straight baseline segments*

The United States has taken the position that, to be consistent with article 7(3), straight baseline segments must:

not depart to any appreciable extent from the general direction of the coastline, by reference to general direction lines which in each locality shall not exceed 60 miles in length;

not exceed 24 miles in length; and

result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

*Minor deviations*

Straight baselines drawn with minor deviations from the foregoing criteria are not necessarily inconsistent with the Convention.

*Economic interests*

Economic interests alone cannot justify the location of particular straight baselines. In determining the alignment of particular straight baseline segments of a baseline system which satisfies the deeply indented or fringing islands criteria, in accordance with article 7(5), only those economic interests may be taken into account which are peculiar to the region concerned and only when the reality and importance of the economic interests are clearly evidenced by long usage.

### *Basepoints*

Except as noted in article 7(4), basepoints for all straight baselines must be located on land territory and situated on or landward of the low-water line. No straight baseline segment may be drawn to a basepoint located on the land territory of another State.

#### *Use of low-tide elevations as basepoints in a system of straight baselines*

In accordance with article 7(4), only those low-tide elevations which have had built on them lighthouses or similar installations may be used as basepoints for establishing straight baselines. Other low-tide elevations may not be used as basepoints unless the drawing of baselines to and from them has received general international recognition. The United States has taken the position that "similar installations" are those that are permanent, substantial and actually used for safety of navigation and that "general international recognition" includes recognition by the major maritime users over a period of time.

#### *Effect on other States*

Article 7(6) provides that a State may not apply the system of straight baselines in such a manner as to cut off the territorial sea of another State from the high seas or an EEZ. In addition, article 8(2) provides that, where the establishment of a straight baseline 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 the Convention shall exist in those waters. Article 35(a) has the same effect with respect to the right of transit passage through straits.

#### *Unstable coastlines*

As provided in article 7(2), where a coastline, which is deeply indented and cut into or fringed with islands in its immediate vicinity, is also highly unstable because of the presence of a delta or other natural conditions, the appropriate basepoints may be located along the furthest seaward extent of the low-water line. The straight baseline segments drawn joining these basepoints remain effective, notwithstanding subsequent regression of the low-water line, until the baseline segments are changed by the coastal State in accordance with international law reflected in the Convention.

### OTHER BASELINE RULES

#### *Low-tide elevations*

Under article 13, the low-water line on a low-tide elevation may be used as the baseline for measuring the breadth of the territorial sea only where that elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea measured from the mainland or an island. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, even if it is within that distance measured from a straight baseline or bay closing line, it has no territorial sea of its own. Low-tide elevations can be mud flats, or sand bars.

### *Combination of methods*

Article 14 authorizes the coastal State to determine each base-line segment using any of the methods permitted by the Convention that suit the specific geographic condition of that segment, i.e., the methods for drawing normal baselines, straight baselines, or closing lines (discussed below).

### *Harbor works*

In accordance with article 11, only those permanent man-made harbor works which form an integral part of a harbor system, such as jetties, moles, quays, wharves, breakwaters and sea walls, may be used as part of the baseline for delimiting the territorial sea.

### *Mouths of rivers*

If a river flows directly into the sea without forming an estuary, pursuant to article 9, the baseline shall be a straight line drawn across the mouth of the river between points on the low-water line of its banks. If the river forms an estuary, the baseline is determined under the provisions relating to juridical bays.

## BAYS AND OTHER FEATURES

### JURIDICAL BAYS

A "juridical bay" is a bay meeting the criteria of article 10(2). Such a bay is a well-marked indentation on the coast 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 is not a juridical 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.

For the purpose of measurement, article 10(3) provides that the indentation is that area 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 for satisfaction of the semicircle test.

Under article 10(4), if the distance between the low-water marks of the natural entrance points of a juridical bay of a single State does not exceed 24 miles, the juridical bay may be defined by drawing a closing line between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters. Where the distance between the low-water marks exceed 24 miles, a straight baseline of 24 miles shall be drawn within the juridical bay in such a manner as to enclose the maximum area of water that is possible within a line of that length.

### HISTORIC BAYS

Article 10(6) exempts so-called historic bays from the rules described above. To meet the standard of customary international law for establishing a claim to a historic bay, a State must demonstrate

its open, effective, long-term, and continuous exercise of authority over the bay, coupled with acquiescence by foreign States in the exercise of that authority. An actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition. The United States has in the past claimed Delaware Bay and the Chesapeake Bay as historic. These bodies also satisfy the criteria for juridical bays reflected in the Convention.

#### CHARTS AND PUBLICATION

Article 16(1) requires that the normal baseline be shown on large-scale nautical charts, officially recognized by the coastal State. Alternatively, the coastal State must provide a list of geographic coordinates specifying the geodetic data. The United States depicts its baseline on official charts with scales ranging from 1:80,000 to about 1:200,000. Drying reefs used for locating basepoints shall be shown by an internationally accepted symbol for depicting such reefs on nautical charts, pursuant to article 6.

To comply with article 16(2), the coastal State must give due publicity to such charts or lists of geographical coordinates, and deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Closure lines for bays meeting the semi-circle test must be given due publicity, either by chart indications or by listed geographic coordinates.

#### ISLANDS

Article 121(1) defines an island as a naturally formed area of land, surrounded by water, which is above water at high tide. Baselines are established on islands, and maritime zones are measured from those baselines, in the same way as on other land territory. In addition, as previously indicated, there are special rules for using islands in drawing straight baselines and bay closing lines, and even low tide elevations (which literally do not rise to the status of islands) may be used as basepoints in specified circumstances. These special rules are not affected by the provision in article 121(3) that rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.

#### ARTIFICIAL ISLANDS AND OFF-SHORE INSTALLATIONS

Pursuant to articles 11, 60(8), 147(2) and 259, artificial islands, installations and structures (including such man-made objects as oil drilling rigs, navigational towers, and off-shore docking and oil pumping facilities) do not possess the status of islands, and may not be used to establish baselines, enclose internal waters, or establish or measure the breadth of the territorial sea, EEZ or continental shelf. Articles 60, 177(2), and 260 provide criteria for establishing safety zones of limited breadth to protect artificial islands, installations and structures and the safety of navigation in their vicinity.

## ROADSTEADS

Article 12 provides that roadsteads normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly beyond the outer limits of the territorial sea, are included within the territorial sea. Roadsteads included within the territorial sea must be clearly marked on charts by the coastal State. Only the roadstead itself is territorial sea; roadsteads do not generate territorial seas around themselves; the presence of a roadstead does not change the legal status of the water surrounding it.

## NAVIGATION AND OVERFLIGHT

INTERNAL WATERS, TERRITORIAL SEA, STRAITS, ARCHIPELAGIC STATES, EXCLUSIVE ECONOMIC ZONE, AND HIGH SEAS

(Parts II-V, VII)

Parts II-V and VII of the Convention contain a critical, effective and delicate balance between the interests of the international community in maintaining the freedom of navigation and those of coastal States in their offshore areas. As discussed in the previous section of this Commentary, the Convention creates a distinct legal regime for each maritime zone. This section analyzes the rules set forth in each of these regimes regarding the rights, duties and jurisdiction of coastal States and maritime States relating to navigation and overflight.

The maritime zones off the coasts of the United States are among the largest and most economically productive in the world. The United States also remains the world's preeminent maritime power. Accordingly, the importance to the United States in maintaining the complex balance of interests represented by these provisions of the Convention cannot be overstated.

There are five elements of the Convention essential to the maintenance of this balance from the perspective of navigation, overflight, telecommunications, and related uses:

- the rules for enclosing internal waters and archipelagic waters within baselines, and the prohibition on territorial sea claims beyond 12 miles from those baselines;

- the express protection for and accommodation of passage rights through internal waters, the territorial sea, and archipelagic waters, including transit passage of straits and archipelagic sea lanes passage, as well as innocent passage;

- the express protection for and accommodation of the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses beyond the territorial sea, including broad areas where there are substantial coastal State rights and jurisdiction, such as the EEZ and the continental shelf;

- the prohibition on regional arrangements in areas that restrict the exercise of these rights and freedoms by third States without their consent; and

- the right to enforce this balance through arbitration or adjudication.

Rights, freedoms and jurisdiction recognized and established by the Convention are subject to Part XII of the Convention on the Protection and Preservation of the Marine Environment, discussed below. This includes the duty of the flag State to ensure that its ships comply with international pollution control standards, and the rule of sovereign immunity set forth in article 236.

#### INTERNAL WATERS

Internal waters are those landward of the baseline. Article 2 makes clear the generally recognized rule that coastal State sovereignty extends to internal waters. In articles 218 and 220, the Convention adds to general notions of sovereignty and jurisdiction over internal waters by expressly authorizing port State enforcement action within internal waters for pollution violations that have occurred elsewhere. This authorization does not imply any limitation on other enforcement actions that coastal States may choose to exercise in their ports or other internal waters.

Subject to ancient customs regarding the entry of ships in danger or distress (force majeure) and the exception noted below, the Convention does not limit the right of the coastal State to restrict entry into or transit through its internal waters, port entry, imports or immigration.

The exception to the right of the coastal State to deny entry into or transit through its internal waters is found in article 8(2), which provides:

When the establishment of a straight baseline \* \* \* 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.

If a foreign flag vessel is found in a coastal State's internal waters without its permission, the full range of reasonable enforcement procedures is available against a foreign commercial vessel. With respect to foreign warships and other government ships on non-commercial service, which are immune from the enforcement jurisdiction of all States except the flag State, it may be inferred that a coastal State may require such a vessel to leave its internal waters immediately (cf. article 30). In addition, a port State has the right to refuse to permit foreign ships from entering, or remaining within its internal waters.

#### TERRITORIAL SEA

##### *Right of innocent passage*

One of the fundamental tenets in the international law of the sea is that all ships enjoy the right of innocent passage through another State's territorial sea. (Innocent passage does not include a right of overflight or submerged passage.) This principle finds expression in article 17, and is developed further throughout Section 3 of Part II of the Convention (articles 17-32). These precise and objective rules governing innocent passage represent a significant advance in development of law of the sea concepts.

The Convention defines "passage" (article 18) and "innocent passage" (article 19), and lists those activities considered to be non-innocent or "prejudicial to the peace, good order or security of the coastal State" (article 19(2)(a)-(1)).

The definition of passage in article 18 is essentially the same as that in article 14(2) and (3) of the Territorial Sea Convention. Three new elements appear in article 18. First, the Convention recognizes that ports of a coastal State may be located outside that State's internal waters (as, for example, a roadstead or an offshore deep water port). Second, the Convention makes explicit that passage through the territorial sea must be continuous and expeditious. Third, the Convention provides that passage includes stopping and anchoring for the purpose of rendering assistance to persons, ships or aircraft in danger or distress, thereby expanding upon the customary right of "assistance entry."

Article 19(2) adds to the basic definition of innocent passage, i.e., that passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State, an all-inclusive list of activities considered to be prejudicial to the peace, good order, and security, and therefore inconsistent with innocent passage. (Such activities do not include the use of equipment employed to protect the safety or security of the ship.) This list provides criteria by which States can determine whether a particular passage is innocent.

Article 19(2) refers to activities that occur in the territorial sea. This means that any determination of non-innocence of passage by a transiting ship must be made on the basis of acts it commits while in the territorial sea. Thus cargo, means of propulsion, flag, origin, destination, or purpose of the voyage cannot be used as criteria in determining that the passage is not innocent. This point is of major national security significance, in particular because some 40 per cent of U.S. Navy combatant ships use nuclear propulsion.

Article 20 requires that submarines and other underwater vehicles must navigate on the surface and show their flag while in the territorial sea, unless the coastal State decides to waive that requirement (as has been done in the NATO context).

Article 25(1) authorizes the coastal State to take appropriate measures in the territorial sea to prevent passage that is not innocent. Pursuant to Article 25(2), the coastal State also may take the measures necessary to prevent any breach of the conditions for admission of foreign ships to internal waters, as well as calls at a port facility outside internal waters.

Article 21(4) requires foreign ships exercising the right of innocent passage to comply with the laws and regulations enacted by the coastal State in conformity with the Convention, as well as all generally accepted international regulations relating to the prevention of collisions at sea. Subject to the provisions regarding ships entitled to sovereign immunity, this duty applies to all ships. However, the Convention provides no authority for a coastal State to condition the exercise of the right of innocent passage by any ships, including warships, on the giving of prior notification to or the receipt of prior permission from the coastal State.

Articles 21–24 add new and useful details regarding the rights and duties of coastal States and foreign ships. For purposes such as resource conservation, environmental protection, and navigational safety, a coastal State may establish certain restrictions upon the right of innocent passage of foreign vessels, as set out in article 21. This list is essentially new in the Convention and is exhaustive.

Such restrictions must be reasonable and necessary and not have the practical effect of denying or impairing the right of innocent passage. Article 24(1) provides that the restrictions must not discriminate in form or in fact against the ships of any State or those carrying cargoes to, from, or on behalf of any State. Pursuant to article 22, the coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage to utilize designated sea lanes and traffic separation schemes; tankers, nuclear powered vessels, and ships carrying dangerous or noxious substances may be required to utilize such designated sea lanes. Article 23 requires such ships, when exercising innocent passage, to carry documents and observe special precautionary measures established for such ships by international agreements, including the International Convention for the Safety of Life at Sea, 1974, 32 UST 47, TIAS No. 9700 (SOLAS).

Article 21(2) imposes an additional limitation, that 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 established by the International Maritime Organization (IMO). This rule does not affect the right of the coastal State to establish and enforce its own requirements for port entry, or preclude cooperation between coastal States to enforce their respective port entry requirements. States may also agree to establish higher standards for their ships or for trade between them.

Article 24(2) requires the coastal State to give appropriate publicity to any dangers to navigation of which it has knowledge within its territorial sea.

Article 26 provides that no charge (such as a transit fee) may be levied upon foreign ships by reason only of their passage through the territorial sea. The only charges which may be levied are for specific services rendered to the ship, and any such charges must be levied without discrimination.

#### *Temporary suspension of innocent passage*

Article 25(3) provides that:

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.

The prohibition against discrimination “in form or in fact” is designed to protect against acts which overtly discriminate in a manner that is prohibited by the article (discrimination “in form”) and

also against acts that, although not overtly discriminatory, have a discriminatory effect (discrimination "in fact"). "Weapons exercises" includes weapons testing.

*Rules applicable to merchant ships and government ships operated for commercial purposes (articles 27 and 28)*

Article 27, concerning criminal jurisdiction on board a foreign ship, and article 28, concerning civil jurisdiction in relation to foreign ships, are taken almost verbatim from articles 19 and 20 of the Territorial Sea Convention, respectively, but have been expanded to include the regime of the EEZ and the rules of Part XII on the protection and preservation of the marine environment introduced by the Convention.

*Rules applicable to warships and other government ships operated for non-commercial purposes (articles 29 to 32)*

Warships are defined in article 29 for the purposes of the Convention as a whole, including articles 95, 107, 110, 111 and 236. The Convention expands upon earlier definitions, no longer requiring that such a ship belong to the "naval" forces of a nation, under the command of an officer whose name appears in the "Navy list" and manned by a crew who are under regular "naval" discipline. Article 29 instead refers to "armed forces" to accommodate the integration of different branches of the armed forces in various countries, the operation of seagoing craft by some armies and air forces, and the existence of a coast guard as a separate unit of the armed forces of some nations, such as the United States.

Under article 30, the sole recourse available to a coastal State in the event of noncompliance by a foreign warship with that State's laws and regulations regarding innocent passage is to require the warship to leave the territorial sea immediately. Article 31 provides that the flag State bears international responsibility for any loss or damage caused by its warships or other government ships operated for noncommercial purposes to a coastal State as a result of noncompliance with applicable law. This provision is consistent with the modern rules of State responsibility in cases of State immunity.

Article 32 provides, in effect, that the only rules in the Convention derogating from the immunities of warships and government ships operated for noncommercial purposes are those found in articles 17-26, 30 and 31.

STRAITS USED FOR INTERNATIONAL NAVIGATION (PART III, ARTICLES 34-39, 41-45)

The navigational provisions of the Convention concerning international straits are fundamental to U.S. national security interests. Merchant ships and cargoes, civil aircraft, naval ships and task forces, military aircraft, and submarines must be able to transit international straits freely in their normal mode as a matter of right, and not at the sufferance of the States bordering straits. The United States has consistently made clear throughout its history that it is not prepared to secure these rights through bilateral arrangements. The continuing U.S. position is that these rights must

form an explicit part of the law of the sea: Part III of the Convention guarantees these rights.

With the expansion of the maximum permissible breadth of the territorial sea from 3 to 12 miles, it was necessary to develop stronger guarantees for navigation and overflight on, over, and under international straits. Such rules were critical to maintain the essential balance of interests between States bordering straits and other concerned States.

Part III applies to all straits used for international navigation, regardless of width, including their approaches, unless there is a high seas/EEZ route through the strait of similar convenience with respect to navigational and hydrographic characteristics. Part III applies three legal regimes to different kinds of straits used for international navigation.

Transit passage applies to straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ (article 37), except as noted below. The great majority of strategically important straits, e.g., Gibraltar, Bonifacio, Bab el Mandeb, Hormuz, Malacca, Singapore, Sunda, Lombok, and the Northeast, Northwest, and Windward Passages fall into this category. However, it is use for international navigation, not importance, that is the basic legal criterion, as described below.

Archipelagic sea lanes passage replaces transit passage as the relevant regime that applies to straits within archipelagic waters and the adjacent territorial sea, where archipelagic waters affecting such straits are established in accordance with Part IV of the Convention. This would be the situation, for example, in the Sunda and Lombok straits were Indonesia to designate archipelagic sea lanes. Transit passage applies to routes through islands groups to which the provisions regarding archipelagic waters do not apply.

Non-suspendable innocent passage applies to straits connecting a part of the high seas/EEZ and the territorial sea of a foreign State (article 45(1)(b)), and to straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a State bordering the strait and its mainland, if there exists seaward of the island a route through the high seas/EEZ of similar convenience with regard to navigation and hydrographic characteristics (article 38(1)).

In addition, the Convention does not alter the legal regime in straits regulated by long-standing international conventions in force specifically relating to such straits. This provision refers to the Turkish Straits (the Bosphorus and Dardanelles, connecting the Black Sea and the Aegean Sea via the Sea of Marmara) and the Strait of Magellan.

### *Transit passage*

Part III of the Convention protects long-standing navigation and overflight rights in international straits through the concept of transit passage. This is the regime governing the right of free navigation and overflight for ships and aircraft in transit in, over, and under straits used for international navigation. Recognition of such a right was a fundamental requirement for a successful Convention. With the extension by coastal States of their territorial seas to 12 miles, over 100 straits, which previously had high seas cor-

ridors, became overlapped by such territorial seas. Without provision for transit passage, navigation and overflight rights in those straits would have been compromised.

Read together, articles 38(2) and 39(1)(c) define transit passage as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit in the normal modes of operation utilized by ships and aircraft for such passage. For example, submarines may transit submerged and military aircraft may overfly in combat formation and with normal equipment operation; surface warships may transit in a manner necessary for their security, including formation steaming and the launching and recovery of aircraft, where consistent with sound navigational practices. Article 38(3) provides that any activity which is not an exercise of the right of transit passage remains subject to the other applicable provisions of the Convention.

Under article 44, a State bordering an international strait may not suspend transit passage through international straits for any purpose, including military exercises. Further, article 42(2) requires that the laws and regulations of the State bordering a strait relating to transit passage not be applied so as to have the practical effect of denying, hampering or impairing the right of transit passage.

#### *Innocent passage in international straits*

Under article 45(1)(b), the regime of innocent passage, rather than transit passage, applies in straits used for international navigation that connect a part of the high seas or an EEZ with the territorial sea of a coastal State. There may be no suspension of innocent passage through such straits, and there is no right of overflight in such straits. These so-called "dead-end" straits include Head Harbour Passage leading through Canadian territorial sea to the United States' Passamaquoddy Bay.

Under articles 38(1) and 45(1)(a), the regime of non-suspendable innocent passage also applies in those straits formed by an island of a State bordering the strait and its mainland, where there exists seaward of the island a route through the high seas or EEZ of similar convenience with regard to navigational and hydrographical characteristics.

#### *International straits not completely overlapped by territorial seas*

The effect of article 36 is that ships and aircraft transiting through or above straits used for international navigation which are not completely overlapped by territorial seas and through which there is a high seas or EEZ corridor suitable for such navigation, enjoy the high seas freedom of navigation and overflight while operating in and over such a corridor.

Moreover, if the high seas route is not of similar convenience with respect to navigational or hydrographical characteristics, the regime of transit passage applies within such straits. Thus, for example, a submarine may transit submerged through the territorial sea in a strait not completely overlapped by territorial seas where the territorial sea route is the only one deep enough for submerged transit.

*“Straits used for international navigation”*

Under the Convention, the criteria in identifying an international strait is not the name, the size or length, the presence or absence of islands or multiple routes, the history or volume of traffic flowing through the strait, or its relative importance to international navigation. Rather the decisive criterion is its geography: the fact that it is capable of being used for international navigation to or from the high seas or the EEZ.

The geographical definition contemplates a natural strait and not an artificially constructed canal. Thus, the transit passage regime does not apply to the Panama and Suez Canals.

*Legal status of waters forming international straits*

The regime of passage through international straits does not affect the legal status of these waters or the sovereignty or jurisdiction of the States bordering straits (article 34(1)). Article 34(2) requires States bordering straits to exercise their sovereignty and jurisdiction in accordance with Part III and other rules of international law. States bordering straits must not impede the right of transit passage.

*Rights and duties of States bordering straits*

Articles 41–44 address the rights and duties of States bordering straits relating to a number of topics, including navigational safety and the prevention, reduction, and control of pollution from ships engaged in transit passage.

Pursuant to article 41, States bordering straits may designate sea lanes and prescribe traffic separation schemes to promote navigational safety. However, such sea lanes and separation schemes must conform to generally accepted international standards and be approved by the competent international organization (i.e., the IMO) before the sea lanes and traffic separation schemes may be put into effect. Ships in transit must respect properly designated sea lanes and traffic separation schemes. Such traffic separation schemes now exist in strategic straits such as Hormuz, Gibraltar and Malacca.

Article 42 specifically authorizes States bordering straits to adopt nondiscriminatory laws and regulations relating to transit passage through straits in respect of the safety of navigation and regulation of maritime traffic as provided in article 41; 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 (i.e., the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, with annexes (95th Cong., 1st Sess., Sen. Ex. E, 96th Cong., 1st Sess., Sen. Ex. C (MARPOL) and any applicable regional agreement); the prevention of fishing, including the stowage of fishing gear by fishing vessels; and 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. Due publicity must be given to these laws and regulations, and foreign ships exercising the right of transit passage are required by article 42(4) to comply with them (subject to

the provisions of the Convention regarding ships entitled to sovereign immunity).

Article 43 encourages users and States bordering straits to cooperate by agreement in the establishment and maintenance of necessary navigational or safety aids in the strait, and in other improvements in aid of international navigation, and for the prevention, reduction and control of pollution from ships. The IMO has been active in promoting such cooperation.

*Duties of ships and aircraft during transit passage (article 39)*

Article 39(1) defines the common duties both ships and aircraft have while exercising the right of transit passage. They include the duty to proceed without delay through or over the strait, to refrain from the threat or use of force against States bordering straits, to 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), and to comply with other relevant provisions of Part III.

In addition, ships in transit passage are required by article 39(2) to comply with the International Regulations for Preventing Collisions at Sea, 1972, 28 UST 3459, TIAS No. 8587 (COLREGS), and other generally accepted international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships (i.e., those adopted by the IMO).

Aircraft in transit passage are required to observe the ICAO Rules of the Air (Annex 2 to the International Convention on Civil Aviation (61 Stat. 1180, TIAS No. 1591, 15 UNTS 295, Chicago Convention), as they apply to civil aircraft. Article 39(3)(a) states that State aircraft will normally comply with such safety measures and operate at all times with due regard for the safety of navigation, as required by article 3(d) of the Chicago Convention. Aircraft in transit passage are also required to maintain a continuous listening watch on the appropriate frequency.

ARCHIPELAGIC STATES (PART IV, ARTICLES 46-54)

Part IV represents a successful resolution, following years of controversy, of the effort, led by Indonesia and the Philippines, to achieve a special regime for archipelagic States. The United States and other maritime States were willing to recognize the concept of archipelagic States only if its application were limited and precisely defined and did not impede rights of navigation and overflight. In effect, the concept of archipelagic States creates a geographic situation requiring the same kind of solution as transit passage of straits, i.e., the right of navigation and overflight on, over, and under the waters enclosed. Acceptance of this principle guarantees critical U.S. military and commercial navigation rights.

Article 46 describes an archipelagic State as one "constituted wholly by one or more archipelagos" and may include other islands. It defines an "archipelago" as a:

group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and po-

litical entity, or which historically have been regarded as such.

Thus, the special regime of Part IV only applies to island States; a continental State may not claim archipelagic waters.

### *Archipelagic baselines*

A State may enclose archipelagic waters within archipelagic baselines that satisfy the criteria specified in article 47. Depending on how the archipelagic baseline system is established, the following 20 States could legitimately claim archipelagic waters: Antigua & Barbuda, The Bahamas, Cape Verde, Comoros, Fiji, Grenada, Indonesia, Jamaica, Kiribati (in part), Maldives, Marshall Islands (in part), Papua New Guinea, Philippines, Saint Vincent and the Grenadines, Sao Tome & Principe, Seychelles, Solomon Islands (five archipelagos), Tonga, Trinidad & Tobago, and Vanuatu.

