Acknowledgments

The Codification Division of the Office of Legal Affairs of the United Nations expresses its gratitude to Oxford University Press for granting permission to use the following material for the International Law Fellowship Programme held in The Hague, The Netherlands, from 24 June to 2 August 2013:


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The Hague, The Netherlands
16 - 19 July 2013

LAW OF THE SEA
PROFESSOR TULLIO TREVES

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Legal instruments and documents


Case Law

7. *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment of 14 March 2012, International Tribunal for the Law of the Sea

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   d. Prompt release of vessels and crews
   e. The jurisprudence of the ITLOS and prospects for the future.
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Traités et accords internationaux enregistrés ou classés et inscrits au répertoire au Secrétariat de l’Organisation des Nations Unies

No. 31363

MULTILATERAL


MULTILATÉRAL


UNITED NATIONS CONVENTION 1 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 relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

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

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

Recognising 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,

1 Came into force on 16 November 1994, i.e., 12 months after the date of deposit with the Secretary-General of the United Nations of the sixth instrument of ratification or accession, in accordance with article 305 (1):

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<th>Participant</th>
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(Continued from page 397)

In addition, and prior to the entry into force of the Convention, the following States also deposited instruments of ratification, accession or notification of succession:

<table>
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<th>Participant</th>
<th>Date of deposit of the instrument of ratification, accession or notification of succession (a)</th>
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<td>The former Yugoslav Republic of Macedonia</td>
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<td>4 November 1994</td>
<td>(With effect from 16 November 1994)</td>
</tr>
</tbody>
</table>

* For the declarations made upon ratification or accession, see vol. 1835, p. 105.
** Democratic Yemen ratified the Convention on 21 July 1987. Subsequently, the Yemen Arab Republic and the People’s Democratic Republic of Yemen merged on 22 May 1990 to form the Republic of Yemen. The Republic of Yemen is considered a party to the Convention as of the date when Democratic Yemen became a party to the Convention.


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[Note: This text continues on page 398]
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 seawater 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.
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 too and too low 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 sea 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 of 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;

(b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19  
Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;
(f) the launching, landing or taking on board of any military device;
(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
(h) any act of wilful and serious pollution contrary to this Convention;
(i) any fishing activities;
(j) the carrying out of research or survey activities;
(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
(l) any other activity not having a direct bearing on passage.

Article 20
Submarines and other underwater vehicles
In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 21
Laws and regulations of the coastal State relating to innocent passage
1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
(a) the safety of navigation and the regulation of maritime traffic;
(b) the protection of navigational aids and facilities and other facilities or installations;
(c) the protection of cables and pipelines;
(d) the conservation of the living resources of the sea;
(e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
(f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
(g) marine scientific research and hydrographic surveys;
(h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

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

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

Article 22
Sea lanes and traffic separation schemes in the territorial sea
1. The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships.

2. In particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.

3. In the designation of sea lanes and the prescription of traffic separation schemes under this article, the coastal State shall take into account:
(a) the recommendations of the competent international organization;
(b) any channels customarily used for international navigation;
(c) the special characteristics of particular ships and channels; and
(d) the density of traffic.

4. The coastal State shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given.

Article 23
Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances
Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

Article 24
Duties of the coastal State
1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this Convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:
(a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
(b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.
2. The coastal State shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.

**Article 25**

**Rights of protection of the coastal State**

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State shall have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or 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 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

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

**Article 29**

**Definition of warships**

For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.
Article 30
Non-compliance by warships with the laws and regulations of the coastal State

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

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

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

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

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

SECTION 4. CONTIGUOUS ZONE

Article 33
Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
   (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
   (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

PART III
STRAITS USED FOR INTERNATIONAL NAVIGATION

SECTION 1. GENERAL PROVISIONS

Article 34
Legal status of waters forming straits used for international navigation

1. The régime 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 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 régime 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 inland of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

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

Article 39
Duties of ships and aircraft during transit passage

1. Ships and aircraft, while exercising the right of transit passage, shall:
   (a) proceed without delay through or over the strait;
   (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
   (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;
   (d) comply with other relevant provisions of this Part.

2. Ships in transit passage shall:
   (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

   (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

3. Aircraft in transit passage shall:
   (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
   (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40
Research and survey activities

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

Article 41
Sea lanes and traffic separation schemes in straits used for international navigation

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.

3. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall 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, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

(a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;

(b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;

(c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;

(d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.

3. States bordering straits shall give due publicity to all such laws and regulations.

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

5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Article 43

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

User States and States bordering a strait should by agreement 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.
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 thereon, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.

5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coast than 10 per cent of the distance between the nearest points on islands bordering the sea lane.

6. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.

7. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.

8. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.

10. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

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**Article 54**

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

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

**PART V**

EXCLUSIVE ECONOMIC ZONE

**Article 55**

Specific legal régime of the exclusive economic zone

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal régime 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 adjacent to the sea-bed and of the 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.

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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 dissolved 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 organisations, 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 organisations, 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 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 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 of these stocks, establish total allowable catches for stocks originating in its rivers.

3. (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.

(b) The State of origin shall 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.