The legal status of archipelagic waters, of the air space over archipelagic waters, and of their bed and subsoil is described in article 49. Article 51 addresses existing agreements, traditional fishing rights, and existing submarine cables. Archipelagic States measure the breadth of their various maritime zones from the archipelagic baselines. They may also draw closing lines delimiting internal waters of individual islands following the rules set out in articles 9-11.

### *Navigation and overflight in archipelagos*

The right to navigate on, under, and over archipelagic waters by all kinds of ships and aircraft was a critical goal of the United States during the negotiations leading to the Convention. As with respect to the right of transit passage through international straits, the result of the negotiation fully protects this right.

Archipelagic sea lanes passage is very similar to the concept of transit passage. Article 53(3) defines archipelagic sea lanes passage as the exercise of the rights of navigation and overflight in the normal mode solely for the purpose of "continuous, expeditious and unobstructed transit" through archipelagic waters. For example, submarines may transit submerged and military aircraft may overfly in combat formation and with normal equipment operation; surface warships may transit in a manner necessary for their security, including formation steaming and the launching and recovery of aircraft, where consistent with sound navigational practices. The provisions regarding the width of archipelagic sea lanes were specifically designed to accommodate defensive formations and navigation practices normally used in open waters. Article 54, referring back to article 44, provides that the right of archipelagic sea lanes passage cannot be impeded or suspended by the archipelagic State for any reason.

All ships and aircraft, including warships and military aircraft, enjoy the right of archipelagic sea lanes passage while transiting through, under, or over the waters of archipelagos and adjacent territorial seas via archipelagic sea lanes. Articles 53(4) and 53(12) mean that archipelagic sea lanes passage must be respected in all routes normally used for international navigation and overflight, whether or not sea lanes are actually designated under the Convention.

Article 53 permits an archipelagic State to designate sea lanes and air routes for the exercise of archipelagic sea lanes passage. Such archipelagic sea lanes "shall include all normal passage routes \* \* \* and all normal navigational channels \* \* \*". Each sea lane is defined by a continuous line from the point of entry into the archipelago to the point of exit. Ships and aircraft in designated archipelagic sea lanes passage are required to remain within 25 miles from either side of the axis line and must approach no closer to the coastline than 10 percent of the distance between the nearest islands.

Archipelagic sea lanes must conform to generally accepted international regulations, and must be referred to the "competent international organization," the IMO, with a view to their adoption, before implementation. Only after adoption by the IMO may the archipelagic State implement archipelagic sea lanes. No archipelagic State has yet submitted any proposal to the IMO.

The elements of the transit passage regime for international straits apply to archipelagic sea lanes passage. Article 54 applies, *mutatis mutandis*, the provisions of articles 39 (duties of ships and aircraft during their passage), 40 (research and survey activities), and 42 and 44 (laws, regulations, and duties of States bordering straits relating to passage).

Article 52 provides that innocent passage applies in archipelagic waters other than designated archipelagic sea lanes or the routes through which archipelagic sea lanes passage is guaranteed. All the normal rules of innocent passage apply, and there is no right of overflight or submerged passage. In island groups where a State either may not claim archipelagic waters under the Convention, or has not done so, the other rules of the Convention apply, including the rules regarding transit passage of straits.

#### THE CONTIGUOUS ZONE (ARTICLE 33)

In the contiguous zone, vessels and aircraft enjoy the same high seas freedoms of navigation and overflight as in the EEZ.

#### THE EXCLUSIVE ECONOMIC ZONE (PART V, ARTICLES 55-60, 73)

From the perspective of the United States, Part V (articles 55-75) provides a regime for the EEZ that achieves a proper, long-term balance between coastal interests and maritime interests. These provisions enable the coastal State to explore, exploit, conserve and manage resources out to 200 miles from coastal baselines, while allowing other States to navigate, overfly and conduct related activities in the EEZ.

The United States is far and away the world's primary beneficiary in each respect. From a coastal perspective, the United States has an EEZ which is among the largest and richest of any in the world, with extensive living and non-living resources. From a maritime perspective, U.S. military and commercial ships and aircraft, as well as U.S. trade and communications, are guaranteed in the EEZs of other States essential navigational and related freedoms, from military exercises to laying cables and pipelines.

Article 56 defines the rights, jurisdiction, and duties of the coastal State in the EEZ. Paragraph 1 of this article distinguishes sovereign rights and jurisdiction, as follows:

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 sea-bed and of the sea-bed 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 the Convention with regard to:
    - (i) the establishment and use of artificial islands, installations and structures (i.e., article 60);
    - (ii) marine scientific research (i.e., Part XIII);
    - (iii) the protection and preservation of the marine environment (i.e., Part XII, particularly article 220);
  - (c) other rights and duties provided for in the Convention.

Article 56 enumerates the rights of the coastal State in the EEZ. Article 56(1)(a) establishes the sovereign rights of the coastal State. Article 56(1)(b) sets forth the nature and scope of coastal State jurisdiction with respect to specific matters. The terms "sovereign rights" and "jurisdiction" are used to denote functional rights over these matters and do not imply sovereignty. A claim of sovereignty in the EEZ would be contradicted by the language of articles 55 and 56 and precluded by article 58 and the provisions it incorporates by reference.

Pursuant to Article 58, in the EEZ all States enjoy the high seas freedoms of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the seas related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and which are compatible with the other provisions of the Convention. Articles 88 to 115, which (apart from the fuller enumeration of freedoms in article 87) set forth the entire regime of the high seas on matters other than fisheries, apply to the EEZ in so far as they are not incompatible with Part V. These rights are the same as the rights recognized by international law for all States on the high seas.

Military activities, such as anchoring, launching and landing of aircraft, operating military devices, intelligence collection, exercises, operations and conducting military surveys are recognized historic high seas uses that are preserved by article 58. Under that article, all States have the right to conduct military activities within the EEZ, but may only do so consistently with the obligation to have due regard to coastal State resource and other rights, as well as the rights of other States as set forth in the Convention. It is the duty of the flag State, not the right of the coastal State, to enforce this "due regard" obligation.

The concept of "due regard" in the Convention balances the obligations of both the coastal State and other States within the EEZ. Article 56(2) provides that coastal States "shall have due regard to the rights and duties of other States" in the EEZ. Article 58(3) places similar requirements on other States in exercising their rights, and in performing their duties, in the EEZ. Although it is

not specific, article 59 provides a basis for resolving disputes over any rights and duties not allocated by articles 56, 58 and other provisions of the Convention. 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 sets out the provisions permitting the coastal State to construct and to authorize and regulate the construction, operation, and use of artificial islands, installations and structures used for the purposes provided for in article 56(1) and other economic purposes, and other installations and structures that may interfere with the exercise of the coastal State's rights in its EEZ. This provision does not preclude the deployment of listening or other security-related devices. Article 60(3) requires the coastal State to give "due notice" of artificial islands, installations and structures and to remove those no longer in use in accordance with generally accepted international standards established by the IMO (e.g., IMO Assembly Resolution A.672(16)). Article 60(4)-(6) permits the coastal State to establish and give notice of reasonable safety zones around such structures not to exceed 500 meters in breadth except in accordance with generally accepted international standards or as recommended by the IMO, and requires ships to respect the zone and generally accepted international navigational standards.

Article 60(7) provides that artificial islands, installations and structures, and the safety zones around them, may not be located where they may cause interference with the use of recognized sea lanes essential to international navigation.

Of the remaining 15 articles on the EEZ (articles 61-75), 13 specifically relate to living resources jurisdiction in the zone, and are discussed below in the section on living marine resources; the other two are discussed below in the section on maritime boundary delimitation.

Consistent with article 73, the coastal State may, in the exercise of its sovereign rights over living resources in the EEZ, take such measures, including boarding, inspection, arrest, and judicial proceedings against foreign vessels as are necessary to ensure compliance with its rules and regulations adopted in conformity with the Convention. Arrested vessels and their crews are to be promptly released upon the posting of reasonable bond or other security. In cases of arrest or detention of foreign vessels, the coastal State is required to notify the flag State promptly, through appropriate channels, of the action taken and of any penalties imposed.

While no State has claimed an EEZ extending beyond 200 miles from coastal baselines, several of the States which have declared EEZs claim rights to regulate activities within the EEZ well beyond those authorized in the Convention. For example, Iran claims the right to prohibit all foreign military activities within its EEZ. The United States does not recognize such claims, which are not within the competence of coastal States under the Convention. Accession to the Convention will significantly enhance the ability of the United States to deal with such excessive claims, and to prevent their proliferation, on the basis of the balance of interests reflected in the Convention.

## HIGH SEAS (PART VII, ARTICLES 86-115)

Freedom to navigate and operate on, over, and under the high seas is a central requirement of the United States. The high seas provisions of the Convention reproduce the provisions of the 1958 Convention on the High Seas, 13 UST 2312, TIAS No. 5200 (High Seas Convention), with some very useful clarifications and updating that, for example, protect scientific research and facilitate enforcement against drug smuggling and unauthorized broadcasting. The relatively sparse anti-pollution provisions of the High Seas Convention have been replaced by the strong and elaborate environmental provisions discussed in the next section of this Commentary.

Pursuant to article 87, all ships and aircraft, including warships and military aircraft, enjoy freedom of movement and operation on and over the high seas. For warships and military aircraft, this includes task force maneuvering, flight operations, military exercises, surveillance, intelligence gathering activities, and ordnance testing and firing.

All of these activities must be conducted with due regard for the rights of other States and the safe conduct and operation of other ships and aircraft. The exercise of any of these freedoms is subject to the conditions that they be taken with "reasonable" regard, according to the High Seas Convention, or "due" regard, according to the LOS Convention, for the interests of other nations in light of all relevant circumstances. There is no substantive difference between the two terms. The "reasonable regard/due regard" standard requires any using State to be cognizant of the interests of others in using a high seas area, to balance those interests with its own, and to refrain from activities that unreasonably interfere with the exercise of other States' high seas freedoms in light of that balancing of interests. Articles 87, 89, and 90 prohibit any State's attempt to impose its sovereignty on the high seas; they are open to use by all States, whether coastal or land-locked.

*Security zones.* Some coastal States have claimed the right to establish military security zones, beyond the territorial sea, in which they purport to regulate the activities of warships and military aircraft of other nations by such restrictions as prior notification or authorization for entry, limits on the number of foreign ships or aircraft present at any given time, prohibitions on various operational activities, or complete exclusion. There is no basis in the Convention, or other sources of international law, for coastal States to establish security zones in peacetime that would restrict the exercise of non-resource-related high seas freedoms beyond the territorial sea. Accordingly, the United States does not recognize the peacetime validity of any claimed security or military zone seaward of the territorial sea which purports to restrict or regulate the high seas freedoms of navigation and overflight, as well as other lawful uses of the sea.

*Peaceful purposes* (article 88) is discussed below in connection with article 301, on peaceful uses of the seas, in the section on general provisions.

*Nationality, status, and duties of ships (articles 91-96)*

Articles 91-92 pertain to the nationality and status of ships. Article 91 requires, *inter alia*, that, for a State to grant its nationality to a ship, there must be a genuine link between the flag State and the ship. Article 92 provides that ships shall sail under the flag of one State only, save in certain exceptional cases, and be subject only to that State's jurisdiction while on the high seas. A ship that sails under two or more flags, using them according to convenience, may not claim any of the nationalities in question and may be treated as a stateless vessel.

Article 93 deals explicitly with ships flying the flag of the United Nations and its specialized agencies or the International Atomic Energy Agency. Article 94 sets out new, stricter duties of flag States with respect to their vessels, including such duties regarding the safety of navigation, that have been elaborated primarily under the auspices of the IMO.

While the general rule of exclusive flag State jurisdiction over vessels on the high seas has long standing in international law, the United States and other members of the international community have developed procedures for resolving problems that have arisen in certain contexts, including drug smuggling, illegal immigration and fishing, when States are unable or unwilling to exercise responsibility over vessels flying their flag. These procedures, several of which are contained in international agreements, typically seek to ensure that the flag State gives expeditious permission to other States for the purpose of boarding, inspection and, where appropriate, taking law enforcement action with respect to its vessels.

*Sovereign immunity (articles 29-32, 95-96, 236)*

The Convention protects and strengthens the key principle of sovereign immunity for warships and military aircraft. Although not a new concept, sovereign immunity is a principle of vital importance to the United States. The Convention provides for a universally recognized formulation of this principle.

As discussed above, with respect to the territorial sea regime, articles 29 through 32 set forth the sovereign immunity rules applicable to warships and other government ships operated for non-commercial purposes.

Article 32 provides that, with such exceptions as are contained in subsection A and in articles 30 and 31 (discussed above), nothing in the Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

Regarding the definition of "warship," article 29 expands the traditional definition to include all ships belonging to the armed forces of a State bearing the external markings distinguishing the character and nationality of such ships, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list of officers, and manned by a crew which is under regular armed forces discipline. A ship need not be armed to be regarded as a warship.

Concerning government ships operated for non-commercial purposes, these would include auxiliaries, which are vessels, other than warships, that are owned or operated by the armed forces. Like warships, they are immune from arrest and search, whether

in port or at sea, and exempt from foreign taxes and enforcement of foreign laws and regulations; further, the flag State exercises exclusive control over all passengers and crew onboard.

Articles 95–96 address these issues with respect to the high seas regime. Article 95 provides that warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State. Article 96 provides that 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.

Finally, article 236 makes clear that the provisions of Part XII 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 must 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 the Convention.

#### PENAL JURISDICTION IN MATTERS OF COLLISION OR ANY OTHER INCIDENT OF NAVIGATION (ARTICLE 97)

Article 97 restates existing international law relating to this subject.

#### ASSISTANCE TO PERSONS, SHIPS, AND AIRCRAFT IN DISTRESS (ARTICLE 98)

The law has long realized the importance of rendering assistance to persons in distress at sea. Article 98 replicates verbatim article 12 of the High Seas Convention. The duty to rescue also appears in the International Convention for the Unification of Certain Rules Relating to Salvage of Vessels at Sea, September 23, 1910, 37 Stat. 1658, TIAS No. 576, and the International Convention on Salvage, 1989, article 10, Sen. Treaty Doc. 102–12. Article 98 is implemented by 46 U.S.C. §§ 2303 & 2304.

*Duty of masters.* In addition, the United States is a Party to the SOLAS Convention, which requires the master of every merchant ship and private vessel not only to speed to the assistance of persons in distress, but to broadcast warning messages with respect to dangerous conditions or hazards encountered at sea (Chapter V, Regulations 10 and 2).

#### PROHIBITION OF THE TRANSPORT OF SLAVES (ARTICLE 99)

Article 99 is identical to article 13 of the High Seas Convention and relates to the Convention to Suppress the Slave Trade and Slavery of September 25, 1926, 46 Stat. 2183, TS No. 778, 2 Bevans 607, 60 LNTS 253; the Protocol of December 7, 1953 Amending the Slavery Convention of September 25, 1926, 7 UST 479, TIAS No. 3532, 182 UNTS 51; and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of September 5, 1956, 18 UST 3201, TIAS No. 6418, 266 UNTS 3. This obligation is implemented in 18 U.S.C. §§ 1581–88 (1982), and gives effect to the pol-

icy enunciated by the Thirteenth Amendment to the Constitution of the United States.

The Slavery Convention, Amending Protocol, and Supplementary Convention do not authorize nonconsensual high seas boarding by foreign flag vessels. Nevertheless, article 22(1) of the High Seas Convention authorized nonconsensual boarding by a warship where there exists reasonable ground for suspecting that a vessel is engaged in the slave trade. Article 110(1)(b) of the LOS Convention reaffirms this approach.

#### PIRACY (ARTICLES 100–107)

Despised by all nations since earliest recorded history, piracy continues to be a major problem in certain parts of the world. Articles 100–107 reaffirm the rights and obligations of all States to suppress piracy on the high seas.

The U.S. Constitution (article I, section 8) provides that:

The Congress shall have Power \* \* \* to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations.

Congress has exercised this power by enacting 18 U.S.C. § 1651, which provides that:

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

Congress has further exercised this power, including with respect to certain acts not regarded as piracy under international law, by enacting 18 U.S.C. §§ 1651–61 (piracy), 49 U.S.C. §§ 1472(i)–(n) (aircraft piracy), 33 U.S.C. §§ 381–84 (regulations for suppression piracy), and 18 U.S.C. § 1654 (privateering). These statutes provide a firm basis for implementing the relevant provisions of the Convention and other applicable international law.

#### SUPPRESSION OF INTERNATIONAL NARCOTICS TRAFFIC (ARTICLE 108)

Article 108 of the Convention provides a valuable additional tool in support of the war on illicit drugs. This article requires all States to 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. This article also permits any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic to request the cooperation of other States to suppress such traffic.

This principle finds expression in other international law, including in the Single Convention on Narcotic Drugs, 1961, 18 UST 1407, TIAS No. 6298, 520 UNTS 204. Article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Sen. Treaty Doc. 101–4, also mandates a consensual regime for the boarding of foreign flag vessels suspected of drug trafficking at sea. The United States has entered into a number of bilateral maritime counter-narcotics agreements, for example with the United Kingdom (33 UST 4224, TIAS No. 10296,

1285 UNTS 197), Belize (TIAS No. 11914), Panama (TIAS No. 11833) and Venezuela (TIAS No. 11827).

Implementing legislation in this field includes 49 U.S.C. §§ 781–789, 14 U.S.C. § 89, 22 U.S.C. § 2291, and 46 U.S.C. App. § 1903 *et seq.*

#### SUPPRESSION OF UNAUTHORIZED BROADCASTING (ARTICLE 109)

Article 109 is designed to aid in the suppression of “pirate broadcasting” and supports the Regulations annexed to the 1973 International Telecommunication Convention, 28 UST 2495, TIAS No. 8572; the 1982 International Telecommunication Convention, 99th Cong., 1st Sess. Treaty Doc. 99–6; and the 1979 Radio Regulations, 97th Cong., 1st Sess. Treaty Doc. 97–21. Unauthorized broadcasting from international waters is made a crime in the United States by 47 U.S.C. § 502 (1982).

#### WARSHIP’S RIGHT OF APPROACH AND VISIT (ARTICLE 110)

Article 110 of the Convention reaffirms the right of warships, military aircraft or other duly authorized ships or aircraft to approach and visit other vessels to ensure that they are not engaged in various illegal activities. This is a right of great importance to the United States. Article 110 permits the right of visit to be exercised if there are reasonable grounds for suspecting that a foreign flag vessel is engaged in piracy, the slave trade, or unauthorized broadcasting; is without nationality; or is, in reality, of the same nationality as the warship. The maintenance and continued respect for these rights are essential to maritime counter-narcotics and alien smuggling interdiction operations.

#### HOT PURSUIT (ARTICLE 111)

Article 111 of the Convention provides a detailed elaboration of the concept of “hot pursuit,” based on article 23 of the High Seas Convention. However, the Convention expands this concept to take into account the development of the EEZ and archipelagic waters, and provides further details with respect to aircraft engaged in hot pursuit. These modifications increase U.S. ability to pursue criminals, such as drug traffickers, as well as those who violate U.S. fisheries laws.

#### CABLES AND PIPELINES (ARTICLES 79, 87(1)(C), 112–115)

The provisions on submarine cables and pipelines codify the right to lay and operate them. These provisions replicate their counterparts in article 4 of the Convention on the Continental Shelf, 15 UST 471, TIAS No. 5578, and articles 26–29 of the High Seas Convention, which themselves reflect the provisions of the 1884 Convention on the Protection of Submarine Cables, 24 Stat. 989, TS No. 380, as amended 25 Stat. 1414, TS Nos. 380–1 and 380–2, 380–3, 1 Bevans 89, 112, 114. The 1884 Submarine Cables Convention is implemented in 47 U.S.C. § 21 *et seq.* (1982).

Submarine cables include telegraph, telephone, and high-voltage power cables, which are essential to modern communications. In light of the extraordinary costs and increasing importance to the world economy of undersea telecommunications cables, particularly

the new fiber-optic cables, it is significant that the Convention strengthens the protections for the owners and operators of these cables in the event of breakage.

Pipelines include those which deliver water, oil and natural gas, and other commodities. The Convention recognizes that pipelines may pose an environmental threat to the coastal State and, therefore, increases the authority of the coastal State on its continental shelf over the location of pipelines and with respect to pollution therefrom.

## PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

### (Part XII, articles 192–237)

The Law of the Sea Convention is the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time. Part XII establishes, for the first time, a comprehensive legal framework for the protection and preservation of the marine environment. By addressing all sources of marine pollution, such as pollution from vessels, seabed activities, ocean dumping, and land-based sources, Part XII promotes continuing improvement in the health of the world's oceans. It effectively and expressly balances economic and environmental interests in general, and the interests of coastal states in protecting their environment and natural resources with the rights and freedoms of navigation in particular. Compliance with Part XII's environmental obligations is subject to compulsory arbitration or adjudication.

Part XII thus creates a positive and unprecedented framework for marine environmental protection that will encourage all Parties to take their environmental obligations seriously and come together to address issues of common and pressing concern.

#### DEFINITIONS (ARTICLE 1)

Article 1 defines two terms used in Part XII: "pollution of the marine environment" and "dumping." The term "marine environment" is understood to include living resources, marine ecosystems, and the quality of seawater.

#### GENERAL OBLIGATIONS (ARTICLES 192–196)

Section 1 sets forth general provisions relating to the protection and preservation of the marine environment. Article 192 clearly establishes the legal duty of all States to protect and preserve the marine environment. The remaining provisions require States, *inter alia*, to adopt pollution control measures to ensure that activities under their control are conducted so as not to cause environmental damage to other States or result in the spread of pollution beyond their own offshore zones.

#### GLOBAL AND REGIONAL COOPERATION (ARTICLES 197–201)

Section 2 provides for global and regional cooperation for the protection and preservation of the marine environment. Cooperation includes, *inter alia*, development of rules, standards, and recommended practices and procedures for the protection and preservation of the marine environment (article 197), notification of im-

minent or actual damage to other States likely to be affected (article 198), development of contingency plans to respond to pollution incidents (article 199), promotion of research and exchange of information (article 200), and establishment of appropriate scientific criteria for rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment (article 201). (Article 242 adds provisions for international cooperation in research for environmental purposes.)

#### TECHNICAL ASSISTANCE (ARTICLES 202–203)

Section 3 provides for the promotion of programs and appropriate scientific and technical assistance related to protection and preservation of the marine environment, especially to developing States.

#### MONITORING AND ENVIRONMENTAL ASSESSMENT (ARTICLES 204–206)

Section 4 establishes rules for monitoring and environmental assessment. Article 204 sets forth obligations relating to monitoring the risks or effects of pollution on the marine environment, including the effects of activities which States permit or in which they engage.

Article 206 relates to the environmental assessment of certain activities on the marine environment. 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. (The requirements for assessment of potential environmental impacts of deep seabed mining activity are discussed below in connection with the deep seabed mining provisions of the Convention and the 1994 Agreement generally.)

#### INTERNATIONAL RULES AND NATIONAL LEGISLATION TO PREVENT, REDUCE, AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT (ARTICLES 207–212)

Section 5 obligates States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, sea-bed activities subject to national jurisdiction, deep seabed mining (activities in the Area), ocean dumping, vessels, and the atmosphere. As a general rule, these articles require States to adopt laws and regulations that are no less effective than international rules; to endeavor to harmonize their policies at the regional level; and to cooperate to develop international rules.

Although States are not legally bound by an international agreement to which they are not party, the requirement that their national laws at least have the same effect as, or be no less effective than, internationally-agreed minimum standards of environmental protection is an important step forward in marine environmental protection.

Below is a discussion of the status of the development of international standards, national legislation, and other international activity relating to the sources of pollution identified in section 5, not-

ing where the United States has already implemented these articles.

*Pollution from land-based sources (article 207)*

The Convention will be the first legally-binding global agreement governing marine pollution from land-based sources. Article 207 requires that national laws for the prevention of marine pollution from land-based sources take into account internationally agreed standards. The Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-Based Sources, adopted by the Governing Council of the United Nations Environment Program (Decision 13/18/II of the Governing Council of UNEP of May 24, 1985), are internationally agreed guidelines adopted with a view to assisting governments in developing international agreements and national legislation relating to land-based sources of pollution.

Since land-based sources of pollution continue to account for approximately 80 percent of all marine pollution, global discussions are ongoing in an effort to address more fully this source of pollution. In recognition of the importance of this problem and as an outgrowth of the 1992 United Nations Conference on Environment and Development, the United States in late 1995 will host an international conference on land-based sources of marine pollution. This conference is expected, *inter alia*, to result in a global action plan to address land-based sources of marine pollution.

On a regional basis, the United States is party to two regional agreements that contain general provisions on land-based sources of marine pollution: the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (the SPREP Convention), Sen. Treaty Doc. 101-21, and the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the Cartagena Convention), TIAS No. 11085. Under the auspices of the Cartagena Convention and the United Nations Regional Seas Program, the United States and other Caribbean States are presently considering the need for, and elements of, a possible protocol to the Cartagena Convention on land-based sources of marine pollution. In addition, the Protocol on Environmental Protection to the Antarctic Treaty, Sen. Treaty Doc. 102-22, to which the United States is a signatory, and the Arctic Environmental Protection Strategy address land-based sources of marine pollution.

The United States already has national legislation addressing land-based sources of marine pollution; this legislation takes into account the recommendations of the Montreal Guidelines described above. U.S. laws include the Clean Water Act, 33 U.S.C. §§ 1251-1387, which specifically addresses marine water quality, and other statutes (such as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y) which regulate the release of pollutants and other materials into the environment. See also the Refuse Act, 33 U.S.C. § 407 *et seq.*, and the Coastal Zone Management Act of 1972, 16 U.S.C. § 1451 *et seq.*

*Pollution from sea-bed activities subject to national jurisdiction (article 208)*

The Convention will be the first legally-binding global agreement governing pollution from sea-bed activities. Article 208 requires that coastal State laws governing pollution from seabed activities be no less effective than international rules and standards. Although there are many potential seabed activities, including the mining of coral, placers, and sand, the most common sea-bed activity is the exploration and exploitation of oil and gas. Internationally, the need for regulation of this industry is reviewed periodically by the IMO. Regionally, article 8 of the SPREP Convention and article 8 of the Cartagena Convention address pollution from sea-bed activities.

The United States has domestic legislation that addresses pollution from sea-bed activities of persons subject to U.S. jurisdiction, both in areas subject to U.S. jurisdiction and beyond. These include the Outer Continental Shelf Lands Act, 33 U.S.C. §§ 1331–1356 and the Deep Seabed Hard Minerals Resources Act (“DSHMRA”), 30 U.S.C. §§ 1401 *et seq.*

*Pollution from Deep Seabed Mining (Activities in the Area) (article 209)*

International rules and national legislation relating to pollution from deep seabed mining have yet to be developed. As discussed in the section of this Commentary on deep seabed mining, the environmental protection provisions of the Convention relating to activities in the Area are quite strong and comprehensive. The 1994 Agreement further strengthens these provisions by requiring, *inter alia*, that all applications for approval of plans of work be accompanied by an assessment of the potential environmental impacts of the proposed activities and that the International Seabed Authority adopt rules, regulations and procedures on marine environmental protection as part of its early functions prior to the approval of the first plan of work for exploitation (Annex, section 1(5)(g), (7)). The DSHMRA addresses pollution from sea-bed activities of persons subject to U.S. jurisdiction in areas beyond national jurisdiction, including provision for an environmental impact statement, monitoring, NPDES permits, and emergency suspension of activities.

*Pollution by dumping (article 210)*

Article 210 requires that national laws regarding pollution from dumping be no less effective than the global rules and standards. The global regime addressing pollution of the marine environment by dumping is long-established. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention), 26 UST 2403, TIAS No. 8165, 1046 UNTS 120, governs the ocean dumping of all wastes and other matter.

Both the SPREP Convention (article 10) and the Cartagena Convention (article 6) contain general provisions addressing ocean dumping on a regional basis. In addition, a Protocol to the SPREP Convention contains provisions that parallel those of the London Convention as it existed in 1986.

Domestically, dumping is controlled by the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. §§ 1401-1445.

*Pollution from vessels (article 211)*

The Convention's provisions relating to pollution from vessels are developed in considerable detail. They are a significant part of the overall balance between coastal and maritime interests the Convention is designed to maintain over time.

Paragraph 1 requires States to establish international rules and standards to prevent, reduce and control vessel source pollution and the adoption of routing systems to minimize the threat of accidents which might cause pollution of the marine environment. Such rules and standards are to be developed through the competent international organization, which is recognized to be the IMO. The IMO has developed several conventions that, directly or indirectly, address vessel source pollution. One of the most important of these is the MARPOL Convention, which contains general provisions on pollution from vessels, supplemented by five Annexes pertaining to vessel discharges of oil (Annex I), noxious liquid substances in bulk (Annex II), harmful substances carried by sea in packaged forms, or in freight containers, portable tankers or road and rail tank wagons (Annex III), sewage (Annex IV), and garbage (Annex V). Other IMO conventions include SOLAS; the 1978 International Convention on Standards of Training, Certification and Watchkeeping, 96th Cong., 1st Sess. Sen. Ex. EE (STCW); and the International Convention on Oil Pollution Preparedness, Response, and Cooperation, Sen. Treaty Doc. 102-11. At present, the United States is party to all of the foregoing except MARPOL Annex IV.

Regionally, both the SPREP Convention (article 6) and the Cartagena Convention (article 5) contain broad obligations concerning pollution from vessels.

Paragraph 2 obligates States to adopt measures relating to vessels flying their flag or of their registry. Such laws and regulations must 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 (e.g., MARPOL).

Paragraph 3 recognizes the authority of port States to establish their own requirements relating to vessel source pollution as a condition of entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals. Although port state authority has long been exercised by many countries as a means of enforcing safety and environmental measures, including the United States pursuant to the Ports and Waterways Safety Act, 33 U.S.C. §§ 1223 & 1228, its prominent recognition in the Convention and the provisions for cooperation among port States are important steps forward in marine environmental protection.

Paragraph 4 recognizes the authority of coastal States, in the exercise of their sovereignty within their territorial sea, to establish requirements relating to pollution from foreign vessels in their territorial sea, including vessels exercising the right of innocent passage. This authority is balanced by the proviso in paragraph 4 that such laws and regulations shall, in accordance with Part II, section

3, not hamper innocent passage of foreign vessels. However, passage is not innocent if the vessel engages in “any act of willful and serious pollution contrary to this Convention” (article 19(2)(h)).

Paragraph 5 recognizes the authority of coastal States, for the purpose of enforcement as provided for in section 6, to establish requirements relating to pollution from foreign vessels in their EEZs. Unlike requirements in the territorial sea, coastal State requirements regarding pollution from foreign ships in the EEZ must conform to and give effect to generally accepted international rules and standards established through the competent international organization (i.e., the IMO) or a general diplomatic conference.

Paragraph 6 sets forth circumstances under which coastal States may establish special anti-pollution measures for foreign ships in particular areas of their respective EEZs. Such measures, among other things, require IMO approval. This paragraph strikes an important balance between the need for universal respect for necessary supplemental anti-pollution measures in particular coastal areas and the need to protect freedom of navigation from unilateral coastal State restrictions.

Domestically, vessel source pollution is governed primarily by the Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901–1912, the Clean Water Act, 33 U.S.C. §§ 1251–1387, the Ports and Waterways Safety Act, 33 U.S.C. § 1221 *et seq.*, the Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. § 1401 *et seq.*, the Oil Pollution Act of 1990, 33 U.S.C. § 2761 *et seq.*, the Refuse Act, 33 U.S.C. § 407 *et seq.*, and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*

#### *Pollution from or through the atmosphere (article 212)*

There is at present no global agreement directly governing marine pollution from or through the atmosphere. The parties to MARPOL are currently negotiating a possible new Annex VI that would address air pollution from ships. Article 9 of the SPREP and Cartagena Conventions have broad obligations relating to pollution to those regions from discharges into the atmosphere. Domestically, such provisions are addressed through the Clean Air Act, 42 U.S.C. § 7401 *et seq.*

#### ENFORCEMENT (ARTICLES 213–222)

Section 6 sets forth the rights and obligations of States to ensure compliance with and to enforce measures adopted in accordance with articles 207 through 212. In this respect, the Convention goes beyond and strengthens existing international agreements, many of which do not have express enforcement clauses.

Pursuant to article 229, nothing in the Convention affects the institution of civil (as opposed to punitive) proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

There are express enforcement provisions relating to pollution from land-based sources (article 213), sea-bed activities (article 214), activities in the Area (article 215), dumping (article 216), vessels (articles 217–220), maritime casualties (article 221), and pollution from or through the atmosphere (article 222). Although all of

these articles contain specific obligations, the provisions regarding the enforcement for vessel source pollution are set out in detail.

Article 217 places a duty on flag States to ensure that vessels flying their flag or of their registry comply with the measures adopted in accordance with the Convention. Among other things, flag States must ensure that vessels flying their flag or of their registry are in compliance with international rules and standards, carry requisite certificates, and are periodically inspected. If a vessel commits a violation of applicable rules and standards, the flag State must provide for immediate investigation and, where appropriate, institute proceedings irrespective of where the violation or pollution has occurred. Penalties must be adequate in severity to discourage violations wherever they occur. Article 217 is consistent with article 4 of MARPOL, chapter I of the Annex to SOLAS, and article VI of STCW.

Section 6 also sets forth the rights of port States and coastal States to take enforcement action against foreign flag vessels that do not comply with measures adopted in accordance with the Convention.

Article 218 recognizes the authority of the port State to take enforcement action in respect of a discharge from a vessel on the high seas in violation of applicable international rules and standards. (Discharges in the territorial sea or EEZ of the port State are addressed in article 220(1).) The port State may also take enforcement action in respect of a discharge violation in the internal waters, territorial sea or EEZ of another State if requested by that State, the flag State, or a State damaged or threatened by the discharge, or if the violation has caused or is likely to cause pollution to the internal waters, territorial sea, or EEZ of the port State.

Article 219 recognizes the authority of the port State to prevent a vessel from sailing when it ascertains that the vessel is in violation of applicable international rules and standards relating to seaworthiness and thereby threatens damage to the marine environment.

Article 220 provides an overall enforcement scheme for vessel source pollution based on various factors, including the location of the vessel, the location of the act of pollution, and the severity of the pollution. Article 220 affects only vessel discharges and does not apply to enforcement with respect to other types of pollution, such as by dumping.

Article 220 recognizes the authority of the coastal State to take enforcement action with respect to a foreign flag vessel in its EEZ or territorial sea, whether or not that vessel enters a port of the coastal State. However, such enforcement authority is not unfettered. Article 220 balances the interests of coastal States in taking enforcement action with rights and freedoms of navigation of flag States. It recognizes express safeguards applicable to enforcement action against foreign flag vessels (see section 7).

Article 220(1) recognizes the authority of a coastal State to take enforcement action against a vessel voluntarily within its port or off-shore terminal when a violation involving that vessel has occurred within the territorial sea or the EEZ of the coastal State.

Under Article 220(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 the coastal State adopted in accordance with the Convention, the coastal State may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including the detention of the vessel.

Under Article 220(3), where there are clear grounds for believing that a vessel navigating in the EEZ or the territorial sea of a State has, in the EEZ, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels, or laws and regulations of the coastal State conforming and giving effect to such rules and standards, the coastal State may require the vessel to provide 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.

Article 220(4) requires flag States to adopt laws and regulations and take other measures so that their vessels comply with requests for information by coastal States under paragraph 3.

Where a violation referred to in article 220(3) results in a substantial discharge causing or threatening significant pollution of the marine environment, article 220(5) authorizes the coastal State to 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.

Where a violation referred to in article 220(3) results in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, article 220(6) authorizes the coastal State, under certain circumstances, to institute proceedings, including detention of the vessel.

Pursuant to article 233, Sections 5 and 6 do not affect the legal regime of straits. Article 233 applies to enforcement of laws and regulations applicable to transit passage under article 42 and, by extension, to archipelagic sea lanes passage under article 54.

#### SAFEGUARDS (ARTICLES 223-233)

Section 7 establishes several safeguards concerning enforcement authority. These include an obligation to facilitate proceedings involving foreign witnesses and the admission of evidence submitted by another State (article 223), a specification as to what officials and vessels may exercise enforcement authority against foreign vessels (article 224), a duty to avoid adverse consequences in the exercise of enforcement powers (article 225), safeguards concerning delay and physical inspection of foreign vessels (article 226), and a duty of non-discrimination against foreign vessels (article 227).

Under article 226, States may not delay a foreign vessel "longer than is essential" for the purposes of the investigations provided for in articles 216, 218, and 220. Moreover, any physical inspection of a foreign vessel is limited to an examination of such certificates, records or other documents as the vessel is required to carry. Any further physical examination 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 cor-

respond 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. While the Convention imposes different procedural restrictions on physical inspections than U.S. law, it is anticipated that one or more of the exceptions for allowing further physical examination will be met in cases where there are "clear grounds" to believe a violation has occurred.

Article 228, which applies only to vessel source pollution, sets forth circumstances under which proceedings shall be suspended and restrictions on institution of proceedings. For example, consistent with the notion in Section 6 that the flag State is primarily responsible for ensuring compliance with the Convention of vessels flying its flag or of its registry, article 228(1) requires the suspension of enforcement proceedings against foreign vessels if the flag State institutes its own proceedings to impose penalties within six months of the date on which proceedings were first initiated. Suspension would not be required if the flag State fails to initiate proceedings within six months, if the 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 suspended proceeding will be terminated when the flag State has brought its proceedings to a conclusion. Article 228(2) imposes a limitation of three years in which to commence proceedings against foreign vessels.

Article 230, which applies only to vessel source pollution, provides that only monetary penalties may be imposed with respect to violations committed by foreign vessels beyond the territorial sea. With respect to violations committed by foreign vessels in the territorial sea, non-monetary penalties (i.e., incarceration) may be applied as well, but only if the vessel has committed a willful and serious act of pollution. The requirement that the act be "willful" would not constrain penalties for gross negligence. Article 230 applies only to natural persons aboard the vessel at the time of the discharge.

Article 231 provides for notification to the flag State and other States concerned of any measure taken against the foreign vessel. Under article 232, the enforcing State will be liable for damage or loss caused by measures taken that are unlawful or exceed those reasonably required in light of available information.

The extent to which, if at all, Sections 6 and 7 (on enforcement and safeguards, respectively) will enhance and/or constrain U.S. enforcement authorities is the subject of ongoing analysis.

#### ICE-COVERED AREAS (ARTICLE 234)

Section 8 authorizes coastal States to adopt and enforce laws and regulations relating to marine pollution from vessels in ice-covered areas within the limits of the EEZ, 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.

Pursuant to this article, a State may enact and enforce non-discriminatory laws and regulations to protect such ice-covered areas that are within 200 miles of its baselines established in accordance with the Convention. Such laws and regulations must have due regard to navigation and the protection and preservation of the marine environment, based on the best available scientific evidence, and must be otherwise consistent with other relevant provisions of the Convention and international law, including the exemption for vessels entitled to sovereign immunity under article 236.

The purpose of article 234, which was negotiated directly among the key states concerned (Canada, the United States and the Soviet Union), is to provide the basis for implementing the provisions applicable to commercial and private vessels found in the 1970 Canadian Arctic Waters Pollution Prevention Act to the extent consistent with that article and other relevant provisions of the Convention, while protecting fundamental U.S. security interests in the exercise of navigational rights and freedom throughout the Arctic.

#### RESPONSIBILITY AND LIABILITY (ARTICLE 235)

Section 9 provides that States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment and that they shall be liable in accordance with international law. It further provides that States shall ensure recourse in their legal systems for relief from damage caused by pollution of the marine environment. Finally, it obligates States to cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability.

#### SOVEREIGN IMMUNITY (ARTICLE 236)

Section 10 provides that the provisions of the Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, or other vessels and aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, the second sentence of article 236 imposes on flag States the duty to ensure, by adopting appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned and operated by it, that such vessels and aircraft act in a manner consistent, so far as is reasonable and practicable, with the Convention.

This article acknowledges that military vessels and aircraft are unique platforms not always adaptable to conventional environmental technologies and equipment because of weight and space limitations, harsh operating conditions, the requirements of long-term sustainability, or other security considerations. In addition, security needs may limit compliance with disclosure requirements.

#### OBLIGATIONS UNDER OTHER CONVENTIONS ON THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT (ARTICLE 237)

Section 11 (article 237(1)) provides that the provisions in Part XII are without prejudice to the specific obligations assumed by States under agreements previously concluded which relate to the protection and preservation of the marine environment and to

agreement which may be concluded in furtherance of the general principles set forth in the Convention. Article 237(2) provides that specific obligations assumed by States under other agreements should be carried out in a manner consistent with the general principles and objectives of this Convention. The United States does not anticipate any change in its implementation of other agreements, since it currently implements such agreements consistent with the principles and objectives of the Convention.

#### LIVING MARINE RESOURCES

(Articles 2, 56, 61-73, 77(4), 116-120)

Approximately 90 percent of living marine resources are harvested within 200 miles of the coast. By authorizing the establishment of EEZs, and by providing for the sovereign rights and management authority of coastal States over living resources within their EEZs, the Convention has brought most living marine resources under the jurisdiction of coastal States.

The Convention recognizes the need for consistent management of ecosystems and fish stocks throughout their migratory range, and sound management on the basis of biological characteristics. It imposes on the coastal State a duty to conserve the living marine resources of its EEZ.

While the Convention preserves the freedom to fish on the high seas beyond the EEZ, it makes that freedom subject to certain obligations, particularly the duty to cooperate in the conservation and management of high seas living resources. Failure to respect these obligations beyond the EEZ is subject to compulsory arbitration or adjudication. Tribunals are empowered to prescribe provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, including its living resources, pending the final decision.

The Convention's provisions relating to the conservation and management of living marine resources are consistent with U.S. law, policy and practice, and have provided the foundation for the international agreements governing this subject. These provisions are more critical today to U.S. living marine resource interests than they were in 1982 because of the dramatic overfishing that has occurred world-wide in the past decade.

#### TERRITORIAL SEA AND EEZ

*Basic rights and obligations.* The Convention gives the coastal State broad authority to conserve and manage living resources within its territorial sea and EEZ. Article 2 of the Convention provides that the sovereignty of the coastal State extends throughout the territorial sea. As part of the exercise of such sovereignty, the coastal State has the exclusive right to conserve and manage resources, including living resources, within the territorial sea, which may extend up to 12 miles from coastal baselines.

The Convention also provides that the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing living resources within its EEZ, including the right to utilize fully the total allowable catch of all such resources

(articles 56, 61, 62). With these rights come general responsibilities for the coastal State, including the duty:

- to determine the allowable catch of living resources in its EEZ (article 61(1));

- to ensure that such resources are not endangered by over-exploitation (article 61(2));

- to take into account effects of its management measures on non-target species with a view to maintaining or restoring such species above levels at which their reproduction may become seriously threatened (article 61(3));

- to promote the objective of optimum utilization of such resources (article 62(1)); and

- to determine its capacity to harvest such resources and to give other States access to any surplus under reasonable conditions (article 62(2)).

The coastal State has significant flexibility in defining optimum utilization and in fixing allowable catch, in determining its harvesting capacity, and therefore in determining what, if any, surplus may exist. The coastal State must, taking into account the best scientific evidence available to it, ensure that over-exploitation of stocks within its EEZ does not jeopardize the maintenance of the stocks overall and must maintain stocks of harvested species at levels which can produce maximum sustainable yields, as qualified by economic, environmental and other factors.

Similarly, the Convention gives coastal States wide discretion in choosing which other States will be allocated a share of any surplus. In making this choice, the coastal State must take into account "all relevant factors." Foreign fishing, to the extent authorized, may be conditioned upon observance of a wide variety of coastal State regulations, including area, season, vessel and gear restrictions, research, reporting and observer requirements, and compensation in the form of fees, financing, equipment, training and technology transfer.

U.S. law, primarily the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. § 1801 *et seq.*) (MFCMA), fully enables the United States to exercise its rights and implement its obligations with respect to the provisions of the Convention discussed above.

The MFCMA provides the United States with exclusive fishery management authority over all fishery resources up to the 200-mile limit of the U.S. EEZ (16 U.S.C. § 1811(a)). The MFCMA requires conservation of such resources in a manner consistent with article 61 (16 U.S.C. § 1851) and provides the legislative basis on which the United States determines the allowable catch of the living resources in its EEZ, as required by article 61 (16 U.S.C. § 1852). The process for making that determination fully comports with the principles of conservation and optimum utilization contained in articles 61 and 62. Fishery management plans developed pursuant to the MFCMA must prohibit overfishing and must attempt to achieve "optimum yield" (16 U.S.C. § 1851(a)(1)).

While the MFCMA does not separately address the issue of associated or dependent species, it gives sufficiently broad authority to regional fishery management councils to permit them to protect non-target species to the extent required by article 61(3), and argu-

ably requires the councils to do so by providing that, to the extent practicable, interrelated species shall be managed as a "unit" (16 U.S.C. § 1851(a)(3)). The Endangered Species Act (16 U.S.C. § 1651 *et seq.*) would independently protect those non-target species that were endangered or threatened throughout a significant portion of their range.

The MFCMA authorizes the allocation of any surplus to foreign States and establishes terms and conditions for any foreign fishing in the U.S. EEZ, thus providing the basis on which to fulfill any such obligations under article 62 (16 U.S.C. § 1821 generally and § 1824(b)(7)). In fact, because the harvesting capacity of the U.S. domestic fishing industry has in recent years been estimated to equal the total allowable catch of all relevant species subject to U.S. management authority, the United States has had no surplus to allocate to potentially interested States.

To have an opportunity to receive an allocation, a foreign nation must have in force a "governing international fishery agreement" (GIFA) with the United States (16 U.S.C. § 1821). This requirement is fully consistent with article 62. Presently, the United States has GIFAs in force with 5 nations, although, as noted above, there has been no surplus to allocate under such GIFAs in recent years.

In the event that a surplus of one or more species becomes available in the future, the MFCMA lists a variety of factors to be considered in determining the allocation of such surplus among foreign States (16 U.S.C. § 1821(e)). The Convention also lists many of these same factors, either as relevant considerations or as permissible terms and conditions for foreign fishing (article 62(3) & (4)). The Convention's list is not exhaustive and does not restrict utilizing any of the factors set forth in the MFCMA.

Although articles 69 and 70 require coastal States to give some special consideration to land-locked and geographically disadvantaged States in the same subregion or region in allocating any surplus, the Convention does not provide clear standards by which to determine whether any such States exist in the U.S. subregion or region. In any event, the language of these articles and that of article 62 gives the coastal State wide discretion in making such allocations and cannot be read to compel the making of an allocation to any particular State.

The MFCMA imposes other conditions on foreign fishing, including the payment of permit fees and compliance with fishery regulations and enforcement provisions (16 U.S.C. § 1821). The Convention permits the coastal State to impose all these conditions and requires nationals of other States fishing in an EEZ to observe regulations of the coastal State (article 62(4)).

In sum, the MFCMA provides a fully sufficient basis on which the United States could exercise its rights and implement its obligations with respect to the conservation and management of living resources within its territorial sea and EEZ.

*Particular categories of species.* Articles 63 through 68 of the Convention set forth additional provisions relating to particular categories of living resources that do not remain solely within areas under the fishery management authority of a single coastal State. U.S. law, and the international agreements to which the United States is party, as well as the 1992 United Nations moratorium on

high seas driftnet fishing, are fully consistent with these provisions.

Article 63(1) requires coastal States within whose EEZs the same stock or stocks of associated species occur to seek to agree on the measures necessary to coordinate and ensure the conservation and development of such stocks. The MFCMA calls for the Secretary of State to negotiate such agreements (16 U.S.C. § 1822). One example of such an agreement is the U.S.- Canada Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, March 2, 1953, 5 UST 5, TIAS No. 2900, 222 UNTS 77.

Articles 63(2) and 64, respectively, address "straddling" stocks and highly migratory species. These provisions are reviewed below in detail.

Article 65 of the Convention recognizes the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate exploitation of marine mammals more strictly than is required in the case of other living resources. Article 65 also requires States to cooperate with a view to conserving marine mammals and, in the case of cetaceans, to work in particular through appropriate international organizations. Article 120 makes article 65 applicable to the high seas as well.

These provisions lent direct support to the efforts of the United States and other conservation-minded States within the International Whaling Commission to establish a moratorium on commercial whaling. Prior to the adoption of these provisions in the text, whaling States argued that the Convention should require that protective measures for marine mammals may do no more than ensure the maintenance of maximum sustainable yield. These arguments were definitively rejected in the Third United Nations Conference on the Law of the Sea, paving the way for the commercial whaling moratorium and other measures that strictly protect marine mammals, including the Southern Ocean Whale Sanctuary adopted in 1994 by the International Whaling Commission.

U.S. law, including the Marine Mammal Protection Act of 1972, as amended, and the Whaling Convention Act of 1949, as amended (16 U.S.C. § 916 *et seq.*), strictly limits the exploitation of marine mammals within the U.S. territorial sea and EEZ and by U.S. vessels and persons subject to U.S. jurisdiction elsewhere.

Article 66 sets forth provisions relating to anadromous stocks (fish that migrate from salt water to spawn in fresh water) such as salmon, which recognize their special characteristics and reflect a major U.S. policy accomplishment. Article 66(1) provides that "States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks."

Article 66(2) authorizes the State of origin, after consulting with other relevant States, to set total allowable catches for anadromous stocks originating in its rivers.

Article 66(3)(a) prohibits fishing for anadromous stocks on the high seas beyond the EEZ except when such a prohibition would "result in economic dislocation" for a State other than a State of origin. On its face, this provision makes unlawful any new high seas salmon fisheries or the expansion of current ones. In fact, at the time the Convention was concluded, only Japan maintained a

high seas salmon fishery. Since the entry into force of the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, on February 16, 1993, that fishery has been prohibited as well. The 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean, TIAS No. 10789, also prohibits high seas fishing for salmon in that region. Thus, the combined effect of the LOS Convention and these two treaties precludes any fishery for U.S.-origin salmon, or any other salmon, on the high seas, a major benefit to the United States.

U.S. law implementing the North Pacific and North Atlantic salmon treaties prohibits persons or vessels subject to the jurisdiction of the United States from fishing for salmon on the high seas of those regions (16 U.S.C. §§ 3606, 5009).

Article 66 does not supersede the sovereign rights of the coastal State over anadromous stocks exercised in the territorial sea and EEZ pursuant to articles 2 and 56(1)(a), respectively, or those coastal State rights recognized under articles 61 and 62.

Anadromous stocks that originate in one State and migrate through the internal waters, territorial sea or EEZ of another State are subject to interception by the latter. In such cases, article 66(4) of the Convention requires the States concerned to cooperate in matters of conservation and management. The 1985 Treaty Between the Government of the United States and the Government of Canada Concerning Pacific Salmon, TIAS No. 11091, currently the subject of additional negotiations, established the Pacific Salmon Commission to effect such cooperation on salmon in that region. It should be noted, however, that the so-called equity principle of the Pacific Salmon Treaty does not derive from article 66, but is specific to that Treaty.

Under article 67, catadromous stocks (fish that migrate from fresh water to spawn in salt water) are the special responsibility of those States where they spend the greater part of their life cycle, and may not be harvested on the high seas beyond the EEZ. The United States exercises exclusive fishery management authority over catadromous stocks within the U.S. EEZ under the general provisions of the MFCMA discussed above.

*Enforcement.* The Convention authorizes the coastal State to take a broad range of measures to enforce its fishery laws, including boardings and inspections, requirements for observer coverage and vessel position reports, and arrests and fines (articles 62(4) & 73). The Convention requires that vessels arrested in the EEZ and their crews must be promptly released upon posting of a bond or other security. This rule is consistent with U.S. law. The rare foreign fisherman charged with a criminal violation of fisheries law may post bail; the MFCMA also provides for the release of a seized vessel upon the posting of a satisfactory bond (16 U.S.C. § 1860(d)).

Under the Convention, penalties for violations of fisheries laws in the EEZ may not include imprisonment, unless the States concerned agree to the contrary, or other form of corporal punishment (article 73). The MFCMA provides for criminal fines of up to \$200,000 for fishing violations committed by foreign fishermen. The MFCMA also provides for imprisonment for such acts as forcible assault, resisting or interfering with arrest, and obstructing a vessel boarding by an enforcement officer (16 U.S.C. § 1859(b)). The

Convention does not preclude imprisonment of those who assault officers, resist arrest, or violate other non-fishery laws.

The provisions of the Convention prohibiting imprisonment or corporal punishment for fishing violations responded to the severe treatment meted out to foreign fishermen in some places. Although the Convention limits the ability of the United States to impose prison sentences on foreign fishermen who violate U.S. fishery laws, the Convention promotes a major U.S. objective in protecting U.S. fishermen seized by other States from the imposition of prison sentences. On balance, these provisions of the Convention serve U.S. interests overall, given that many U.S. fishermen are actively engaged in fishing within foreign EEZs, while no foreign fishing is authorized within the U.S. EEZ at present.

#### CONTINENTAL SHELF

Under articles 68 and 77 of the Convention, sedentary species, such as coral, are not subject to the Convention's provisions relating to the EEZ, but are dealt with in the articles relating to the continental shelf. Under article 77, the coastal State has sovereign rights for the purpose of exploring and exploiting the sedentary species of the continental shelf, unqualified by the duties specifically associated with the conservation and management of living resources in the EEZ. This result is consistent with article 2(4) of the Continental Shelf Convention.

The definition of sedentary species remains the same as that in the Continental Shelf Convention:

organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Neither convention provides examples of sedentary species subject to coastal State jurisdiction. However, the MFCMA specifies a number of varieties of coral, crab, mollusks and sponges as included within the sedentary species subject to U.S. continental shelf jurisdiction, and permits identification of other species when published in the Federal Register (16 U.S.C. § 1802(4)).

#### HIGH SEAS

International law has long recognized the right of all States for their nationals to engage in fishing on the high seas (High Seas Convention, article 2(2)). The freedom of high seas fishing has never been an unfettered right, however. The High Seas Convention, for example, required this freedom to be exercised by all States with "reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

By authorizing the establishment of EEZs out to 200 miles, the LOS Convention has significantly reduced the areas of high seas in which fishermen may exercise this freedom.

Moreover, while article 87(1)(e) of the Convention preserves the right of all States for their nationals to engage in fishing on the high seas, it makes this right *subject to* a number of important, though general, conditions set forth in articles 116-120:

other treaty obligations of the State concerned;

the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63(2) and articles 64-67; and

basic obligations to cooperate in the conservation and management of high seas living resources set forth in articles 117-119.

In furtherance of these provisions, the international community has concluded numerous treaties that regulate or prohibit high seas fisheries. Among these treaties are many to which the United States is party, including, *inter alia*:

International Convention for the Conservation of Atlantic Tunas, May 14, 1966, 20 UST 2887, TIAS No. 6767, 673 UNTS 63;

Convention for the Establishment of an Inter-American Tropical Tuna Commission, March 3, 1950, 1 UST 230, TIAS No. 2044, 80 UNTS 3;

Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, February 11, 1992;

Convention for the Conservation of Salmon in the North Atlantic Ocean, March 2, 1982, TIAS No. 10789;

Convention on the Conservation of Antarctic Marine Living Resources, May 20, 1980, 33 UST 3476, TIAS No. 10240;

Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, April 2, 1987, TIAS No. 11100;

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, November 24, 1989; and

International Convention for the Regulation of Whaling, November 19, 1956, 10 UST 952, TIAS No. 4228, 338 UNTS 366.

The United States has also recently participated in the conclusion of two other treaties relating to high seas fishing that are not yet in force, namely, the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, Sen. Treaty Doc. 103-27, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Sen. Treaty Doc. 103-24.

The United States was also instrumental in promoting the adoption, by consensus, of United Nations General Assembly Resolutions 44/225, 45/297 and 46/215, which have effectively created a moratorium on the use of large-scale driftnets on the high seas. In pressing for the adoption of these resolutions, the United States relied heavily on the fact that large-scale driftnets in the North Pacific Ocean intercepted salmon of U.S. origin in violation of article 66 of the Convention and indiscriminately killed large numbers of other species, including marine mammals and birds, in violation of the basic conservation and related obligations contained in the Convention. In creating the moratorium, the international community implemented obligations flowing from these provisions of the Convention.

Existing U.S. law implements all pertinent U.S. obligations flowing from the general provisions of articles 116-120 of the Convention and the additional treaties to which the United States is party. The MFCMA also calls upon the Secretary of State to negotiate any additional treaties and other international agreements that may be

necessary or appropriate in the fulfillment of U.S. obligations under the Convention to cooperate in the conservation and management of living resources of the high seas (16 U.S.C. § 1822).

#### "STRADDLING" STOCKS AND HIGHLY MIGRATORY SPECIES

While virtually all members of the international community accept the fishery provisions of the Convention as reflective of customary law, differences remain over their interpretation and application, particularly as they relate to so-called "straddling" stocks and highly migratory species. This part of the commentary will review these provisions in detail, as well as on-going efforts to resolve the differences that remain.

*"Straddling" stocks.* Although the Convention does not use the term "straddling" stocks, that term has come to refer to those stocks described in article 63(2), which provides that:

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.

This provision reflects the need for international cooperation in the conservation of stocks that "straddle" the line that separates the EEZ from the high seas beyond. While the Convention recognizes the rights and responsibilities of the coastal State with respect to stocks occurring within its EEZ (article 56), overfishing for the same stock (or stocks of associated species) in the adjacent high seas area can radically undermine efforts by the coastal State to exercise those rights and fulfill those responsibilities.

Article 63(2) obligates the coastal State and the States fishing for such stocks in the adjacent area to "seek to agree" on necessary conservation measures for these stocks in the adjacent area. Three features of this provision are worth noting. First, the coastal State has the right to participate in the negotiations contemplated by article 63(2) whether or not it maintains a fishery for the stocks in question either within its EEZ or in the adjacent high seas area. Second, the conservation measures to be negotiated are for application only in the adjacent high seas area, not in the coastal State's EEZ, although, to be effective, the measures applied in the two areas should be compatible. Finally, article 63(2) leaves unresolved the question of what happens when the States concerned have not been able to agree on necessary measures. The on-going United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, discussed below, is presently grappling with this issue.

While disputes over straddling stocks in other parts of the world remain, article 63(2) provided the basis on which the United States was able to resolve a conflict over the primary straddling stock fishery of concern to it, namely the fishery for the Aleutian Basin stock of Alaskan pollock. This pollock stock is a valuable straddling stock that occurs in the EEZs of both the United States and the Russian Federation, as well as in the high seas area of the Bering

Sea, commonly known as the Donut Hole. Overfishing for pollock in the Donut Hole by other States led to a collapse of the stock in the late 1980s. Relying on article 63(2), the United States and the Russian Federation persuaded the fishing States in question to conclude the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, which, once it enters into force, will establish an effective conservation and management regime for pollock in the Donut Hole, consistent with U.S. interests in that stock as a coastal State.

*Highly migratory species.* Article 64 of the Convention provides separate treatment for highly migratory species (HMS), which are those listed in Annex I to the Convention. The list includes, *inter alia*, tuna and billfish. With respect to HMS, article 64 provides that:

1. The coastal State and other States whose nationals fish in the region for highly migratory species 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 [Part V of the Convention].

At the time the Convention was concluded, the United States sharply disagreed with most other States over the interpretation of this article. The predominant view was that HMS are treated exactly the same as all other living resources in the sense that they fall within exclusive coastal State authority in the territorial sea and EEZ under articles 2 and 56(1)(a), and are subject to articles 61 and 62. The United States, however, contended that article 64, by calling for international management of HMS throughout their migratory range, derogated from coastal State claims of jurisdiction. According to the U.S. interpretation, a coastal State would not be permitted, absent an agreement, to prevent foreign vessels from fishing for HMS in its EEZ.

Effective January 1, 1992, however, the United States amended the MFCMA to include HMS among all other species over which it asserts sovereign rights and exclusive fishery management authority while such species occur within the U.S. EEZ (16 U.S.C. § 1812). That amendment also recognized, at least implicitly, the right of other coastal States to assert the same sovereign rights and authority over HMS within their EEZs. With this amendment, a long-standing juridical dispute came to an end.

The end of the juridical dispute has not rendered article 64 meaningless, however. While virtually all States now accept that article 64 does not derogate from the rights of coastal States over living resources within their EEZs, article 64 does require all relevant States to cooperate in international management of HMS throughout their range, both within and beyond the EEZ. Article 64 thus differs in this critical respect from article 63(2), which obligates relevant States to cooperate in the establishment of nec-

essary conservation measures for "straddling" stocks only in the high seas area adjacent to the EEZ.

State practice has generally followed this distinction between straddling stocks and HMS. For example, such tuna treaties as the International Convention for the Conservation of Atlantic Tunas and the Convention for the Establishment of an Inter-American Tropical Tuna Commission apply both within and beyond the EEZs in their respective regions. Similarly, the International Convention for the Regulation of Whaling applies on a global basis, both within and beyond EEZs. By contrast, the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea and the Convention on Future Multilateral Cooperation in Northwest Atlantic Fisheries, both of which regulate fisheries for "straddling" stocks, apply only in the high seas areas adjacent to the relevant EEZs.

One justification for this distinction rests on the biological differences between the two categories of stocks. Broadly speaking, "straddling" stocks, such as cod in the Northwest Atlantic and pollock in the Bering Sea, occur primarily in the EEZs of a very few coastal States. Outside the EEZs, these stocks are fished in relatively discrete areas of the adjacent high seas. Accordingly, it seems reasonable for the coastal State "unilaterally" to determine conservation and management measures applicable in its EEZ, while the high seas fishing States and the coastal State(s) jointly develop such measures applicable in the adjacent areas.

Most HMS, by contrast, migrate through thousands of miles of open ocean. They are fished in the EEZs of large numbers of coastal States and in many areas of the high seas. No single coastal State could adopt effective conservation and management measures for such a stock as a whole. As a result, international cooperation is necessary in the development of such measures for these stocks throughout their range, both within and beyond the EEZ.

The list of HMS contained in Annex I to the Convention may not, on the basis of scientific evidence available today, reflect most accurately those marine species that in fact migrate most widely. The MFCMA also defines HMS for the purpose of that statute by listing some, but not all, of the marine species included in Annex I (16 U.S.C. § 1802(14)). The absence of some Annex I species from the MFCMA definition would not prevent the United States from fulfilling its obligations under article 64 to cooperate in the developing international regimes for HMS regulation, however. Indeed, the MFCMA calls upon the Secretary of State, in consultation with the Secretary of Commerce, to negotiate agreements to establish such regimes (16 U.S.C. § 1822(e)).

Finally, although Annex I includes dolphins and cetaceans among the listed HMS, this would not prejudice the provisions of articles 65 and 120, which preserve the right of coastal States and the competence of international organizations, as appropriate, to prohibit, limit or regulate the taking of marine mammals more strictly than otherwise provided for in the Convention.

*United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.* As noted above, articles 63(2) and 64 establish, for "straddling" stocks and HMS, respectively, general obligations for coastal States and other States whose nationals fish for

these stocks to cooperate in conservation and management. Within the framework of these general obligations, the international community has concluded numerous treaties and other agreements to regulate fisheries for "straddling" stocks and HMS.

The existence of this framework and of these treaties and agreements has not resolved all differences regarding the conservation and management of these species, however. With a view to resolving these differences, Agenda 21, adopted by the 1992 United Nations Conference on Environment and Development, called upon the United Nations to convene a conference specifically devoted to this subject. As the resulting United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks has not yet completed its work, it would be premature to speculate on its outcome, except to say that all participating States have agreed that any such outcome must be consistent with the LOS Convention.

#### DISPUTE SETTLEMENT

The Convention's dispute settlement provisions, as they apply to fisheries disputes, reinforce the scheme of the fishery provisions of the Convention as a whole. A coastal State need not submit to binding arbitration or adjudication any dispute relating to the exploration, exploitation, conservation, or management of living resources in the EEZ, including, for example, its discretionary powers for determining the allowable catch. However, such disputes may, in limited circumstances, be referred to compulsory but non-binding conciliation.

Fishing beyond the EEZ is subject to compulsory, binding arbitration or adjudication. This will give the United States an additional means by which to enforce compliance with the Convention's rules relating to the conservation and management of living marine resources and measures required by those rules, including, for example, the prohibition in article 66 on high seas salmon fishing, the application of articles 63(2) and 116 in the Central Bering Sea in light of the new Pollock Convention, and the application of articles 66, 116 and 192 in light of the United Nations General Assembly Resolutions creating a moratorium on large-scale high seas driftnet fishing.

Neither the Convention's dispute settlement provisions nor any of its other provisions, however, limit the ability of the United States to use other means, including trade measures, provided under U.S. law to promote compliance with environmental and conservation norms and objectives.

The dispute settlement provisions as they relate to living marine resources are discussed more fully below in the section on dispute settlement.

#### THE CONTINENTAL SHELF

(Article 56(1); Part VI, articles 76-78, 80-80, 85; Annex II; Final Act, Annex II)

Part VI of the Convention, together with other related provisions on the continental shelf, secures for the coastal State exclusive control over the exploration and exploitation of the natural resources, including oil and gas, of the sea-bed and its subsoil within 200

miles of the coastal baselines and to the outer edge of the geological continental margin where the margin extends beyond 200 miles.

United States interests are well served by the Convention's provision for exclusive coastal State control over offshore mineral resources to the outer edge of the continental margin. In addition, the Convention's standards and procedures for delimiting the outer edge of the margin will help avoid uncertainty and disagreement over the maximum extent of coastal State continental shelf jurisdiction. The resulting clarity advances both the resource management and commercial interests of the United States, as well as its interests in stabilizing claims to maritime jurisdiction by other States.

In order to provide necessary legal certainty with respect to coastal State control over exploration and development activities on the continental margin beyond 200 miles, the Convention sets forth detailed criteria for determining the outer edge of the margin. In addition, it provides for establishment of an expert body, the Commission on the Limits of the Continental Shelf, to provide advice and recommendations on the application of these criteria.

Only a limited number of coastal States, including the United States, have significant areas of adjacent continental margin that extend beyond 200 miles from the coast. Many States preferred a universal limit at 200 miles for all. The Convention balances the extension of coastal State control over the natural resources of the continental margin seaward of 200 miles with a modest obligation to share revenues from successful minerals development seaward of 200 miles. The potential economic benefits of these resources to the coastal State greatly exceed any limited revenue sharing that may occur in the future.

#### THE CONCEPT OF THE CONTINENTAL SHELF

From a geological perspective, the continental shelf is only one part of the submerged prolongation of land territory offshore. It is the inner-most of three geomorphological areas—the continental slope and the continental rise are the other two—defined by changes in the angle at which the seabed drops off toward the deep ocean floor. The shelf, slope and rise, taken together, are geologically known as the continental margin (see Figure 2). Worldwide, there is wide variation in the breadths of these areas.

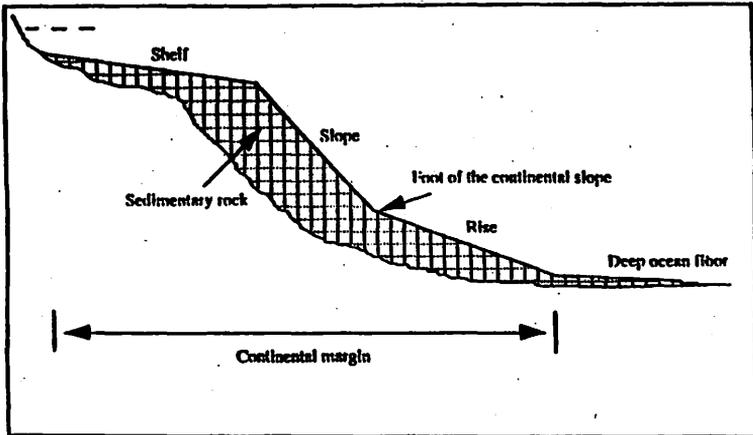


Figure 2- Profile of the Continental Margin (article 76(3))

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National claims to the continental shelf in modern times date from President Truman's 1945 Proclamation on the Continental Shelf, by which the United States asserted exclusive sovereign rights over the resources of the continental shelf off its coasts. The Truman Proclamation specifically stated that waters above the continental shelf were to remain high seas and that freedom of navigation and overflight were not to be affected (Presidential Proclamation No. 2667, Sept. 28, 1945, 3 CFR 67 (1943-48 Comp.)).

Differing interpretations and application of concepts underlying the Truman Proclamation led to international efforts to develop a more precise definition of the continental shelf. The first result of these efforts was the Continental Shelf Convention that emerged from the First United Nations Conference on the Law of the Sea in 1958. It provides that the continental shelf refers to:

the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

The "exploitability criterion" of the Continental Shelf Convention, however, itself created considerable uncertainty as to how far seaward a country was entitled to exclusive rights over the resources of the shelf.

The 1982 Convention discards this definition of the continental shelf in favor of expanded objective limits and a method for establishing their permanent location. This change was designed to accommodate coastal State interests in broad control of resources and in supplying the certainty and stability of geographic limits necessary to promote investment and avoid disputes.

#### DEFINITION OF THE CONTINENTAL SHELF

Article 76(1) of the Convention defines the continental shelf as follows:

The continental shelf of a coastal State comprises the sea-bed 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.

This definition allows any coastal State, regardless of the sea floor features off its shores, to claim a 200-mile continental shelf. This is consistent with the provisions of articles 56 and 57, which include among the rights of a coastal State within its EEZ sovereign rights for exploring and exploiting non-living resources of the seabed and its subsoil.

The effect is to give coastal States whose physical continental margins extend less than 200 miles from the coast sovereign rights over the natural resources of the seabed and subsoil up to the 200 mile limit. This is of particular importance in those parts of the United States with a narrow continental margin, such as areas off

the Pacific coast, Hawaii, the Commonwealths of Puerto Rico and of the Northern Mariana Islands, and most other islands comprising U.S. territories and possessions.

#### RIGHTS AND DUTIES

The coastal State's rights under Part VI over the natural resources of the continental shelf exist independent of any action by the coastal State, and apply whether or not the coastal State has declared an EEZ. Article 77 reiterates that the coastal State has sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. The sovereign rights of the coastal State are balanced with provisions protecting the freedom of navigation and the other rights and freedoms of other States from infringement or unjustifiable interference by the coastal State. Under article 78, rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the airspace above those waters.

The right of all States to lay submarine cables and pipelines on the continental shelf is specifically protected by article 79, which is discussed above in the section on the high seas.

Several articles enumerate specific rights of the coastal State regarding activities on the continental shelf. Those relating to artificial islands, installations and structures (article 80) are the same as the rights in article 60 already discussed in connection with the EEZ. Drilling for all purposes (article 81), and tunnelling (article 85) are under coastal State control. The provisions of article 83 on delimitation are discussed below in the section of this Commentary on maritime boundary delimitation.

#### LIMITS OF THE CONTINENTAL SHELF BEYOND 200 MILES (ARTICLE 76)

##### *Definition*

Paragraphs 3-7 of article 76 provide a detailed formula for determining the extent of the continental shelf of a coastal State, based on the definition in paragraph 1, where its continental margin extends beyond 200 miles from the coast. Although this formula uses certain geological concepts as points of departure, its object is legal not scientific. It is designed to achieve reasonable certainty consistent with relevant interests and its effect is to place virtually all seabed hydrocarbon resources under coastal State jurisdiction.

The formula provides two alternative methods for determining the outer edge of the continental margin (paragraph 4). The first is based on the thickness of sedimentary rock (rock presumed to be of continental origin). The limits of the margin are to be fixed by points at which the thickness of sedimentary rock "is at least 1 percent of the shortest distance from such point to the foot of the continental slope." (Thus, if at a given point beyond 200 miles from the baseline, the sediment thickness is 3 kilometers, then that point could be as much as 300 kilometers seaward of the foot of the continental slope.)

The second alternative is to fix the outer limits of the margin by points that are not more than 60 miles from the foot of the continental slope.

These alternative methods are subject to specific qualifications to ensure that their application does not produce unintended results.

First, the continental margin does not include the deep ocean floor with its ocean ridges (paragraph 3).

Second, the outer limit of the continental margin may not extend beyond 350 miles from the coast or 100 miles from the 2,500 meter isobath, whichever is further seaward (paragraph 5). This provision is neither an extension of the 200-mile limit in paragraph 1 nor an alternative definition of the continental margin and its outer edge contained in paragraph 4. It applies only to areas where the outer edge of the continental margin, determined in accordance with either of the methods specified in paragraph 4, might otherwise be located seaward of both of the limits contained in paragraph 5.

Third, notwithstanding the existence of alternative maximum limits in paragraph 5, the outer limit of the continental shelf shall not exceed 350 miles from the coast on submarine ridges, provided that this limitation on the use of either alternative limit set forth in paragraph 5 does not apply "to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs" (paragraph 6).

The United States understands that features such as the Chukchi plateau and its component elevations, situated to the north of Alaska, are covered by this exemption, and thus not subject to the 350 mile limitation set forth in paragraph 6. Because of the potential for significant oil and gas reserves in the Chukchi plateau, it is important to recall the U.S. statement made to this effect on April 3, 1980 during a Plenary session of the Third United Nations Conference on the Law of the Sea, which has never given rise to any contrary interpretation. In the statement, the United States representative expressed support for the provision now set forth in article 76(6) on the understanding that it is recognized that features such as the Chukchi plateau situated to the north of Alaska and its component elevations cannot be considered a ridge and are covered by the last sentence of paragraph 6.

For the United States, the continental shelf extends beyond 200 miles in a variety of areas, including notably the Atlantic coast, the Gulf of Mexico, the Bering Sea and the Arctic Ocean. Other States with broad margins include Argentina, Australia, Brazil, Canada, Iceland, India, Ireland, Madagascar, Mexico, New Zealand, Norway, the Russian Federation and the United Kingdom.

### *Delineation*

Article 76, paragraphs 7-10, deal with the delineation of the outer limits of the continental shelf. For reasons of simplicity and certainty, limits beyond 200 miles are to be delineated by straight lines no longer than 60 miles connecting fixed points defined by coordinates of latitude and longitude (paragraph 7). Coastal States with continental shelves extending beyond 200 miles are to provide information on those limits to the Commission on the Limits of the Continental Shelf, an expert body established by Annex II to the Convention. The Commission is to make recommendations to coastal States on these limits. The coastal State is not bound to accept these recommendations, but if it does, the limits of the continental shelf established by a coastal State on the basis of these rec-

ommendations are final and binding on all States Parties to the Convention and on the International Seabed Authority.

Article 76(9) requires the coastal State to deposit with the Secretary-General of the United Nations the relevant charts and data permanently describing the outer limits of its continental shelf both at and beyond 200 miles. This promotes stability and predictability for investors and minimizes disputes.

#### COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF (ANNEX II)

The Commission on the Limits of the Continental Shelf is to consist of 21 members, who are to be experts in geology, geophysics or hydrography, but may only be nationals of States Parties. A coastal State that intends to establish its continental shelf beyond 200 miles is required by Annex II, article 4 to provide particulars of those limits to the Commission with supporting scientific and technical data no later than 10 years following entry into force for it of the Convention. In some cases, fiscal and technical limitations may mean that this submission merely begins a process that the coastal State will wish to augment with further study and data before the Commission makes its recommendations.

The Commission is authorized to make recommendations on the outer limits of the continental shelf beyond 200 miles. Such recommendations on the submission are prepared by a seven-member subcommission and approved by a two-thirds majority of Commission members (Annex II, articles 5 and 6). If the coastal State agrees, the limits of the continental shelf established by the coastal State on the basis of these recommendations are final and binding (article 76(8)), thus providing stability to these claims which may not be contested.

In the case of disagreement by the coastal State with the recommendations of the Commission, Annex II, article 8 requires the coastal State, within a reasonable time, to make a revised or new submission to the Commission.

The Commission is designed to provide a mechanism to prevent or reduce the potential for dispute and uncertainty over the precise limits of the continental shelf where the continental margin extends beyond 200 miles. The process is not adversarial, and the International Seabed Authority plays no part in determining the outer limit of the continental shelf. Ultimate responsibility for delimitation lies with the coastal State itself, subject to safeguards against exaggerated claims. The procedures of the Commission are structured to provide incentives to ensure that recommendations are not made that are likely to be rejected by the coastal State. For example, if requested, the Commission may aid the coastal State in preparing its data for submission.

Annex II provides for the election of the Commission within 18 months of the entry into force of the Convention. Because the continental shelf of the United States extends beyond 200 miles in areas of potential oil and gas reserves, because of its interest in consolidating the rights of coastal States over their reserves, as well in discouraging exaggerated claims to offshore jurisdiction, it is important for the United States to become party as early as possible in order to be able to participate in the selection of the mem-

bers of the Commission, as well as to nominate U.S. nationals for election to the Commission.

The Commission plays no role in the question of delimitation between opposite or adjacent States.

*Revenue sharing (article 82)*

Article 82(1) provides that coastal States shall make payments or contributions in kind in respect of exploitation of the non-living resources of the continental shelf beyond 200 miles from the coastal baselines. The choice between "payments" and "contributions in kind" is left to the coastal State, which normally can be expected to elect to make payments.

No revenue sharing is required during the first five years of production at any given site (article 82(2)). Thereafter, payments and contributions are to be made with respect to all production at that site. From the sixth to the twelfth year of production, the payment or contribution is to be made at the rate of one per cent per year of the value or volume of production at the site, increasing annually by one per cent. After the twelfth year, the rate remains at seven per cent.

The requisite payments are a small percentage of the value of the resources extracted at the site. That value is itself a small percentage of the total economic benefits derived by the coastal State from offshore resources development. Article 82(3) exempts a small category of developing States from making payments or contributions in kind. Payments are to be distributed by the Authority to States Parties on the basis of criteria for distribution set out in article 82(4). These funds are distinct from, and should not be confused with, the Authority's revenues from deep mining operations under Part XI. They may not be retained or used for purposes other than distribution under article 82, paragraph 4.

Revenue sharing for exploitation of the continental shelf beyond 200 miles from the coast is part of a package that establishes with clarity and legal certainty the control of coastal States over the full extent of their geological continental margins. At this time, the United States is engaged in limited exploration and no exploitation of its continental shelf beyond 200 miles from the coast. At the same time, the United States is a broad margin State, with significant resource potential in those areas and with commercial firms that operate on the continental shelves of other States. On balance, the package contained in the Convention, including revenue sharing at the modest rate set forth in article 82, clearly serves United States interests.

*Statement of Understanding concerning a specific method to be used in establishing the outer edge of the continental margin (Annex II to the Final Act)*

Annex II to the Final Act contains the Statement of Understanding adopted by the Third United Nations Conference on the Law of the Sea that addresses the unusual geographic circumstances involved in determining the outer edge of the continental margin of Sri Lanka and India in the southern part of the Bay of Bengal.

This Statement of Understanding bears upon the interpretation and application of the Convention, but is not part of the Conven-

tion as adopted by the Conference and submitted for the advice and consent of the Senate.

#### DOMESTIC LEGISLATION

The principal U.S. legislation governing the U.S. continental shelf is contained in the Submerged Lands Act of 1953, as amended, 43 U.S.C. § 1301 *et seq.*, and the Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. § 1331 *et seq.*

#### DEEP SEABED MINING

(Part XI and Agreement on Implementation of Part XI; Annexes III and IV)

Part XI and Annexes III and IV to the Convention (Part XI) and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (Agreement) establish the legal regime governing exploration and exploitation of mineral resources of the deep seabed beyond coastal State jurisdiction (seabed mining regime).

Flaws in Part XI caused the United States and other industrialized States not to become parties to the Convention. The unwillingness of industrialized States to adhere to the Convention unless its seabed mining provisions were reformed led the Secretary-General of the United Nations, in 1990, to initiate informal consultations aimed at achieving such reform and thereby promoting widespread acceptance of the Convention. These consultations resulted in the Agreement, which was adopted by the United Nations General Assembly on July 28, 1994 by a vote of 121 (including the United States) in favor with 0 opposed and 7 abstentions. As of September 8, 1994, 50 countries had signed the Agreement, including the United States (subject to ratification). More are expected to follow.

The objections of the United States and other industrialized States to Part XI were that:

- it established a structure for administering the seabed mining regime that did not accord industrialized States influence in the regime commensurate with their interests;

- it incorporated economic principles inconsistent with free market philosophy; and

- its specific provisions created numerous problems from an economic and commercial policy perspective that would have impeded access by the United States and other industrialized countries to the resources of the deep seabed beyond national jurisdiction.

The decline in commercial interest in deep seabed mining, due to relatively low metals prices over the last decade, created an opening for reform of Part XI. This waning interest and resulting decline in exploration activity led most States to recognize that the large bureaucratic structure and detailed provisions on commercial exploitation contained in Part XI were unnecessary. This made possible the negotiation of a scaled-down regime to meet the limited needs of the present, but one capable of evolving to meet those of the future, coupled with general principles on economic and com-

mercial policy that will serve as the basis for more detailed rules when interest in commercial exploitation re-emerges.

The waning of the Cold War and the increasing tendency by nations in Eastern Europe and the developing world to embrace market principles gave further impetus to the effort to reform Part XI. These factors led the States that had historically supported Part XI to accept the need for reform. Finally, the 60th ratification of the Convention on November 16, 1993, made it apparent that a failure to reform Part XI before the entry into force of the Convention on November 16, 1994, could jeopardize the future of the entire Convention and seriously impede future efforts to exploit mineral resources beyond national jurisdiction.

The Agreement fully meets the objections of the United States and other industrialized States to Part XI. The discussion that follows describes the seabed mining regime of the Convention and the changes that have been made by the Agreement. The legal relationship between the Convention and the Agreement is then considered, as well as the provisional application of the Agreement.

#### THE SEABED MINING REGIME

##### *Scope of the regime*

The seabed mining regime applies to "the Area," which is defined in article 1 of the Convention to mean the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. The Area is that part of the ocean floor seaward of coastal State jurisdiction over the continental shelf, that is, beyond the continental margin or beyond 200 miles from the baseline from which the breadth of the territorial sea is measured where the margin does not extend that far. It comprises approximately 60 percent of the seabed.

The seabed mining regime governs mineral resource activities in the Area. Article 1(3) defines "activities in the Area" as all activities of exploration for or exploitation of the mineral resources of the Area. Those resources are all solid, liquid or gaseous mineral resources on or under the seabed. Prospecting, however, does not require prior authorization, but may be subject to general regulation.

##### *Common heritage of mankind*

Article 136 provides that the Area and its resources are the common heritage of mankind. This principle, reflects the fact that the Area and its resources are beyond the territorial jurisdiction of any nation and are open to use by all in accordance with commonly accepted rules.

This principle has its roots in political and legal opinion dating back to the earliest days of the Republic. President John Adams stated that "the oceans and its treasures are the common property of all men". With respect to the seabed in particular, President Lyndon Johnson declared that "we must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings." The United States joined in the adoption, by consensus, of the United Nations General Assembly Resolution 2749 (XXV)(1970), which set forth this principle. The Deep Seabed Hard

Mineral Resources Act of 1980 (30 U.S.C. § 1401 *et seq.*) (DSHMRA) incorporated this principle into U.S. law.

For reasons of national security, the United States has also supported this principle to ensure that the deep seabed is not subject to national appropriation, which could lead to confrontation or impede the mobility or operations of U.S. armed forces. Article 137, like the DSHMRA, advances these interests by providing that no State shall claim or exercise sovereignty over any part of the Area or its resources or recognize such claims by others.

In furtherance of this principle, article 141 declares the Area to be open to use by all States. Only mining activities are subject to regulation by the International Seabed Authority (discussed below). Other activities on the deep seabed, including military activities, telecommunications and marine scientific research, may be conducted freely in accordance with principles of the Convention pertaining to the high seas, including the duty to have reasonable regard to other uses.

Part XI, as modified by the Agreement, gives specific meaning to the common heritage principle as it applies to the mineral resources of the seabed beyond coastal State jurisdiction. It is worth noting that the Agreement, by restructuring the seabed mining regime along free market lines, endorses the consistent view of the United States that the common heritage principle fully comports with private economic activity in accordance with market principles.

#### ADMINISTRATION OF THE REGIME

##### *International Seabed Authority*

To administer the seabed mining regime, articles 156–7 of the Convention establish a new international organization, the International Seabed Authority (Authority). Article 158 establishes the three principal organs of the Authority: the Assembly, the Council and the Secretariat. In addition, as subsidiary organs to the Council, article 163 creates a Legal and Technical Commission. Section 9 of the Annex to the Agreement adds a Finance Committee.

Article 163 of the Convention also provides for an Economic Planning Commission. However, section 1(4) of the Annex to the Agreement conditions the establishment of the Commission on a future decision by the Council and, for the time being, delegates its functions to the Legal and Technical Commission.

With the exception of the Secretariat, all of these organs consist of representatives whose salaries and expenses are paid by their own States.

##### *Assembly*

The Assembly provided for in articles 159–160 of the Convention is a plenary body of all members of the Authority. Its main specific functions are to elect the Council, to elect a Secretary-General, to assess contributions, to give final approval to rules and regulations and to the budget, and to decide on the sharing of revenues to the Authority from mining.

Because of the size of the Assembly, and because its composition and voting rules do not necessarily ensure adequate protection for

all relevant interests, the Convention and the Agreement provide that the important decision-making functions of the Assembly are exercised concurrently with, or are based on the recommendations of, the Council or the Finance Committee, or both.

### *Council*

The Council is the executive body of the Authority and as such is primarily responsible for the administration of the seabed mining regime. Article 161 provides that the Council is to be composed of 36 members, four from the major consumers of minerals, four from the largest investors in deep seabed mining, four from major land-based producers of minerals, six to represent various interests among developing countries, and the remaining 18 to achieve overall equitable geographic distribution.

The primary functions of the Council, outlined in article 161, are to supervise the implementation of the seabed mining regime, to approve plans of work for exploration or exploitation of mineral resources, to oversee compliance with approved plans of work, to adopt and provisionally apply rules and regulations pending final approval by the Assembly, to nominate candidates for Secretary-General of the Authority, and to make recommendations to the Assembly on subjects upon which the Assembly must make decisions.

Part XI requires the Assembly to make many of its decisions on the basis of recommendations from the Council. Section 3(4) of the Annex to the Agreement expands this requirement to cover virtually all decisions of the Assembly and further provides that, if the Assembly disagrees with a Council recommendation, it must return the issue to the Council for further consideration.

### *Legal and Technical Commission*

The Legal and Technical Commission is a fifteen-member body of technical experts elected by the Council. Under article 165, its primary functions are to review and make recommendations to the Council on the approval of plans of work, to prepare draft rules and regulations, to direct the supervision of activities pursuant to approved plans of work, to prepare environmental assessments and recommendations on protection of the marine environment and to monitor the environmental impacts of activities in the Area.

### *Economic Planning Commission*

Like the Legal and Technical Commission, the Economic Planning Commission was to be a fifteen-member technical body. As noted above, the Economic Planning Commission will not be established in the near term; its functions will be performed by the Legal and Technical Commission. Those functions, defined in article 164, are mainly to review trends and factors affecting supply, demand and prices for minerals derived from the Area and to make recommendations on assistance to developing States that are shown to be adversely affected by activities in the Area (see discussion of the assistance fund below). The fact that such questions will not arise until commercial mining takes place made it reasonable to defer the Commission's establishment.

### *Finance Committee*

In response to proposals by the United States and other industrialized States, section 9 of the Annex to the Agreement establishes a Finance Committee. Section 9(3) requires the Committee to include the five largest contributors to the budget until such time that the Authority generates sufficient funds for its administrative expenses by means other than assessed contributions. Section 3(7) provides that decisions of the Council and the Assembly having financial or budgetary implications shall be based on recommendations of the Finance Committee, which must be adopted by consensus.

#### THE FUNCTIONAL—EVOLUTIONARY APPROACH

One of the major themes in the negotiations that led up to the Agreement was the need for the Authority to be cost-effective. While this was a prime concern of industrialized States, it also had broad support among developing countries. Sections 1(2) and (3) of the Annex to the Agreement accordingly stipulate that the establishment of the Authority and its organs, and the frequency, duration and scheduling of meetings, are to be governed by the objective of minimizing costs while ensuring that the Authority evolves in keeping with the functions it must perform.

Thus, as noted above, the Economic Planning Commission will not be established until a future decision of the Council, or the approval of a plan of work for commercial exploitation. In addition, sections 1(4) and (5) of the Annex to the Agreement identify the specific early functions on which the Authority should concentrate prior to commercial mining. These functions largely relate to approving plans of work for existing mining claims, monitoring compliance, keeping abreast of trends in the mining industry and metal markets, adopting necessary rules and regulations relevant to various stages of mining as interest emerges, promoting marine scientific research, and monitoring scientific and technical developments (particularly related to protection of the environment).

The evolutionary approach also underlies the decision to postpone the elaboration of very specific rules to govern seabed mining until the international community better understands the nature of mining activities likely to occur on a commercial scale. Instead, the Agreement establishes a series of broad reforms based on free market principles that will serve as the basis for more specific rules at an appropriate time. Significant improvements to the decision-making structure of the Authority, discussed below, made it possible for the United States and other industrialized States to have confidence that such rules and regulations will protect their interests.

#### ACQUISITION OF MINING RIGHTS

Article 153 and Annex III to the Convention govern the system for acquiring mining rights.

##### *Prospecting*

Article 2 of Annex III to the Convention does not require prior approval for prospecting. However, prospectors must submit a written undertaking to comply with the Convention. Prospecting, which

may be conducted simultaneously by more than one prospector, does not confer any rights with respect to the resources.

### *Exploration and exploitation*

Article 153 and article 3 of Annex III provide that exploration and exploitation activities may be conducted by States Parties or entities sponsored by States Parties. The applicant submits a written plan of work that upon approval will take the form of a contract between the applicant and the Authority.

Under article 4 of Annex III, entities shall be qualified if they meet standards for nationality, control and sponsorship set forth in article 153(2)(b), as well as other general standards related to technical and financial capabilities and to their performance under previous contracts.

### *Protection of the marine environment*

Article 145 and Annex III, article 17 of the Convention provide for the adoption of rules, regulations and procedures by the Council to ensure effective protection of the marine environment from harmful effects of deep seabed mining activity.

Article 162 also authorizes the Council to disapprove areas for exploitation where there is a risk of serious harm from mining activities already underway.

Section 1(7) of the Annex to the Agreement strengthens these requirements by requiring that all applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and a program for oceanographic and baseline environmental studies. Section 1(5)(g) of the Annex to the Agreement also requires the Authority to adopt rules, regulations and procedures on marine environmental protection as part of its early functions prior to the approval of the first plan of work for exploitation.

### *Application fees*

Article 13, paragraph 2 of Annex III to the Convention provides for an application fee of \$500,000. Section 8(3) of the Annex to the Agreement requires instead a \$250,000 fee for each phase (i.e., exploration or exploitation). If the fee exceeds the cost incurred in processing the application, the Authority is required to refund the difference to the applicant.

### *Approval of applications*

The Authority shall review and approve plans of work on a first-come first-served basis. Special decision-making procedures apply to the approval of plans of work. Under article 165(2), the Legal and Technical Commission shall review applications and make recommendations to the Council on the approval of plans of work. The Commission is required to base its recommendations on whether the applicant meets the financial and technical qualifications mentioned above, whether its proposed plan of work otherwise meets the rules and regulations adopted by the Council, and whether the applicant has included States Parties. The applicant submits a written plan of work that upon approval will take the form of a contract between the applicant and the Authority.

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If the Legal and Technical Commission recommends approval of a plan of work, Section 3(1) of the Annex to the Agreement requires the Council to approve the plan of work within 60 days, unless the Council decides otherwise by a two-thirds majority of its members, including a majority of the members present and voting in each of its chambers. The effects of this provision are to require the Council to act in a timely manner and to allow two members of either the consumer or investor chambers of the Council to ensure that

such a plan of work is approved. If the Commission recommends against approval of an application, the Council can nevertheless approve the application based on its normal decision-making procedures for issues of substance.

*Security of tenure—priority of right*

Section 1(9) of the Agreement requires the Authority to approve plans of work for exploration for a period of fifteen years. At the end of this period, an applicant must apply for approval of a plan of work for exploitation. If, however, the applicant can demonstrate that circumstances beyond its control prevent completion of the work necessary to move to exploitation, or that commercial circumstances do not justify proceeding to exploitation, the Authority must extend the approved plan of work for exploration in additional five-year increments at the request of the contractor.

Under article 16 of Annex III to the Convention, approved plans of work shall accord the contractor exclusive rights in the area covered by the plan of work in respect of a specific category of resources. Article 10 of Annex III provides that an approved plan of work for exploration confers a priority of right on the applicant for approval of a plan of work for exploitation in the same area. The priority may be withdrawn for unsatisfactory performance. However, section 1(13) of the Annex to the Agreement requires unsatisfactory performance to be judged on the basis of a failure to comply with the terms of an approved plan of work notwithstanding written warnings by the Authority.

Article 19 of Annex III provides that contracts cannot be revised except by consent of both parties (i.e., the applicant and the Authority).

*Applications by pioneer investors*

A special procedure exists for grandfathering into the seabed mining regime the mining sites of enterprises that have conducted substantial activities prior to the entry into force of the Convention. This procedure applies to entities from Japan, the Russian Federation, France, China, India, Eastern Europe and South Korea that have registered sites with the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (Prepcom) in accordance with Resolution II of the Final Act of the Third United Nations Conference on the Law of the Sea. The same procedure also applies to the sites of the mining consortia that have been licensed under the seabed mining laws of the United States, Germany or the United Kingdom.

Section 1(6)(a)(ii) of the Annex to the Agreement allows entities that have already registered sites with the Prepcom 36 months to file for the approval of a plan of work under the Convention without jeopardy to their rights to the mine site. When they file an application, and accompany it with the certificate of compliance recently issued by the Prepcom, it will be approved by the Authority, provided that it conforms to the rules, regulations and procedures of the Authority.

With regard to consortia licensed by the United States, Germany or the United Kingdom, section 1(6)(a)(i) of the Annex to the Agreement provides that they will be considered to have met the finan-

cial and technical qualifications necessary for approval of a plan of work if their sponsoring State certifies that they have expended U.S. \$30,000,000 in research and exploration activities and have expended no less than 10 percent of that amount in the location, survey and evaluation of the area referred to in the plan of work. All three of the consortia with current exploration permits issued pursuant to the DSHMRA meet this standard. In addition, section 1(6)(a)(iii) provides that, in keeping with the principle of non-discrimination, the contracts with these consortia "shall include arrangements which shall be similar to and no less favorable than those agreed with" any pioneer investor registered by the Prepcom.

### *Reserved areas*

Applicants for exploration rights under the Convention must set aside reserved areas for possible future use by the Enterprise (an arm of the Authority that, under certain circumstances, may undertake mining activity in its own right). Article 8 of Annex III to the Convention requires that each application cover an area sufficiently large and of sufficient value to allow for two mining operations. The applicant is responsible for dividing the area into two parts of equal estimated value. The Authority must then designate one of the areas to be reserved for future use by the Enterprise and the other to be reserved for the applicant.

Section 2(5) of the Annex to the Agreement modifies articles 8 and 9 of Annex III to the Convention to take into account the fact that the Enterprise, if it begins to undertake mining activity, will operate through joint ventures and to allow an applicant to participate in the exploration and development of a reserved area that it prospected. Under Section 2(5), the miner that contributed the area has the first option to enter into a joint venture with the Enterprise for the exploration and exploitation of that area. Furthermore, if the Enterprise does not submit an application for approval of a plan of work for the reserved area within fifteen years of the date on which that area was reserved, or the date on which the Enterprise becomes operational, whichever is later, the miner that contributed the area can apply to exploit it if the miner makes a good faith offer to include the Enterprise as a joint venture partner.

The pioneer investors that registered their claims with the Prepcom complied with this obligation at the time of registration. However, the areas registered by some pioneer investors (i.e., Japan, France and the Russian Federation) were not large enough to provide a reserved area. After some negotiation, the Prepcom allowed these pioneer investors collectively to reserve a single site and to self-select a major portion of the area they retained. If U.S.-licensed consortia confronted practical problems in registering claims with the Authority, they would be entitled to "no less favorable treatment" under section 1(6)(a)(iii) of the Annex to the Agreement.

### *Compliance*

Article 153(4) of the Convention requires the Authority to exercise such control as is necessary to ensure compliance with the Convention, rules and regulations adopted by the Council, and ap-

proved plans of work. In addition, article 4(4) of Annex III and article 139 provide that States Parties are also responsible for ensuring compliance by the nationals or enterprises they sponsor. However, a State Party will not be liable for damage caused if it has taken reasonable measures within the framework of its legal system to ensure compliance by persons or entities under its jurisdiction.

#### DECISION-MAKING

As noted above, decision-making was one of the key areas of concern for the United States and other industrialized States in the reform of Part XI. In particular, the United States objected to the absence of a guaranteed seat in the 36-member Council, to the possibility that the Assembly could dominate decisions within the Authority (discussed above) and to the fact that industrialized countries did not have influence on the Council commensurate with their interests.

##### *U.S. seat*

The United States is now guaranteed a seat on the Council in perpetuity. Section 3(15) of the Annex to the Agreement provides that the consumer chamber in the Council shall include the State that, upon the entry into force of the Convention, has the largest economy in terms of gross domestic product.

##### *Decisions by the Council*

Because the requirements for representation of developing countries and for equitable geographic distribution set forth in article 161 of the Convention would likely produce a majority of developing States on the Council, the United States and other industrialized States sought to change the voting rules to ensure that the United States, and others with special interests that would be affected by decisions of the Authority, would have special voting rights in the Council. Section 3(5) of the Annex to the Agreement provides that, when consensus cannot be reached in the Council, decisions on questions of substance shall be taken by a two-thirds majority of the members present and voting, provided that the decision is not opposed by a majority in any of the four-member consumer, investor or producer chambers in the Council.

This chambered voting arrangement will ensure that the United States and two other consumers, or three investors or producers acting in concert, can block substantive decisions in the Council. The only exceptions to this rule are for four substantive decisions that, under article 161(8)(d) of the Convention, must be made by consensus. Thus, consensus is required for any decision to provide protection to developing States that are land-based producers of minerals from adverse effects from seabed mining; any decision to recommend to the Assembly rules and regulations on the sharing of financial benefits from seabed mining (revenue sharing); any decision to adopt and apply provisionally rules, regulations and procedures implementing the seabed mining regime or amendments thereto; and any decision to adopt amendments to the seabed mining regime. The requirement that these issues be made by consensus in effect gives the United States a veto with respect to them.

Developing States argued that the six-member developing country category in the Council should also be treated as a chamber for voting purposes. The United States and other industrialized States opposed this on the grounds that developing States in the Council already were assured of sufficient numbers to protect their interests. Sections 3(9) and 3(15)(d) of the Annex to the Agreement represent a compromise on this issue. Those provisions combine the six-member developing State category with the developing States elected on the basis of ensuring overall equitable geographic distribution to serve as a chamber for voting purposes. This would allow eleven developing States acting in concert to block a decision, compared to the thirteen votes needed to block an overall two-thirds majority in the Council.

### *Composition of the Council*

Article 160(12)(a) of the Convention authorizes the Assembly to elect the members of the Council. Section 3(10) of the Annex to the Agreement refines this by providing for all States Parties that meet the criteria of a specific category (i.e., consumers, investors and producers) to nominate their representatives in those categories. This refinement ensures that each category of States Parties will be represented in the Council by members of its own choosing.

### *Rulemaking*

*General.* Article 160(f)(ii) authorizes the Assembly to approve rules, regulations and procedures of the Authority governing the administration of the seabed mining regime that have been adopted by the Council. Article 162(2)(o)(ii) provides that the Council shall adopt and provisionally apply such rules, regulations and procedures pending their approval by the Assembly. As noted above, the Council decision to adopt and provisionally apply rules, regulations and procedures must be taken by consensus. The result is that no implementing rules can be adopted or applied without the consent of the United States.

Section 3(4) of the Annex to the Agreement further protects U.S. interests by requiring that decisions of the Assembly on any matter for which the Council also has competence, or any administrative, budgetary or financial matter, must be based on recommendations of the Council. If the Assembly disagrees with the Council, it must send the recommendations back for further consideration in light of the views of the Assembly. In the meantime, rules adopted by the Council continue to apply provisionally pending their final approval by the Assembly.

*Commercial exploitation rules.* As noted above, the Agreement sets forth general market-oriented principles to provide the basis for future rulemaking when commercial production appears likely. The Agreement provides a special procedure for adopting such rules to create effective incentives for their development in a timely fashion so that delay in their adoption would not impede commercial operations.

Section 1(15) of the Annex to the Agreement sets forth two means by which the process of preparing the necessary rules can be initiated. Paragraph 15(a) provides that the Council can initiate the process when it determines that commercial exploitation is im-

minent or at the request of a State whose national intends to apply for approval of a plan of work for exploitation. Paragraph 15(b) requires the Council to complete its work on the rules within two years of receiving such a request. Paragraph 15(c) provides that, if such work is not completed within this timeframe and an application for approval of a plan of work for exploitation is pending, the Council must consider and provisionally approve the proposed plan of work based on the Convention and any rules adopted provisionally, as well as the principle of non-discrimination.

### *Review conference*

The United States and other industrialized States strongly objected to the Review Conference provided for in article 155 of the Convention. The Review Conference would have convened fifteen years after the commencement of commercial production to re-evaluate Part XI and to propose amendments to the Convention. Such amendments could have entered into force for *all* States if adopted and ratified by three-quarters of the States Parties. This would have allowed the possibility that the United States could be bound by amendments that it had opposed.

Section 4 of the Annex to the Agreement eliminates the Review Conference. Any reconsideration of the seabed mining regime is subject to the normal procedures for adopting amendments to the seabed mining provisions of the Convention contained in articles 314–316. Article 314 requires that amendments to the seabed mining regime be adopted by the Assembly and the Council of the Authority. Article 161(8)(d) requires that amendments be adopted in the Council by consensus, thus ensuring the United States a permanent veto over amendments. Amendments to the seabed mining regime adopted by this procedure enter into force when ratified by three-quarters of the States Parties (article 316(5)).

### ECONOMIC AND COMMERCIAL POLICY CONCERNS

As discussed above, the United States and other industrialized States objected to many features of Part XI on economic and commercial policy grounds. The United States objected, for example, to the provisions of Part XI on production limitations, financial terms of contracts, technology transfer and the Enterprise because of the negative effect they would have had on commercial exploitation of seabed mineral resources.

While there developed a general willingness on the part of other States to meet these objections, the effort to reform Part XI had to address the difficulty of predicting when interest in commercial exploitation will re-emerge, which specific resources will be of interest at that time, and what economic environment will prevail. The Agreement resolves these difficulties by adopting general principles designed to restructure the seabed mining regime along free market lines. The States Parties will implement these general principles through the Authority as the need arises, in accordance with the new decision-making rules discussed above.

The Agreement also contains specific provisions to meet certain specific objections. The substantive solutions to the individual issues of concern are next discussed.

### *Production limitations*

Article 151 of the Convention would have established an elaborate system of controls on production of minerals from the deep seabed, ostensibly to protect land-based producers of minerals from adverse impacts due to competition from deep seabed mining. The controls were based on a formula for estimating the growth in the demand for minerals and then limiting seabed mining to a percentage of that growth, by requiring miners to obtain production authorizations from the Authority. In addition, article 151 would have allowed the Authority to participate in commodity organizations with the objective of promoting growth, efficiency and stability of markets. This could have included commodity agreements with production controls, quotas or other economic provisions for intervening in commodity markets.

In response to the objections of the United States and other industrialized States, section 6 of the Annex to the Agreement eliminates all such provisions. In their place, section 6(1) bases the production policy of the Authority on sound commercial principles. It provides that the provisions of the General Agreement on Tariffs and Trade (or agreements that replace the GATT) will apply to seabed mining beyond national jurisdiction. In particular, there can be no subsidization of seabed mining beyond national jurisdiction that would not be permitted under GATT rules, and no discrimination between minerals produced from the deep seabed and minerals produced from other sources.

Disputes arising from allegations that a State Party is not complying with the relevant GATT provisions would be subject to GATT dispute settlement procedures where both States Parties are party to the relevant GATT arrangements. If one or more parties to the dispute are not party to the relevant GATT arrangements, disputes would be referred to the dispute settlement procedures under the Convention (see discussion of dispute settlement below).

The transition to the World Trade Organization from the present GATT may require clarification of these provisions. For example, issues may arise concerning which agreement applies when some States Parties to the Convention remain party to the former GATT arrangements and others become party to the new arrangements. However, with the timing of the re-emergence of interest in commercial production from the deep seabed uncertain, it is possible that the question will resolve itself before issues arise in this context.

### *Economic assistance*

In negotiating the Agreement, land-based producers of minerals that are found on the seabed agreed to eliminate production controls in exchange for the establishment of an economic assistance fund.

Article 151(10) of the Convention empowers the Authority to establish a "system of compensation or take other measures of economic adjustment assistance" with the objective 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 deep seabed mining.

Section 7 of the Annex to the Agreement contemplates that this provision will be implemented through the establishment of an economic assistance fund. However, such a fund may only be established when the revenues of the Authority exceed those necessary to cover its administrative expenses (i.e., when revenues from mining are sufficient to avoid the need for assessed contributions from members for administrative expenses and a surplus exists). Only revenues from mining and voluntary contributions may be used to finance the fund. The United States veto in the Finance Committee and its influence in the Council are adequate to insure that such a fund is not established or operated in a manner contrary to U.S. interests.

*Financial terms of contracts*

Article 13 of Annex III to the Convention established detailed financial arrangements that were to become part of the contracts between the Authority and the miner and that would have served as the means for the Authority to recover economic rents from the development of mineral resources of the seabed beyond national jurisdiction.

Among these arrangements were a U.S. \$1,000,000 annual fee from the date of approval of a plan of work for exploration. Upon the commencement of commercial production, the miner would have had to elect between the payment of a production charge or a combination of a production charge and a share of net proceeds from mining. The rates of both were graduated, starting out lower in the early years and increasing in the latter years of production, and were also adjustable, based on profitability.

These arrangements were extremely complex and relied upon very specific assumptions about the nature and profitability of a seabed mining operation based on a specific economic model. The United States and other industrialized States objected that these arrangements were both excessive and unduly rigid, given the uncertainties regarding the timing and nature of future mining activities. In particular, the United States objected to charging a \$1,000,000 annual fee during the exploration stage, when miners would have no income stream.

In response to these objections, section 8 of the Annex to the Agreement dispenses with these detailed provisions and provides that a system of financial arrangements shall be established in the future based on certain basic principles. Specifically, it requires that the system be fair to the Authority and the miner, that the rates be comparable to those prevailing with respect to land-based mining to avoid competitive advantages or disadvantages, that the system not be complicated and not impose major administrative costs on the Authority or the miner, and that consideration be given to a royalty or a combination royalty and profit-sharing system.

The \$1,000,000 annual fee charged during the exploration stage is eliminated. The Council will fix the amount of an annual fee during commercial production, which can be credited against payments due under the royalty or profit sharing arrangements. Thus, the effect is to establish a minimum annual fee during commercial production.

### *Technology transfer*

The United States and other industrialized countries objected to the mandatory technology transfer provisions contained in article 5 of Annex III to the Convention. These provisions mandated the inclusion in the miners' contract of an undertaking on the part of the miner to transfer seabed mining technology to the Enterprise or developing countries if they were unable to obtain the technology on the open market. If transfer were not assured, the miner could not use such technology in its own mining activities.

Section 5 of the Annex to the Agreement eliminates these compulsory transfer provisions. In very general terms, article 144 of the Convention encourages the promotion of the transfer of technology and scientific knowledge related to deep seabed mining, including programs to facilitate access under fair and reasonable terms and conditions and to promote training. Section 5 of the Annex to the Agreement provides that the Enterprise and developing countries wishing to acquire seabed mining technology should do so on the open market or through joint ventures. If they are unsuccessful in obtaining such technology, the Authority may request miners and their sponsoring States to cooperate with it in facilitating access to technology "on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights."

### *The Enterprise*

*Background.* Article 170 of the Convention establishes an operating arm of the Authority called the Enterprise. Article 153(2)(a) provides that the Enterprise, as well as other commercial enterprises, may apply to the Authority for mining rights.

The origins of the Enterprise date back to the early days of the Third United Nations Conference on the Law of the Sea, when certain developing States sought a regime where all mining would be conducted directly by the Authority, with private miners relegated to the role of service contractors. Industrialized States favored a system of mining by States and private companies licensed by the Authority. In 1976, Secretary of State Henry Kissinger proposed the compromise that came to be known as the "parallel system" in which the Authority, through the Enterprise, as well as States and private companies, would both engage in mining activities. However, the negotiations that followed left the Enterprise in a privileged position that could have made it difficult for private entities to compete.

Throughout the effort to reform Part XI, the United States sought to eliminate the Enterprise by pointing to the privatization programs underway in many parts of the world. Nevertheless, among many developing States, in particular the least developed countries, where economic reform had not yet begun to take root, strong resistance persisted. Largely because the Enterprise symbolized the aspirations of developing States to have a means to participate in seabed mining, retention of the Enterprise remained a bedrock position of the developing States as a whole.

The Agreement retains the Enterprise but renders it harmless by addressing the specific problems and ensuring that the Enterprise could only become operational following a decision by the Council,

and only if the Council concludes that the operations of the Enterprise would conform to sound commercial principles.

*Problems.* The three main problems posed by the Enterprise were that its first operation would be financed by loans and loan guarantees from the industrialized States, that it would benefit from numerous provisions discriminating in its favor vis-a-vis other commercial entities, and that other commercial entities would be obliged to provide it with technology (discussed above).

*Solutions.* Responding to these concerns, section 2(2) of the Annex to the Agreement provides that the Enterprise will conduct its first operations through joint ventures with other commercial enterprises. Section 2(3) eliminates the obligation for States Parties to finance its operations. Section 2(4) subjects the Enterprise to the same obligations as other miners and modifies article 153(3) of the Convention to ensure that any plan of work submitted by the Enterprise must be in the form of a contract like that of any other miner and thus be subject to the requirements applicable to any other contractor. Finally, section 5 of the Annex to the Agreement removes the compulsory technology transfer provisions.

*Council decision.* Section 2(2) of the Annex to the Agreement contains one of the most significant limitations on the Enterprise by preventing the Enterprise from operating as an independent entity until the Council issues a directive to that effect. In the interim, the secretariat of the Authority, subject to the control of the Council, will perform any necessary functions to prepare for the possible future operation of the Enterprise.

The Council must take up the issue of the independent operation of the Enterprise when an application by another commercial entity is approved for commercial exploitation, or when a proposal is made by another commercial entity to form a joint venture with the Enterprise. The decision by the Council must be based on a conclusion that operations by the Enterprise would accord with sound commercial principles. If such a decision were ever made, the Enterprise would then have to proceed through the normal process of applying for mining rights.

The enhanced role of the United States and other industrialized countries in the Council will allow them to ensure that, if a decision is ever made to make the Enterprise operational, it will only be on a basis that the United States would find acceptable. For example, if seabed mining ever generates sufficient funds through royalties to service the budget of the Authority and still leave a surplus, the Authority might decide to use some of the funds to invest in a joint venture with other commercial entities. It is possible that such an equity position in a seabed mining operation could be structured so as to pose no serious problems from the standpoint of United States interests. It is equally possible that, by the time commercial mining takes place, developing States as well as industrialized countries will recognize the Enterprise as a relic of the past and not seek to make it operational.

#### *Budget of the Authority*

Article 173 of the Convention provides that the administrative budget of the Authority will be met by assessed contributions made by States Parties to the Convention until the time that other funds

(i.e., revenues from mining or voluntary contributions) are adequate to meet the administrative expenses of the Authority. Section 1(14) of the Annex to the Agreement modifies these provisions by requiring that, until the Agreement enters into force, the administrative expenses of the Authority will be met through the budget of the United Nations.

The decision to draw on the United Nations budget was based on the need to provide for provisional application of the Agreement prior to its entry into force (see below), in order to allow States that had not yet become party to the Convention, such as the United States, to participate in the Authority. States that had already ratified or acceded to the Convention insisted that those States which participated in the Authority only through their provisional application of the Agreement should also support the budget. Temporary funding through the United Nations provided a convenient means to accomplish this.

At the last session of the Prepcom (August 1994), the United States achieved a budget recommendation to the United Nations General Assembly that was approximately 30 percent lower than Secretariat estimates for 1995. It assumes a staff for the Authority of six professionals and 17 support personnel. The total budget is estimated at \$2,489,600 and will not necessitate an increase in the overall United Nations budget for the 1994-95 biennium, as it will largely be offset by savings from the discontinuation of activities in support of the Prepcom.

#### PRIVILEGES AND IMMUNITIES

Articles 177-183 of the Convention, as well as article 13 of Annex IV to the Convention, require States Parties to provide certain privileges and immunities to the Authority and to certain persons connected to the Authority. In the near term, due to the limited interest in deep seabed mining and the attendant need for only low-level activity by the Authority, the foreseeable activities of the Authority that may occur in the United States which would implicate these privileges and immunities will take place at United Nations Headquarters in New York, where representatives of the Authority's member States and members of the Authority's secretariat may travel for meetings.

With respect to such activities, the United States is already obligated to provide all relevant privileges and immunities pursuant to existing agreements in force for the United States, including the Agreement between the United Nations and the United States regarding the headquarters of the United Nations, as amended (TIAS 1676, 5961, 6176, 6750, 9955; 61 Stat(4) 3416; 17 UST 74, 17 UST 2319; 20 UST 2810, 32 UST 4414; 11 UNTS 11, 554 UNTS 308, 581 UNTS 362; 687 UNTS 408) and the Convention on the Privileges and Immunities of the United Nations (TIAS 6900; 21 UST 1418; 1 UNTS 16).

#### THE AGREEMENT AND ITS RELATIONSHIP TO THE CONVENTION

The Agreement revises, in a legally binding manner, the objectionable provisions of Part XI. As discussed above, these revisions satisfactorily address the objections raised by the United States and other industrialized countries to Part XI.

The Agreement contains two parts, a main body and an Annex. All of the substantive revisions to Part XI appear in the Annex, while the main body of the Agreement establishes the legal relationship between the Convention and the Agreement, provides options by which States may consent to be bound by the Agreement, and sets forth the terms of entry into force of the Agreement and of its provisional application, and addresses certain subsidiary issues.

Article 1 of the Agreement obligates States Parties to undertake to implement Part XI in accordance with the Agreement. Article 2 states that the provisions of the Convention and those of the Agreement are to be interpreted and applied together as one single instrument; in the event of any inconsistency, the provisions of the Agreement prevail. These articles make the original provisions of Part XI legally subject to those of the Agreement.

Under article 3, the Agreement became open for signature by States and certain other entities (including the European Union) during a twelve-month period beginning on the date on which the United Nations General Assembly adopted the Agreement, i.e., July 28, 1994. Article 4(1) and (2) seek to ensure that States may thereafter only become party to the Agreement and the Convention together.

Article 4(3) allows States to choose among several alternative procedures by which to express their consent to be bound by the Agreement. The United States signed the Agreement subject to ratification, pursuant to article 4(3)(b).

Article 4(3)(c), together with article 5, provide another mechanism by which those States that have already ratified or acceded to the Convention (a category that does not include the United States) may become party to the Agreement. Any such State may sign the Agreement and become party to it without further action unless that State otherwise notifies the Depositary within twelve months of the Agreement's adoption. In the event of such notification, the notifying State is eligible to accede to the Agreement under article 4(3)(d).

This simplified procedure resolved an overarching difficulty in the effort to revise Part XI. During negotiation of the Agreement, those States, including the United States, that *had not* ratified the Convention because of objections to Part XI insisted on the need for a legally binding instrument to revise Part XI. Many of those States that *had* ratified the Convention insisted that they would not return to their parliaments and seek formal approval of a new instrument that would revise Part XI.

The simplified procedure satisfies both objectives in a legally sound manner. Under customary international law, as reflected in article 12(1)(a) of the Vienna Convention on the Law of Treaties (92nd Congress; 1st Session, Senate Executive "L"), "the consent of a State to be bound by a treaty is expressed by signature of its representative when \* \* \* the treaty provides that signature should have that effect." In the case of the Agreement, article 4(3)(c) and article 5 provide that, for any State that has ratified or acceded to the Convention, signature of the Agreement will bind the signatory State to the Agreement twelve months after the Agreement's adoption, unless that State notifies the Depositary otherwise.

One distinct advantage of the simplified procedure is that it allows a large number of States that have already ratified or acceded to the Convention easily to become party to the Agreement as well, thereby reducing the possibility that some States will remain party only to the Convention.

Article 6 governs entry into force of the Agreement. By its terms, the Agreement will enter into force 30 days after the date on which 40 States have established their consent to be bound by it, provided that at least seven of those States meet the criteria established for pioneer investors in deep seabed mining set forth in Resolution II of the Third United Nations Conference on the Law of the Sea and that, of those seven States, five are developed States. The United States is a pioneer investor in deep seabed mining for these purposes.

Article 7 provides for provisional application of the Agreement pending its entry into force. If the Agreement does not enter into force by November 16, 1998, due to the failure of the requisite States with mining interests to adhere to it, provisional application must terminate.

Provisional application advances important U.S. objectives. Without provisional application of the Agreement, the Convention would enter into force on November 16, 1994 unrevised; i.e., the provisions of the Agreement that resolve the objectionable features of Part XI would not be effective. The Authority would begin to function under the terms of the Convention, unaffected by the remedial provisions introduced by the Agreement.

Provisional application also provides a means to give effect to the remedial provisions of the Agreement without using the cumbersome amendment procedures contained in the Convention itself. Those amendment procedures would at the very least substantially delay the entry into force of those provisions and could prevent them from *ever* coming into force.

By virtue of its signature of the Agreement, the United States agreed to apply the Agreement provisionally beginning November 16, 1994. Article 7(2) provides flexibility in allowing States to apply it provisionally "in accordance with their national or internal laws and regulations." This approach, which is similar to that taken in other international agreements that have been provisionally applied, ensures that existing legislation provides sufficient authority to implement likely U.S. obligations during the period of provisional application.

By provisionally applying the Agreement, the United States can promote its seabed mining interests by participating in the very first meetings of the Authority, at which critical decisions are likely to be taken. As discussed above, the Agreement gives the United States considerable influence over the decisions of the Authority, which would be lost if the United States did not participate from the outset.

Provisional application of the Agreement is consistent with international and U.S. law. Article 25 of the Vienna Convention on the Law of Treaties provides for the provisional application of agreements pending their entry into force. Substantial State practice has developed in this regard; a growing list of international agreements have been provisionally applied.

The United States has provisionally applied numerous agreements, including several international commodity agreements and other treaties pending their entry into force for the United States.

Articles 8 through 10 of the Agreement address subsidiary issues relating to the application of the Agreement.

#### UNITED STATES DEEP SEABED MINING LEGISLATION

The DSHMRA constitutes the national licensing and permitting regime for U.S. entities engaged in deep seabed mining activities.

The basic premise of the DSHMRA is that the interests of the United States would best be served by U.S. participation in a widely acceptable treaty governing the full range of ocean uses, including establishment of an international regime for development of mineral resources of the seabed beyond national jurisdiction. Recognizing in 1980 that an acceptable international regime had not been achieved, Congress enacted the DSHMRA both to provide a legal framework within which U.S. entities could continue deep seabed mining activities during the interim period pending an acceptable treaty (and environmental protection concerns could be addressed), and to facilitate a smooth transition from this national regime to the future international regime established by such a treaty.

Anticipating the components of an acceptable international regime, Congress incorporated into the DSHMRA basic elements that are similar to those now found in Part XI as modified by the Agreement. These include:

- recognition of U.S. support for the principle that the deep seabed mineral resources are the common heritage of mankind (30 U.S.C. § 1401(a)(7));

- a disclaimer of sovereignty over areas or resources of the deep seabed (30 U.S.C. § 1402(a));

- recognition of the likelihood of payments to an international organization with respect to hard mineral resources (30 U.S.C. § 1402(a)(15));

- provision of measures for protection of the marine environment, including an environmental impact statement and monitoring (e.g. 30 U.S.C. § 1419(a) and (f)); and

- establishment of a regime based on a first-in-time priority of right, on objective, non-discriminatory criteria and regulations, and on security of tenure through granting of exclusive rights for a fixed time period and with limitations on the ability to modify authorization obligations.

In addition to these basic elements, Subchapter II of the DSHMRA sets forth criteria that would need to be met for an international regime to be acceptable to the United States, namely, assured and non-discriminatory access for U.S. citizens, under reasonable terms and conditions, to deep seabed resources, and assured continuity in mining activities undertaken by U.S. citizens prior to entry into force of the agreement under terms, conditions, and restrictions that do not impose significant new economic burdens that have the effect of preventing continuation of operations on a viable economic basis (30 U.S.C. § 1401(1)). The DSHMRA also recognizes that a treaty must be judged by the totality of its provisions (30 U.S.C. § 1441(2)).

As described above, the Agreement clearly revises Part XI in a manner that satisfies these criteria. Of particular importance in this context are the elimination of production controls, mandatory technology transfer by operators, the annual U.S. \$1,000,000 fee during exploration and the onerous economic rent provisions of Part XI; the provision to U.S. entities of non-discriminatory access to deep seabed mineral resources on terms no less favorable than those provided for registered pioneer investors; the limitations on contract modifications; the restraints imposed on the operation of the Enterprise; and the revisions to the decision-making provisions of Part XI that will allow the United States to protect its interests and those of U.S. citizens.

Provisional application of the Agreement, discussed above, advances a central policy reflected in the DSHMRA of providing for a smooth transition and continuity of activity between the regime established in the DSHMRA and an acceptable international regime established by treaty. For the reasons set forth above, provisional application provides the only workable transition to the new treaty regime.

The DSHMRA seeks to ensure that the transition to an international regime does not result in premature termination of ongoing commercial recovery operations by U.S. citizens. In fact, no commercial seabed mining is currently being conducted by U.S. citizens or by those of other nations, nor is such activity anticipated in the near future.

Under these circumstances, and in view of article 7(2) of the Agreement (providing for provisional application in accordance with national or internal laws or regulations), amendments to the DSHMRA will not be necessary during the provisional application period. International agreements regarding mutual respect of claims in force with nations of other pioneer investors will also remain in force during this period. As implementation of the international regime proceeds, the Administration will consult with Congress regarding the need for additional legislation prior to entry into force of the Convention and the Agreement for the United States.

#### MARINE SCIENTIFIC RESEARCH

(Articles 40, 87, 143, 147; Part XIII, Articles 238-265; Final Act, Annex VI)

The Convention recognizes the essential role of marine scientific research in understanding oceanic and related atmospheric processes and in informed decision-making about ocean uses and coastal waters. Part XIII affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. The Convention encourages publication or dissemination of the data and information resulting from marine scientific research, consistent with the general U.S. policy of advocating the free and full disclosure of the results of scientific research.

Part XIII confirms the rights of coastal States to require consent for marine scientific research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to

ensure that the consent authority is exercised in predictable and reasonable fashion so as to promote maximum access for research activities.

The United States is a leader in the conduct of marine scientific research and has consistently promoted maximum freedom for such research. The framework offered by the Convention offers the best means of pursuing this objective, while recognizing extended coastal State resource jurisdiction. Although the United State does not exercise the option of requiring consent for marine scientific research in the U.S. EEZ, the Convention's procedures and criteria for obtaining coastal State consent to conduct marine scientific research in areas under national jurisdiction provide a sound basis for ensuring access by U.S. scientists to such areas.

The term "marine scientific research", while not defined in the Convention, generally refers to those activities undertaken in the ocean and coastal waters to expand knowledge of the marine environment and its processes. It is distinguished from hydrographic survey, from military activities, including military surveys, and from prospecting and exploration.

#### GENERAL PROVISIONS (SECTION 1, ARTICLES 238-241)

Part XIII sets forth principles governing the conduct of marine scientific research, proceeding from the right set forth in article 238 of all States (irrespective of their geographic location), as well as competent international organizations, to conduct marine scientific research in accordance with the terms of the Convention. Article 239 further calls upon States and competent international organizations to promote and facilitate such research.

Article 240 requires marine scientific research to be conducted exclusively for peaceful purposes. (See discussion below regarding article 301.) It is to be carried out with appropriate scientific methods and means, compatible with the Convention; it is not to interfere unjustifiably with other legitimate uses of the sea compatible with the Convention; it is to be duly respected in the course of such other uses; and it is to be conducted in compliance with all relevant regulations adopted in conformity with the Convention, including those for the protection and preservation of the marine environment.

Article 241 provides that marine scientific research is not to constitute the legal basis for any claim to any part of the marine environment or its resources. This provision parallels similar provisions in articles 89 and 137(1) and (3) on the high seas and the Area, respectively.

#### INTERNATIONAL COOPERATION (SECTION 2, ARTICLES 242-244)

Articles 242 and 243 elaborate upon the obligation of States and competent international organizations to promote international cooperation in marine scientific research and to cooperate, through conclusion of bilateral and multilateral agreements, in creating favorable conditions for the conduct of research and in integrating the efforts of scientists in studying marine phenomena and processes and their interrelationships.

Article 244 further obligates States and competent international organizations to make available by publication and dissemination

through appropriate channels information on proposed major research programs, as well as knowledge resulting from marine scientific research. To this end, States and competent international organizations are called upon to promote actively the flow of data and information resulting from marine scientific research. Likewise, the capabilities of developing countries to carry out marine scientific research are to be promoted.

The Intergovernmental Oceanographic Commission (IOC) plays a leading role in marine scientific research programs, particularly in cooperative undertakings with other United Nations agencies and with other governmental and non-governmental organizations.

#### CONDUCT AND PROMOTION OF MARINE SCIENTIFIC RESEARCH (SECTION 3, ARTICLES 245-257)

The Convention sets forth the rights and obligations of States and competent international organizations with respect to the conduct of marine scientific research in different areas.

*Territorial sea:* Article 245 recognizes the unqualified right of coastal States to regulate, authorize and conduct marine scientific research in the territorial sea. Therefore, access to the territorial sea, and the conditions under which a research project can be conducted there, are under the exclusive control of the coastal State (see also articles 21(1)(g), 19(2)(j)), 40 and 54).

*EEZ and continental shelf:* Under article 246, coastal States have the right to regulate, authorize and conduct marine scientific research in the EEZ and on the continental shelf. Access by other States or competent international organizations to the EEZ or continental shelf for a marine scientific research project is subject to the consent of the coastal State. The consent requirement, however, is to be exercised in accordance with certain standards and qualifications.

In normal circumstances, the coastal State is under the obligation to grant consent. (It is explicitly provided that circumstances may be normal despite the absence of diplomatic relations.) The coastal State, nevertheless, has the discretion to withhold its consent if the research project is of direct significance for the exploration and exploitation of living or non-living resources; involves drilling, the use of explosives or introduction of harmful substances into the marine environment; or involves the construction, operation and use of artificial islands, installations or structures. (The first of these grounds for withholding consent may be used on the continental shelf beyond 200 miles only in areas specially designated as under development.) It may also withhold consent if the sponsor of the research has not provided accurate information about the project or has outstanding obligations in respect of past projects.

The consent of a coastal State for a research project may be granted either explicitly or implicitly. Article 248 requires States or organizations sponsoring projects to provide to the coastal State, at least six months in advance of the expected starting date of the research activities, a full description of the project. The research activities may be initiated six months after the request for consent, unless the coastal State, within four months, has informed the State or organization sponsoring the research that it is denying

consent for one of the reasons set forth in article 246 or that it requires more information about the project. If the coastal State fails to respond to the request for consent within four months following notification, consent may be presumed to have been granted (article 252). This provision should encourage timely responses from coastal States to requests for consent.

Consent may also be presumed under article 247 to have been granted by a coastal State for a research project in its EEZ or on its continental shelf undertaken by a competent international organization of which it is a member, if it approved the project at the time that the organization decided to undertake the project and it has not expressed any objection within four months of the notification of the project by the organization.

Article 249 sets forth specific conditions with which a State or competent international organization sponsoring research in the EEZ or on the continental shelf of a coastal State must comply. These include the right of the coastal State to participate in the project, in particular through inclusion of scientists on board research vessels; provision to the coastal State of reports and access to data and samples; assistance to the coastal State, if requested, in assessing and interpreting data and results; and ensuring that results are made internationally available as soon as practicable. Additional conditions may be established by the coastal State with respect to a project falling into a category of research activities over which the coastal State has discretion to withhold consent pursuant to article 246.

If a State or competent international organization sponsoring research in the EEZ or on the continental shelf of a coastal State fails to comply with such conditions, or if the research is not being conducted in accordance with the information initially supplied to the coastal State, article 253 authorizes the coastal State to require suspension of the research activities. If those carrying out the research do not comply within a reasonable period of time, or if the non-compliance constitutes a major change in the research, the coastal State may require its cessation.

*The high seas and the Area:* Article 87 expressly recognizes conduct of marine scientific research as a freedom of the high seas. Articles 256 and 257 further clarify that marine scientific research may be conducted freely by any State or competent international organization in the water column beyond the limits of the EEZ, as well as in the Area, i.e., the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. Under article 143, research in the Area is to be carried out exclusively for peaceful purposes. (See discussion of article 301 below.)

#### RESEARCH INSTALLATIONS AND EQUIPMENT (SECTION 4, ARTICLES 258-262)

The conditions applicable to marine scientific research set forth in the Convention apply equally to the deployment and use of installations and equipment to support such research (article 258). Such installations and equipment do not possess the status of islands, though safety zones of a reasonable breadth (not exceeding 500 meters) may be created around them, consistent with the Convention. They may not be deployed in such fashion as to constitute

an obstacle to established international shipping routes. They must bear identification markings indicating the State of registry or the international organization to which they belong, and have adequate internationally agreed warning signals (articles 259–262).

#### RESPONSIBILITY AND LIABILITY (SECTION 5, ARTICLE 263)

Pursuant to article 263(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 the Convention. Pursuant to article 263(2), States and organizations shall be responsible and liable for any measures they take in contravention of the Convention in respect of research by other States, their natural or juridical persons or by competent international organizations and shall provide compensation for damage resulting from such measures. With respect to damage caused by pollution of the marine environment arising out of marine scientific research undertaken by or on the behalf of States and competent international organizations, such States or organizations shall be liable pursuant to article 235 (discussed above in connection with Part XII of the Convention.)

#### SETTLEMENT OF DISPUTES (SECTION 6, ARTICLES 264–265)

The application of the dispute settlement provisions of the Convention to marine scientific research is discussed below in the section on dispute settlement.

#### DISPUTE SETTLEMENT

##### (Part XV, articles 279–299; Annexes V–VIII)

The Convention establishes a dispute settlement system to promote compliance with its provisions and ensure that disputes are settled by peaceful means. The system applies to disputes between States and, with respect to deep seabed mining, to disputes between States or miners and the Authority. The dispute settlement procedures of the Convention are:

Flexible, in that Parties have options as to the appropriate means and fora for resolution of their disputes;

Comprehensive, in that the bulk of the Convention's provisions can be enforced through binding mechanisms; and

Accommodating of matters of vital national concern, in that they exclude certain sensitive categories of disputes (e.g., disputes involving EEZ fisheries management) from binding dispute settlement; they also permit a State Party to elect to exclude other such categories of disputes (e.g., disputes involving military activities) from binding dispute settlement.

The dispute settlement system of the Convention advances the U.S. policy objective of applying the rule of law to all uses of the oceans. As a State Party, the United States could enforce its rights and preserve its prerogatives through dispute settlement under the Convention, as well as promote compliance with the Convention by other States Parties. At the same time, the procedures would not require the United States to submit to binding dispute settlement

matters such as military activities or the right to manage fishery resources within the U.S. EEZ.

**GENERAL PROVISIONS (ARTICLES 279-285)**

Section 1 contains general provisions concerning the settlement of disputes under the Convention. Article 279 obligates the parties to a dispute concerning the interpretation or application of the Convention to settle the dispute by peaceful means in accordance with the United Nations Charter. Articles 280 to 282 elaborate the right of States to agree on alternative means for settling their disputes. Article 284 provides for optional conciliation in accordance with the procedure set forth in Annex V, section 1, or any other conciliation procedure chosen by the parties to the dispute.

**COMPULSORY, BINDING DISPUTE SETTLEMENT (ARTICLES 286-296)**

Section 2 addresses compulsory dispute settlement procedures entailing binding decisions. Except as otherwise provided in section 3, if no settlement has been reached under section 1, section 2 of Part XV provides for disputes concerning the interpretation or application of the Convention to be submitted, at the request of any party to the dispute, to the court or tribunal having jurisdiction under this section.

Section 2 (article 287(1)) identifies four potential fora for compulsory, binding dispute settlement:

The International Tribunal for the Law of the Sea constituted under Annex VI;

The International Court of Justice;

An arbitral tribunal constituted in accordance with Annex VII; and

A special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.

A State, when signing, ratifying, or acceding to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention.

If the parties to a dispute have not accepted the same procedure for settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree (article 287(5)). If a State Party has failed to announce its choice of forum, it shall be deemed to have accepted arbitration in accordance with Annex VII.

As stated in the Secretary of State's report to the President, it is recommended that the United States make the following declaration:

The Government of the United States of America declares, in accordance with article 287(1), that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:

(A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environ-

ment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping; and

(B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in (A) above.

Choice of forum does not affect the jurisdiction of the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea, as provided for in Part XI (see below).

Article 290 authorizes a competent court or tribunal, which considers that *prima facie* it has jurisdiction, to prescribe appropriate provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision. The term "marine environment," as used in the Convention, includes "marine life," so that a competent court or tribunal may prescribe provisional conservation measures for living marine resources under this authority whether or not such measures are necessary to protect the respective rights of the parties.

Article 292 provides specifically for expedited dispute settlement to address allegations that a State Party has not complied with the Convention's provisions for the prompt release of a vessel flying the flag of another State Party and its crew.

Article 293 provides for a court or tribunal having jurisdiction under section 2 to apply the Convention and other rules of international law not incompatible with the Convention.

Any decision rendered by a court or tribunal having jurisdiction under section 2 is final and is to be complied with by all the parties to the dispute; however, the decision has no binding force except between the parties and in respect of that particular dispute (article 296).

#### LIMITATIONS ON COMPULSORY, BINDING DISPUTE SETTLEMENT (ARTICLES 297-299)

Section 3 provides for limitations on, and optional exceptions to, the applicability of compulsory, binding dispute settlement under section 2.

##### *Limitations*

Disputes concerning the exercise by a coastal State of its sovereign rights or jurisdiction are subject to compulsory, binding dispute settlement under section 2 only in certain cases (article 297(1)). These cases involve allegations that:

A coastal State has acted in contravention of the provisions of the 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;

A State, in exercising such rights and freedoms, has violated the Convention or certain laws and regulations adopted by a coastal State; and

A coastal State has violated specified rules and standards for the protection of the marine environment.

Disputes concerning marine scientific research fall within the scope of compulsory, binding dispute settlement under section 2, with two exceptions (article 297(2)). The first exception involves the exercise by the coastal State of its explicit right or discretion to withhold consent (e.g., with respect to research directly related to resources or involving drilling). The second pertains to the coastal State's decision to exercise its right to suspend or cancel a research project for non-compliance with certain required conditions. There is provision, however, for disputes falling within such exceptions to be addressed through compulsory, non-binding conciliation under Annex V, section 2.

Under article 297(3), fisheries disputes are subject to compulsory, binding dispute settlement under section 2, except that a coastal State need not submit to such settlement any dispute relating to its sovereign rights with respect to the living resources in its EEZ, or the exercise thereof, including, for example, its discretionary powers for determining the allowable catch. However, such disputes may, under certain conditions, be referred to compulsory, non-binding conciliation under Annex V, section 2. Conciliation may be invoked if it is alleged that 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;

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

Arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.

### *Optional exceptions*

Article 298 provides for a State to opt out of one or more of the dispute settlement procedures in section 2 with respect to one or more enumerated categories of disputes. These include:

Maritime boundary disputes (to which compulsory, non-binding conciliation may apply under certain conditions);

Disputes concerning military activities and certain law enforcement activities; and

Disputes in respect of which the UN Security Council is exercising the functions assigned to it by the United Nations Charter.

As stated in the Secretary of State's report to the President, it is recommended that the United States invoke all three of these exceptions and, thus, that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

#### PARTICULAR REGIME FOR DEEP SEABED MINING

The Convention contains provisions that apply specifically to disputes relating to deep seabed mining. Unlike other disputes arising under the Convention, deep seabed mining disputes may be brought before the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, established by article 14 and section 4 of Annex VI to the Convention.

Article 187 gives the Sea-Bed Disputes Chamber jurisdiction, inter alia, over disputes:

- (1) between States Parties regarding the interpretation or application of Part XI and its related annexes, as modified by the Agreement;
- (2) between the Authority and States Parties regarding:
  - (i) acts or omissions of the Authority in contravention of the Convention or rules and regulations adopted pursuant thereto,
  - (ii) an allegation of acts by the Authority in excess of its jurisdiction or a misuse of its power, and
  - (iii) disapproval of a contract for exploration and exploitation rights,
- (3) between the Authority and mining companies regarding:
  - (i) the refusal to approve a plan of work or legal issues arising during the approval process, and
  - (ii) the interpretation or application of a contract and activities undertaken pursuant to an approved plan of work.

In the case of disputes regarding the interpretation or application of a contract, or acts or omissions of a party to a contract, the mining companies have standing to initiate proceedings and need not rely on the sponsoring State. In addition, article 188 provides that such disputes shall be submitted to commercial arbitration at the request of any party to the dispute.

Article 189 provides that the Tribunal shall not substitute its discretion for that of the Authority. It also provides that the Tribunal shall not declare invalid any rules and regulations adopted by the Authority, but shall confine itself to determinations of whether their application in specific cases is consistent with the Convention or with a contract, or whether the Authority has exceeded its jurisdiction or has misused its power.

#### ARBITRATION UNDER ANNEX VII

Annex VII sets forth detailed rules concerning the procedure governing arbitration under this Annex:

The list of potential arbitrators is maintained by the Secretary-General of the United Nations; each Party may nominate up to four arbitrators to appear on the list.

An arbitral panel generally consists of five members. Each party to the dispute appoints one member; the other three members are appointed by agreement between the parties.

Annex VII provides a mechanism for appointments, should the parties be unable to agree on members; in general, the President of the International Tribunal for the Law of the Sea makes the necessary appointments.

The arbitral tribunal determines its own procedure.

Decisions of the tribunal are to be by majority vote.

Arbitral awards are final and without appeal (unless otherwise agreed) and are to be complied with by the parties to the dispute.

#### SPECIAL ARBITRATION UNDER ANNEX VIII

Annex VIII contains somewhat different rules concerning the procedure governing arbitration of disputes concerning the interpretation or application of articles of the Convention relating to (1) fisheries; (2) protection and preservation of the marine environment; (3) marine scientific research; and (4) navigation, including pollution from vessels and by dumping:

States Parties may nominate two experts in each of these fields, whose names shall appear on lists of experts to be established and maintained.

A special arbitral panel generally consists of five members, preferably appointed from the relevant list. Each party to the dispute appoints two members; the other member is appointed by agreement between the parties. Annex VIII provides a mechanism for appointments, should the parties be unable to agree on a fifth member; in general, the Secretary-General of the United Nations is to make the necessary appointments.

The provisions for arbitration under Annex VII shall otherwise apply.

In addition, the parties to a dispute may agree to request the special arbitral tribunal to carry out an inquiry and establish the facts giving rise to the dispute and, if the parties further agree, to formulate recommendations which shall constitute a basis for review by the parties.

### OTHER MATTERS

#### MARITIME BOUNDARY DELIMITATION

(Articles 15–16, 74–75, 83–84)

Where the territorial seas, EEZs or continental shelves of States with opposite or adjacent coasts overlap, the Convention provides rules for the delimitation of those zones.

With respect to the territorial sea, delimitation is to be based on equidistance (i.e., a median line), unless historic title or other special circumstances call for a delimitation different from equidistance (article 15).

With respect to the EEZ and the continental shelf, articles 74 and 83 provide that delimitation of the EEZ and the continental shelf, respectively, are to be effected by agreement, on the basis of international law, in order to achieve an equitable solution.

Pending agreement on delimitation of the EEZ or the continental shelf, the States concerned are to 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 (articles 74(3) and 83(3)). Such arrangements are without prejudice to the final delimitation of the EEZ or the continental shelf (article 74(3)).

Where there is an agreement in force between the States concerned, questions relating to the delimitation of the EEZ or the continental shelf are to be determined in accordance with the provisions of that agreement.

### *Implications for U.S. Maritime Boundaries*

The United States has twenty-eight maritime boundary situations with its neighbors. To date, ten of them have been negotiated or adjudicated in whole or in part.

U.S. maritime boundary positions are fully consistent with the rules reflected in the Convention. These positions were determined through an interagency process in the late 1970s, prior to the U.S. extension of its maritime jurisdiction to 200 miles. As a result of that process, the United States determined that equidistance was the appropriate boundary in most cases, but that three situations required a boundary other than the equidistant line: with Canada in the Gulf of Maine/Georges Bank area; with the USSR (now the Russian Federation) in the Bering and Chukchi Seas and North Pacific Ocean; and with the Bahamas north of the Straits of Florida. These positions were reflected in the outer limit of the U.S. EEZ, published in the Federal Register (November 4, 1976, March 7 and May 12, 1977, and January 11, 1978).

The Senate has given its advice and consent to ratification of boundary treaties related to the following areas: U.S.-Mexico (regarding the territorial sea boundary); U.S. (Puerto Rico and U.S. Virgin Islands)-Venezuela; U.S. (American Samoa)-Cook Islands; U.S. (American Samoa)-New Zealand (Tokelau); and U.S.-U.S.S.R. (now the Russian Federation). The Senate has before it, for its advice and consent, treaties establishing equidistant line boundaries with Cuba and Mexico. The Senate also has before it two recently-concluded equidistant line treaties with the United Kingdom in respect of Puerto Rico and the U.S. Virgin Islands, and Anguilla and the British Virgin Islands. (Pending entry into force, the U.S.-Cuba boundary treaty is being applied provisionally pursuant to its terms, extended through biannual exchanges of notes. The U.S.-Mexico boundary is being applied through an interim executive agreement. The U.S.-Russia treaty is being applied provisionally pending ratification by Russia.)

With respect to the U.S.-Canada maritime boundary in the Gulf of Maine, most of that boundary was determined through a 1984 award of a Chamber of the International Court of Justice. Regarding the United States and Japan, they have recorded an understanding that recognizes that the respective outer limits of their maritime jurisdiction coincide and constitute a line of delimitation.

In addition to the President's constitutional authority in this area, Congress has authorized the Secretary of State to negotiate with foreign States to establish the boundaries of the EEZ of the United States in relation to any such State (16 U.S.C. § 1822(d)) and called upon the President to establish procedures for settling any out-

standing international boundary disputes regarding the outer continental shelf (43 U.S.C. § 1333(a)(2)(B)).

#### ENCLOSED OR SEMI-ENCLOSED SEAS

##### (Part IX, articles 122–123)

The Convention defines an enclosed or semi-enclosed sea as 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 122).

The Convention calls upon States bordering an enclosed or semi-enclosed sea to cooperate in carrying out their duties under the Convention, but gives such States no greater or lesser rights vis-a-vis third States. The Convention does, however, specifically require them to endeavor to co-ordinate with each other in the areas of management of living resources, environmental protection and scientific research and to invite, as appropriate, other interested States and international organizations to cooperate with them in these undertakings (article 123).

These provisions do not place or authorize any additional restrictions or limitations on navigation and overflight with respect to enclosed or semi-enclosed seas beyond those that appear elsewhere in the Convention.

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

##### (Part X, Articles 124–132)

Part X addresses the rights of access of land-locked States to and from the sea. It draws from, and expands upon, article 3 of the High Seas Convention. Part X also tracks quite closely the 1965 Convention on Transit Trade of Land-locked States, 19 UST 7383, TIAS No. 6592, 597 UNTS 42.

Article 124 defines several terms applicable to this Part of the Convention. In particular, a land-locked State is one which does not have a sea coast, and a transit State is one that is situated between a land-locked State and the sea, through whose territory traffic in transit passes.

Article 125 gives land-locked States the right of access to and from the sea. The remaining articles of Part X address the specific rights and obligations of land-locked and transit States. Exact terms of transit are to be agreed upon between the land-locked and transit States concerned. The United States is neither. It does, however, have interests in trade with landlocked States and in their economic development. Those interests are furthered by Part X.

Worldwide, there are now 42 land-locked States:

Africa (15): Botswana, Burkina, Burundi, Central African Republic, Chad, Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Zambia, Zimbabwe.

Asia (12): Afghanistan, Armenia, Azerbaijan, Bhutan, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Nepal, Tajikistan, Turkmenistan, Uzbekistan.

Europe (13): Andorra, Austria, Belarus, Czech Republic, Holy See, Hungary, Liechtenstein, Luxembourg, F.Y.R.O.M.<sup>1</sup>, Moldova, San Marino, Slovakia, Switzerland.

South America (2): Bolivia, Paraguay.

#### OTHER RIGHTS OF LAND-LOCKED STATES AND GEOGRAPHICALLY DISADVANTAGED STATES

(Articles 69–71, 160–161, 254, 266, 269, 272)

Several articles in the Convention require that specific consideration be given to land-locked and geographically disadvantaged States. Article 70(2) defines a geographically disadvantaged State as one which either can claim no EEZ of its own, or one whose geographical situation makes it dependent upon the exploitation of living resources in the EEZs of other coastal States in its region, or subregion. The articles relating to access to fisheries are discussed above in connection with living marine resources.

The Assembly of the Authority is to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, particularly for land-locked States and geographically disadvantaged States (article 160(1)(k)).

Article 254 provides for land-locked States and GDS to be given the opportunity to participate in marine scientific research in areas off neighboring coastal States. Articles 266, 269 and 272 further call upon States, either directly or through competent international organizations, to endeavor to promote the development of marine scientific and technological capacity through programs of technical cooperation with land-locked States and geographically disadvantaged States.

#### DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY

(Part XIV, Articles 266–278)

Part XIV of the Convention is largely declaratory of policy and imposes few specific obligations. It will not compel any change in U.S. practices or policy. It encourages States to promote the development and transfer of marine technology, particularly in relation to achieving more widespread participation in and benefit from marine scientific research activities covered in Part XIII. Technology transfer regarding deep seabed mining was discussed above, except for articles 273–275, which are discussed below.

Article 266 urges States to cooperate in accordance with their capabilities in promoting development and transfer of marine science and technology on fair and reasonable terms and conditions, as well as to promote the marine scientific and technological capacity of States, particularly developing countries, which may need and request assistance in this field. In promoting such cooperation, States are to have due regard for the rights and duties of holders, suppliers and recipients of marine technology.

Article 268 lists basic objectives to be promoted by States, directly or through competent international organizations. These include the acquisition, evaluation and dissemination of marine tech-

<sup>1</sup> Former Yugoslav Republic of Macedonia.

nological knowledge and facilitation of access to data and information; the development of appropriate marine technology, as well as of the infrastructure to facilitate transfer of marine technology; and the development of human resources through training and education of developing country nationals. In that regard, the IMO has established the World Maritime University in Malmo, Sweden, and the International Maritime Law Institute in Malta.

Article 269 identifies measures to achieve these objectives, including the establishment of technical cooperation programs; promotion of favorable conditions for conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions; holding conferences, seminars and symposia; promotion of the exchange of scientists and experts; and undertaking projects and promotion of joint ventures and other forms of bilateral and multilateral cooperation.

International cooperation to promote development and transfer of marine technology should include use of existing programs (article 270); establishment of generally accepted guidelines, criteria and standards for the transfer of such technology on a bilateral basis or within the framework of international organizations (article 271); and coordination of the activities of competent international organizations (article 272).

Article 273 calls upon States to cooperate with competent international organizations and the Authority to encourage and facilitate transfer to developing countries and the Enterprise of skills and marine technology regarding activities in the Area (i.e., exploration and exploitation of seabed minerals). With further respect to activities in the Area, article 274 urges the Authority itself, subject to the rights and duties of holders, suppliers and recipients of marine technology, to provide training and employment opportunities to developing country nationals; to make available, as requested and particularly to developing countries, technical documentation on relevant technologies; and to facilitate technical assistance to developing countries in acquiring skills and know-how as well as of hardware.

Article 275 encourages States to promote, particularly in developing coastal States, establishment of national marine scientific and technological research centers, as well as strengthening of existing centers, while article 276 emphasizes the establishment of regional marine scientific and technological centers, particularly in developing countries. The functions of such centers are to include training and education; management studies and studies on the health of the marine environment; organization of regional conferences, seminars and symposia; acquisition and processing of marine scientific and technological data and information, as well as dissemination of results of marine scientific and marine technological research; and compilation of information on specific technologies and study of national policies on transfer of marine technology (article 277).

Under Part XIII (marine scientific research), as well as Part XIV, competent international organizations are called upon to take all appropriate measures directly or in close cooperation to carry out their responsibilities under Part XIV (article 278).

## DEFINITIONS

## (Part I, Article 1)

Various provisions of the Convention define key terms. Article 1(1) contains the definitions of five terms for purposes of the entire Convention: Area; Authority; activities in the Area; pollution of the marine environment; and dumping. The first three of these definitions relate to the regime for deep seabed mining and are discussed above. The next two definitions relate to marine environmental issues, and are also discussed above.

Article 1(2) contains a standard definition for the term "States Parties" and also makes clear that the term applies, *mutatis mutandis*, to certain other entities (such as the European Union) entitled to become party to the Convention under article 305, in accordance with the conditions relevant to each.

Certain terms are defined elsewhere in the Convention, but also for purposes of the entire Convention: archipelagic baselines (article 47); archipelagic sea lanes passage (article 53(3)); archipelagic State (article 46); archipelago (article 46); bay (article 10(2)); contiguous zone (article 33); continental shelf (article 76); enclosed or semi-enclosed sea (article 122); EEZ (article 55); innocent passage (article 19(2)); internal waters (article 8); land-locked State (article 124(1)(a)); low-tide elevation (article 13(1)); means of transport (article 124(1)(d)); passage (article 18(1)); piracy (article 101); pirate ship or aircraft (article 103); territorial sea (article 2); transit passage (article 38(2)); transit State (article 124(1)(c)); unauthorized broadcasting (article 109); and warship (article 29).

Certain terms are given specific meanings for a particular Part or a given article of the Convention, particularly in relation to deep seabed mining. Neither the term "ship" nor the term "vessel" is defined in the Convention; the two are considered to be synonymous.

Few of these terms were defined in the Territorial Sea Convention, the Continental Shelf Convention, or the High Seas Convention. The definitions included in the LOS Convention thus represent an advance in the effort to make the law of the sea more precise and predictable.

## GENERAL PROVISIONS

## (Part XVI, Articles 300–304)

Part XVI of the Convention contains five "general provisions" to guide the interpretation and application of the Convention as a whole, or of specific parts of it.

## GOOD FAITH AND ABUSE OF RIGHTS (ARTICLE 300)

This article restates existing customary law. The requirement of good faith reflects article 2(2) of the United Nations Charter and the fundamental rule *pacta sunt servanda*, reflected in article 26 of the Vienna Convention on the Law of Treaties.

PEACEFUL USES OF THE SEAS (ARTICLES 88, 141, 143(1), 147(2)(d), 155(2), 240(a), 242(1), 246(3), 301)

Article 301 reaffirms that all States Parties, whether coastal or flag States, in exercising their rights and performing their duties under the Convention with respect to all parts of the sea, must comply with their duty under article 2(4) of the United Nations Charter to refrain from the threat or use of force against the territorial integrity or political independence of any States.

Other provisions of the Convention echo this requirement. Article 88 reserves the high seas for peaceful purposes, while articles 141 and 155(2) reserves the Area for peaceful purposes. Under articles 143(1), 147(2)(d), 240(a), 242(1) and 246(3), marine scientific research is required to be conducted for peaceful purposes.

None of these provisions creates new rights or obligations, imposes restraints upon military operations, or impairs the inherent right of self-defense, enshrined in article 51 of the United Nations Charter. More generally, military activities which are consistent with the principles of international law are not prohibited by these, or any other, provisions of the Convention.

DISCLOSURE OF INFORMATION (ARTICLE 302)

Without prejudice to the use of the Convention's dispute settlement procedures, in fulfilling its obligations under the Convention, a State Party is not required to supply information the disclosure of which is contrary to the essential interests of its security.

ARCHAEOLOGICAL AND HISTORICAL OBJECTS FOUND AT SEA (ARTICLES 33, 149 AND 303)

Article 303 imposes a general duty on States to protect objects of an archaeological and historical nature found at sea and to cooperate for this purpose. This obligation was implemented by the Abandoned Shipwreck Act of 1987, 42 U.S.C. §§ 2101-2106, and implementing regulations 54 Fed. Reg. 13642 et seq.; the National Marine Sanctuary Act, 16 U.S.C. section 1431 et seq.; the Archaeological Resources Protection Act, 16 U.S.C. § 470aa-ll, and its uniform regulations 43 CFR Part 7, 36 CFR Part 296, 18 CFR Part 1312, 32 CFR Part 229; the National Historic Preservation Act, 16 U.S.C. § 470, 36 CFR Part 800; the Antiquities Act of 1906, 16 U.S.C. §§ 431-433; and the National Register of Historic Places, 36 CFR Parts 60 & 63.

Coastal State competence to control the activities of foreign nationals and foreign flag ships in this regard is limited to internal waters, its territorial sea, and if it elects, to its contiguous zone (article 303 (2)). The United States has not decided whether to extend its contiguous zone for this purpose.

Under article 149, all such objects found on the seabed beyond the limits of national jurisdiction must be preserved and disposed of for the benefit of mankind as a whole. Particular regard must be paid to the preferential rights of the State or country of origin, the State of cultural origin, or the State of historical or archaeological origin.

Article 303(3) clarifies that the Convention is not intended to affect the rights of identifiable owners, admiralty law, and the laws

and practices concerning cultural exchanges. Article 303 is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature (article 303(4)). For example, in 1989, the United States and France entered into an agreement for the protection and study of the wreck of the CSS *Alabama*, sunk by USS *Kearsarge* on June 19, 1864, in waters now forming part of the French territorial sea (TIAS No. 11687).

The term "objects of an archaeological and historical nature" is not defined in the Convention. It is not intended to apply to modern objects whatever their historical interest.

#### RESPONSIBILITY AND LIABILITY FOR DAMAGE (ARTICLE 304)

The many specific provisions of the Convention regarding State responsibility and liability for damage (articles 31, 42(5), 106, 110(3), 139, 232, 235, 263) are without prejudice to existing rules and the development of further rules.

#### FINAL PROVISIONS

##### (Part XVII, Articles 305–320)

The final provisions of the Convention contain a number of innovations in addition to the usual final clauses.

#### SIGNATURE (ARTICLE 305)

The Convention was open for signature for two years from the date of its adoption, December 10, 1982. By December 9, 1984, the Convention had been signed by 159 States and other entities entitled to sign it (Cook Islands, EEC, United Nations Council for Namibia and Niue). Along with the United States, thirteen other States then in existence did not sign the Convention: Albania, Ecuador, Federal Republic of Germany, the Holy See, Israel, Jordan, Kiribati, Peru, San Marino, Syria, Turkey, the United Kingdom, and Venezuela. The Trust Territory of the Pacific Islands and the West Indies Associated States also did not sign the Convention, although they were eligible to do so.

#### RATIFICATION AND ACCESSION (ARTICLES 306 AND 307)

The Convention makes signature subject to ratification. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention.

#### ENTRY INTO FORCE (ARTICLE 308)

Pursuant to article 308, the Convention enters into force twelve months after the deposit of the sixtieth instrument of ratification or accession. That instrument was deposited on November 16, 1993; accordingly, the Convention will enter into force on November 16, 1994.

Thereafter, the Convention will enter into force for a State ratifying or acceding to it 30 days following deposit of its instrument of ratification or accession.

(The entry into force of the Agreement, and its effect in revising Part XI, is discussed above in the section relating to deep seabed mining.)

RESERVATIONS, EXCEPTIONS, DECLARATIONS AND STATEMENTS  
(ARTICLES 309 AND 310)

Article 309 prohibits reservations and exceptions to the Convention, except where expressly permitted by other articles. No other article permits reservations; only article 298 permits exceptions and allows a Party to exclude certain categories of disputes from compulsory dispute settlement.

Article 310 provides that a State may make declarations or statements when signing, ratifying or acceding to the Convention, provided they are not reservations, i.e., that they do not purport to exclude or modify the legal effect of the provisions of the Convention in their application to that State.

RELATION TO OTHER INTERNATIONAL AGREEMENTS (ARTICLE 311)

The Convention considers the effect of the Convention on earlier agreements, and of later agreements on the Convention, where the same State is party to both, in a manner that is generally consistent with the Vienna Convention on the Law of Treaties.

Agreements, existing or future, that are expressly permitted or preserved by the Convention are not affected by the Convention. Examples of such agreements would include maritime boundary treaties between States with opposite or adjacent coasts.

AMENDMENT (ARTICLES 312–316)

The Convention creates distinct regimes for amendments relating to activities in the Area (i.e., deep seabed mining activities) and to all other parts of the Convention.

With respect to amendments *not* relating to activities in the Area, amendments to the Convention may be adopted in either of two ways. First, beginning in November 2004, the States Parties may convene a conference, if more than half the States Parties agree to do so, for the purpose of considering and adopting amendments to the Convention (article 312).

Second, proposed amendments that are circulated at any time after entry into force of the Convention shall be considered adopted if no State objects to the amendment, or to use of the simplified procedure, within 12 months of circulation of the amendment (article 313).

In either case, amendments are subject to ratification. They enter into force only for States ratifying them, after they have been ratified by two-thirds of, but not fewer than 60, States Parties (article 316(1)).

With respect to amendments relating to activities in the Area (i.e., deep seabed mining), amendments to the deep seabed mining regime can only be adopted upon the approval of the Council and Assembly of the Authority. The Council, on which the United States is guaranteed a seat in perpetuity (provided we are party), can only adopt such amendments by consensus (article 161(8)(d)).

Because the seabed mining regime creates an institutional structure that can operate only the basis of on one set of rules applicable to all, amendments to this regime enter into force for all States Parties one year after three fourths of the States Parties ratify.

As noted above, the Agreement abolishes the Review Conference.

**DENUNCIATION (WITHDRAWAL) (ARTICLE 317)**

A State Party may denounce the Convention on one year's notice. Article 317 also addresses certain consequences of denunciation.

**STATUS OF ANNEXES (ARTICLE 318)**

The Annexes form an integral part of the Convention.

**DEPOSITARY (ARTICLE 319)**

The Secretary-General of the United Nations is the depositary and is assigned the normal functions of a Depositary, as well as those consequential to particular provisions in the Convention.

**AUTHENTIC TEXTS (ARTICLE 320)**

The texts in the six official languages of the United Nations are equally authentic.

## UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

*The States Parties to this Convention,*

*Prompted* by the desire to settle, in a spirit of mutual understanding and co-operation, all issues related 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 inter-related 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 sea-bed 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, co-operation 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 sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

(2) "Authority" means the International Sea-Bed 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 régime 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 co-ordinates*

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 co-ordinates or points, specifying the geodetic datum, may be substituted.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates 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 to *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 willful 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 psychotropic 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 in 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 purpose 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 or 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 co-operate 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, State 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 State 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 co-operate:

(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 of 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, water 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 co-ordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical co-ordinates 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 régime 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 right 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 percent of the distance between the nearest points on islands bordering the sea lanes.

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*

Article 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 sea-bed and of the sea-bed 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 sea-bed 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 co-operate 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 co-operative 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 co-ordinate 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 co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective or optimum utilization of such species throughout the region, both within the 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 co-operate 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 co-operate 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 of 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 co-operate 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 co-operate 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 States;

(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 co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of development land-locked States of the same subregional 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 to 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

population 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 region 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 co-operate 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 license, 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, inspection, 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, and States concerned, in a spirit of understanding and co-operation, 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 co-ordinates*

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 co-ordinates 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 co-ordinates 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 sea-bed 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 sea-bed 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 sea-bed, 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 nautical 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 co-ordinates 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 sea-bed 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 sea-bed or are unable to move except in constant physical contact with the sea-bed 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 percent of the value or volume of production at the site. The rate shall increase by 1 percent for each subsequent year until the twelfth year and shall remain at 7 percent 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 co-operation, 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 co-ordinates*

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 co-ordinates 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 co-ordinates 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 measure 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 co-operate 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 license 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 co-operate with neighbouring States for this purposes.

*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 pre-

vent 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 co-operate in the repression of piracy*

All States shall co-operate 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 co-operate 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 co-operation of other States to suppress such traffic.

*Article 109. Unauthorized broadcasting from the high seas*

1. All States shall co-operate 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 broadcasting 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 iden-

tifiable 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 willfully 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 co-operate 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. Co-operation of States in the conservation and management of living resources*

States shall co-operate 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, co-operate 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. Co-operation of States bordering enclosed or semi-enclosed seas*

States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance 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 co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to co-ordinate 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 co-operate 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 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 transportation*

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 State 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 sea-bed, 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 co-ordinates showing the limits referred to in article 1, paragraph 1(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 AREA

*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 inter-

national law in the interests of maintaining peace and security and promoting international co-operation 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 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 co-ordinate 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 co-operation in marine scientific research in the Area by:

(a) participating in international programmes and encouraging co-operation 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 co-operate 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 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 or 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 co-operation 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, as provided in 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 co-operate 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 authorization 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 percent 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 co-operation 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 there-

to, 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 régime 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 régime.

#### *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 provisions 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 régime 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 Sea-Bed 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 activi-

ties 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 fulfill 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 and 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 by 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 Sea-Bed 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 percent of total world consumption or have had net imports of more than 2 percent 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 co-ordinate 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 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 Sea-Bed Disputes Chamber in cases of non-compliance;

(v) notify the Assembly upon a decision by the Sea-Bed 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 materials which may be derived from the Area, bearing in mind the interests of both importing and ex-

porting 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 co-

ordinate 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 Sea-Bed 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 Sea-Bed 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 fulfill 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, and 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 co-operation 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 co-operation with inter-

national 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 accordance with the rules of procedure of these organs. Procedure 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 of 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 con-

sider 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(1).

*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 fulfillment 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 the 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 the State to the representatives, officials and employees of comparable rank of other State 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 State Parties to grant exemption from such taxes or duties or provide for their reimbursement. Goods im-

ported 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 State 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 mission 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 Sea-Bed 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 OPINIONS

##### *Article 186. Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea*

The establishment of the Sea-Bed 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 Sea-Bed Disputes Chamber*

The Sea-Bed 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 State 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 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 had 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 for the Law of the Sea or an ad hoc chamber of the Sea-Bed 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 Sea-Bed 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 jurisdictional to decide any question of interpretation of this Convention. When the dispute also involved 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 Sea-Bed 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 Sea-Bed Disputes Chamber, the arbitral tribunal shall refer such question to the Sea-Bed Disputes Chamber for such ruling. The arbitral tribunal shall then proceed to render its award in conformity with the ruling of the Sea-Bed 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 disputes otherwise agree.

*Article 189. Limitation on jurisdiction with regard to decisions of the Authority*

The Sea-Bed 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 Sea-Bed 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 jurisdictions 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 Sea-Bed 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 PROVISIONS

*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 sea-bed 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 CO-OPERATION

*Article 197. Co-operation on a global or regional basis*

States shall co-operate 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 co-operate, 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 co-operate, 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 as-

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 co-operate, 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 ASSISTANCE

*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 ASSESSMENT

*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 sea-bed 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 sea-bed 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 routing 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 co-operative 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 co-operative 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 co-operative 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 enforcements 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 endeavor 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 sea-bed 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 sea-bed 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 co-operation could be useful in clarifying the circumstances of the case. States shall endeavor 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 of 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 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 pursuant 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 other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessel 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 a 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 paragraph 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*

State 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) State 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 limited 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 co-operate 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 proceed-

ings 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 law 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 willful 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 in-

formed 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 régime 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 fulfillment 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 co-operate 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 CO-OPERATION

*Article 242. Promotion of international co-operation*

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 co-operation 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 co-operation, 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 co-operation 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 devel-

oping 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 sub-

paragraph (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 re-

ceipt 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 the 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 dis-

advantaged 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 co-operate 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 co-operation 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 nations of developing States and countries and especially the nationals of the least developed among them;
- (e) international co-operation 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 endeavor, *inter alia*, to:

(a) establish programmes of technical co-operation 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 favorable 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 co-operation.

SECTION 2. INTERNATIONAL CO-OPERATION

*Article 270. Ways and means of international co-operation*

International co-operation 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. Co-ordination of international programmes*

In the field of transfer of marine technology, States shall endeavour to ensure that competent international organizations co-ordinate 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. Co-operation with international organizations and the Authority**

States shall co-operate 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, landlocked 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 co-ordination with the competent international organizations, the Authority and national marine scientific and techno-

logical 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 co-operate 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 sea-bed, 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 co-operation with other states of the region.

SECTION 4. CO-OPERATION AMONG INTERNATIONAL ORGANIZATIONS

*Article 278. Co-operation 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 co-operation 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 Sea-Bed 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 of 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 Sea-Bed 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 Sea-Bed 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 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 as 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 applica-

tion 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 accepted 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 co-operate 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 sea-bed 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 matter 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 enti-

ties 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 the 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 Committee 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 the 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 fulfill 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 include 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 State Parties in accordance with this Convention.

3. (a) The Secretary-General shall also transmit to the observes referred to in article 156:

(i) reports referred to in paragraph 2(a);

(ii) notification 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, hav-

ing 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 co-operate, 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.

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### 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 co-operation 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 ac-

tivities in the Area under the contract, which the contractor is legally entitled to transfer. This shall be done by means of licenses 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 license 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 license 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 to 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 contractors 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 in within the 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 State 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 State 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 the 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 as-

surances 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 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 of 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 kilometers surrounding the centre of either 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 percent of the total sea-bed 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 State 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 State 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 co-ordinates 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 sea-bed 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 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:

Portion of attributable net proceeds	Share of the authority (in percent)	
	First period of commercial production	Second period of commercial production
That portion representing a return on investment which is greater than 0 per cent, but less than 10 per cent .....	35	40
That portion representing a return on investment which is 10 per cent or greater, but less than 20 per cent .....	42.5	50
That portion representing a return on investment which is 20 per cent or greater .....	50	70

(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: 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).

(ii) 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 percent 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 percent 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 procedures 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) 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 ac-

counting 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 be 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 En-

terprise 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 to 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 sea-bed 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 transfer 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 procedure 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 operation, 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 omission by the con-

tractor. 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, para-

graph 2(c), elect a new member for the remainder of his predecessor's terms.

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 fulfill 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 an 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 regulation 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 meeting 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 this 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 activities 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 inter-

est-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 operation 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 fulfillment 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 favorable 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.

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## 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 of 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.

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ANNEX VI. STATUTE OF THE INTERNATIONAL TRIBUNAL 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 enjoyed 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 provisions: 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 sea-bed or other commercial use of the sea or the sea-bed.

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. Sea-Bed Disputes Chamber*

A Sea-Bed 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 work load 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*

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 Sea-Bed 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. SEA-BED DISPUTES CHAMBER

*Article 35. Composition*

1. The Sea-Bed 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 Au-

thority 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 Sea-Bed 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 Sea-Bed 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 Sea-Bed 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.

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#### 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 or 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.

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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 Inter-Governmental 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, article 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.

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**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.

I hereby certify that the preceding text is a true copy of the United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica, on 10 December 1982, the original of which is deposited with the Secretary-General of the United Nations.

The original also comprises two separate signature-page volumes, one for the signatures effected with the Government of Jamaica and another one for the signatures effected with the Secretary-General of the United Nations in New York.

For the Secretary-General,  
The Legal Counsel:



Erik Suy

United Nations, New York  
19 January-1983

Je, soussigné, certifie que le texte qui précède est une copie conforme de la Convention des Nations Unies sur le droit de la mer, conclue à Montego Bay (Jamaïque) le 10 décembre 1982, dont l'original est déposé auprès du Secrétaire général de l'Organisation des Nations Unies.

L'original comprend en outre deux volumes de pages de signature, l'un pour les signatures effectuées auprès du Gouvernement de la Jamaïque, l'autre pour les signatures effectuées auprès du Secrétaire général de l'Organisation des Nations Unies à New York.

Pour le Secrétaire général,  
Le Conseiller juridique :

Organisation des Nations Unies, New York  
le 19 janvier 1983

UNITED NATIONS  NATIONS UNIES

UNITED NATIONS CONVENTION  
ON THE LAW OF THE SEA  
CONCLUDED AT MONTEGO BAY, JAMAICA  
ON 10 DECEMBER 1982

CONVENTION DES NATIONS UNIES  
SUR LE DROIT DE LA MER  
CONCLUE A MONTEGO BAY (JAMAÏQUE)  
LE 10 DECEMBRE 1982

PROCES-VERBAL OF RECTIFICATION OF THE  
ENGLISH TEXT OF THE CERTIFIED TRUE  
COPIES OF THE CONVENTION

PROCES-VERBAL DE RECTIFICATION DU TEXTE  
ANGLAIS DES EXEMPLAIRES CERTIFIES  
CONFORMES DE LA CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica, on 10 December 1982,

LE SECRETAIRE GENERAL DE L'ORGANISATION DES NATIONS UNIES, agissant en sa qualité de dépositaire de la Convention des Nations Unies sur le droit de la mer, conclue à Montego Bay (Jamaïque), le 10 décembre 1982,

WHEREAS, owing to a printing error, article 19 of annex VI does not appear on page 178 in the English text of the certified true copies of the Convention established on 19 January 1983,

CONSIDERANT qu'à la suite d'une erreur d'impression, l'article 19 de l'annexe VI a été omis à la page 178 dans le texte anglais des exemplaires certifiés conformes de la Convention établis le 19 janvier 1983,

HAS DETERMINED that the said page in the certified true copies should be supplemented as follows:

A DECIDE qu'il y avait lieu de compléter comme suit ladite page des exemplaires certifiés conformes :

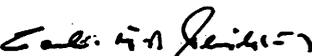
Article 19  
Expenses of the Tribunal

"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."

IN WITNESS WHEREOF, I, Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, have signed this Procès-verbal, to be inserted in the certified true copies of the Convention, at the Headquarters of the United Nations, New York, on 26 July 1983.

EN FOI DE QUOI, Nous, Carl-August Fleischhauer, Secrétaire général adjoint, Conseiller juridique, avons signé le présent procès-verbal, en vue de son insertion dans lesdits exemplaires certifiés conformes de la Convention, au Siège de l'Organisation des Nations Unies, à New York, le 26 juillet 1983.

  
Carl-August Fleischhauer

UNITED NATIONS  NATIONS UNIES

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, CONCLUDED AT MONTEGO BAY, JAMAICA, ON 10 DECEMBER 1982

CONVENTION DES NATIONS UNIES SUR LE DROIT DE LA MER, CONCLUE A MONTEGO BAY (JAMAÏQUE) LE 10 DECEMBRE 1982

PROCES-VERBAL OF RECTIFICATION OF THE ENGLISH AND SPANISH ORIGINAL OF THE CONVENTION

PROCES-VERBAL DE RECTIFICATION DE L'ORIGINAL ANGLAIS ET ESPAGNOL DE LA CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica, on 10 December 1982,

WHEREAS it appears that the original of the Convention (English and Spanish texts) contains a number of errors which should be corrected as follows:

English text

Page 105, article 242 (1), line 4

Instead of:

"reseach"

read:

"research"

Page 141, annex III, article 5 (3) (c), line 6

Instead of:

"tranfer"

read:

"transfer"

Spanish text

Page 105, article 211 (1), line 1

Instead of:

"las organizaciones internacionales competentes"

read:

"la organización internacional competente"

LE SECRETAIRE GENERAL DE L'ORGANISATION DES NATIONS UNIES, agissant en sa qualité de dépositaire de la Convention des Nations Unies sur le droit de la mer, conclue à Montego Bay (Jamaïque) le 10 décembre 1982,

CONSIDERANT que l'original de la Convention (textes anglais et espagnol) comporte un certain nombre d'erreurs qu'il conviendrait de rectifier comme indiqué ci-après :

Texte anglais

Page 105, article 242, paragraphe 1, ligne 4

Au lieu de :

"reseach"

lire :

"research"

Page 141, annexe III, article 5, paragraphe 3 c) ligne 6

Au lieu de :

"tranfer"

lire :

"transfer"

Texte espagnol

Page 105, article 211, paragraphe 1, ligne 1

Au lieu de :

"las organizaciones internacionales competentes"

lire :

"la organización internacional competente"

UNITED NATIONS  NATIONS UNIES

- 2 -

WHEREAS the proposed corrections were communicated by depository notification C.N.134.1984.TREATIES-5 of 25 June 1984 to all States concerned,

WHEREAS at the end of a period of 90 days from the date of that communication no objection had been notified,

HAS CAUSED the corrections to be effected in the original of the Convention (English and Spanish texts) which also applies to the certified true copies of the Convention established on 19 January 1983.

IN WITNESS WHEREOF, I,  
Carl-August Fleischhauer,  
Under-Secretary-General, Legal Counsel,  
have signed this Procès-verbal  
at the Headquarters of the  
United Nations, New York, on 1 October 1984.

CONSIDERANT que les propositions de correction ont été communiquées par notification dépositaire C.N.134.1984.TREATIES-5 du 25 juin 1984 à tous les Etats intéressés,

CONSIDERANT que dans le délai de 90 jours à compter de la date de cette communication aucune objection n'a été notifiée,

A FAIT PROCEDER dans l'original de la Convention (textes anglais et espagnol) aux corrections qui s'appliquent également aux exemplaires certifiés conformes de la Convention établis le 19 janvier 1983.

EN FOI DE QUOI, Nous,  
Carl-August Fleischhauer,  
Secrétaire général adjoint, Conseiller  
juridique, avons signé le présent procès-verbal  
au Siège de l'Organisation des  
Nations Unies, à New York, le 1er octobre 1984.

*Carl-August Fleischhauer*

Carl-August Fleischhauer

UNITED NATIONS



NATIONS UNIES

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, CONCLUDED AT MONTEGO BAY, JAMAICA, ON 10 DECEMBER 1982

PROCES-VERBAL OF RECTIFICATION OF THE ENGLISH ORIGINAL OF THE CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica, on 10 December 1982,

WHEREAS it appears that the original of the Convention (English text) contains an error which should be corrected as follows:

English text

Page 75, article 164, paragraph 2 (b), line 2

Instead of:

"materials which may be derived from the Area"

read:

"minerals which may be derived from the Area"

WHEREAS the corresponding proposed correction was communicated to all States concerned by depositary notification C.N.94.1985.TREATIES-6 of 30 April 1985,

WHEREAS at the end of a period of 90 days from the date of the said communication no objection had been notified,

CONVENTION DES NATIONS UNIES SUR LE DROIT DE LA MER, CONCLUE A MONTEGO BAY (JAMAÏQUE) LE 10 DECEMBRE 1982

PROCES-VERBAL DE RECTIFICATION DE L'ORIGINAL ANGLAIS DE LA CONVENTION

LE SECRETAIRE GENERAL DE L'ORGANISATION DES NATIONS UNIES, agissant en sa qualité de dépositaire de la Convention des Nations Unies sur le droit de la mer, conclue à Montego Bay (Jamaïque) le 10 décembre 1982,

CONSIDERANT que l'original de la Convention (texte anglais) comporte une erreur qu'il conviendrait de rectifier comme indiqué ci-après :

Texte anglais

Page 75, article 164, paragraphe 2 b), ligne 2

Au lieu de :

"materials which may be derived from the Area"

lire :

"minerals which may be derived from the Area"

CONSIDERANT que la proposition de correction correspondante a été communiquée à tous les Etats intéressés par notification dépositaire C.N.94.1985.TREATIES-6 du 30 avril 1985,

CONSIDERANT que dans le délai de 90 jours à compter de la date de ladite communication aucune objection n'a été notifiée,

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HAS CAUSED the correction to be effected in the original of the Convention (English text) which also applies to the certified true copies of the Convention established on 19 January 1983.

IN WITNESS WHEREOF,  
I, Carl-August Fleischhauer,  
Under-Secretary-General,  
the Legal Counsel, have signed this  
Procès-verbal at the Headquarters of  
the United Nations,  
New York, on 8 August 1985.

A FAIT PROCÉDER dans l'original de  
la Convention (texte anglais) à la  
correction laquelle s'applique  
également aux exemplaires certifiés  
conformes de la Convention établis le  
19 janvier 1983.

EN FOI DE QUOI, Nous,  
Carl-August Fleischhauer,  
Secrétaire général adjoint,  
Conseiller juridique, avons signé le  
présent procès-verbal au Siège de  
l'Organisation des Nations Unies,  
à New York, le 8 août 1985.

*Carl-August Fleischhauer*

Carl-August Fleischhauer

**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 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 article 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 1986 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 applied *mutatis mutandis* to the entities 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. Depositary**

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 28th 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. The 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 percent 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 fulfillment 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 State 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 principle 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 applies 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.

The 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 of 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 decision 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, decision 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 effort 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 fulfils 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 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 to 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 (1), 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 contractors 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 to 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 changes 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 the 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 confiden-

tial 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.

I hereby certify that the foregoing text is a true copy of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, adopted by the General Assembly on 28 July 1994, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est la copie conforme de l'Accord relatif à l'application de la Partie XI de la Convention des Nations Unies sur le Droit de la mer du 10 décembre 1982, adopté par l'Assemblée générale le 28 juillet 1994, et dont l'original se trouve déposé auprès du Secrétaire général des Nations Unies.

For the Secretary-General,  
The Legal Counsel  
(Under-Secretary-General  
for Legal Affairs)

Pour le Secrétaire général  
Le Conseiller juridique  
(Secrétaire général adjoint  
aux affaires juridiques)



Hans Corell

United Nations, New York  
29 July 1994

Organisation des Nations Unies  
New York, le 29 juillet 1994

**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 Sea-Bed 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 régime 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 persons<sup>1</sup> 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**

<sup>1</sup>For their identity and composition see "Sea-bed 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).

effectively controlled by its 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 sea-bed, 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 kilometers. 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 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 co-ordinates 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) 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 co-ordinates 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 investor 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 the 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 (c).

(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 percent 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. With 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.

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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 the 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 the 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.