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 States mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68
Sedentary species

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

Article 69
Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, Inter alia:
(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zones, has taken into account the need to minimise detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70

Right of geographically disadvantaged States

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall 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 minimise detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.
**Article 71**

Non-applicability of articles 69 and 70

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

**Article 72**

Restrictions on transfer of rights

1. Rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned.

2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

**Article 73**

Enforcement of laws and regulations of the coastal State

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

   1. 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), shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by 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 authorise and regulate drilling on the continental shelf for all purposes.

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

1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include resources used in connection with exploitation.

3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.

4. The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

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

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardise 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 56.

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 specialised agencies or the International Atomic Energy Agency, flying the flag of the organization.

Article 94
Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and

(b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) the construction, equipment and seaworthiness of ships;

(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;

(c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall 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 licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 98
Duty to render assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 99
Prohibition of the transport of slaves

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

Article 100
Duty to 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 seise 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 broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:

(a) the flag State of the ship;
(b) the State of registry of the installation;
(c) the State of which the person is a national;
(d) any State where the transmissions can be received; or
(e) any State where authorized radio communication is suffering interference.

4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

Article 110
Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

(a) the ship is engaged in piracy;
(b) the ship is engaged in the slave trade;
(c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
(d) the ship is without nationality; or
(e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
4. These provisions apply mutatis mutandis to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

**Article 111**

**Right of hot pursuit**

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

(a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis;

(b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

**Article 112**

**Right to lay submarine cables and pipelines**

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.

2. Article 79, paragraph 5, applies to such cables and pipelines.

**Article 113**

**Breaking or injury of a submarine cable or pipeline**

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

**Article 114**

**Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline**

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

**Article 115**

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

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.
SECTION 2. CONSERVATION AND MANAGEMENT OF THE LIVING RESOURCES OF THE HIGH SEAS

Article 116
Right to fish on the high seas

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

(a) their treaty obligations;

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

(c) the provisions of this section.

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

All States have the duty to take, or to 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;
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 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 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
Co-operation in the construction and improvement of means of transport

Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may co-operate 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 co-operate towards their expeditious elimination.

Article 131
Equal treatment in maritime ports

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

Article 132
Grant of greater transit facilities

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

PART XI
THE AREA

SECTION 1. GENERAL PROVISIONS

Article 133
Use of terms

For the purposes of this Part:

(a) "resources" means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the 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 international 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 discrimination and without prejudice to the other provisions of this Part.

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Article 144
Transfer of technology

1. The Authority shall take measures in accordance with this Convention to acquire technology and scientific knowledge relating to activities in the Area, and to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties 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, placed and removed solely in accordance with this Part and subject to the rules, regulations and procedures of the Authority. Due notice must be given of the erection, emplacement and removal of such installations, and permanent means for giving warning of their presence must be maintained;

(b) such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity;

(c) safety zones shall be established around such installations with appropriate markings to ensure the safety of both navigation and the installations. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;

(d) such installations shall be used exclusively for peaceful purposes;

(e) such installations do not possess the status of islands, they have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

3. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

Article 148
Participation of developing States in activities in the Area

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

Article 149
Archaeological and historical objects

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.
SECTION 3. DEVELOPMENT OF RESOURCES OF THE AREA

Article 150
Policies relating to activities in the Area

Activities in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international 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, in accordance with sound principles of conservation, the avoidance of unnecessary waste;

(c) the expansion of opportunities for participation in such activities consistent in particular with articles 144 and 148;

(d) participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in this Convention;

(e) increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;

(f) the promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;

(g) the enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;

(h) the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, as provided in article 151;

(i) the development of the common heritage for the benefit of mankind as a whole; and

(j) conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

Article 151
Production policies

1. (a) Without prejudice to the objectives set forth in article 150 and for the purpose of implementing subparagraph (b) 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 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.
(a) When issued, the production authorization and approved application shall become a part of the approved plan of work.

(b) 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 earlier. 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 that the production ceiling established for any year of the interim period may not in any case exceed the difference between the original trend line value for that year and the original trend line value for the year immediately prior to the commencement of the interim period.

5. The Authority shall reserve to the Enterprise for its initial production a quantity of 38,000 metric tonnes of nickel from the available production ceiling calculated pursuant to paragraph 4.

6. (a) An operator may in any year produce less than or up to 8 per cent more than the level of annual production of minerals from polymetallic nodules specified in his production authorization, provided that the over-all amount of production shall not exceed that specified in the authorization. Any excess over 8 per cent and up to 20 per cent in any year, or any excess in the first and subsequent years following two consecutive years in which excesses occur, shall be negotiated with the Authority, which may require the operator to obtain a supplementary production authorization to cover additional production.

(b) Applications for such supplementary production authorizations shall be considered by the Authority only after all pending applications by operators who have not yet received production authorizations have been acted upon and due account has been taken of other likely applicants. The Authority shall be guided by the principles 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 minimising their difficulties and assisting them in their economic adjustment.
Article 152
Exercise of powers and functions by the Authority

1. The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.

2. Nevertheless, special consideration for developing States, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this Part shall be permitted.

Article 153
System of exploration and exploitation

1. Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole in accordance with this article as well as other relevant provisions of this Part and the relevant Annexes, and the rules, regulations and procedures of the Authority.

2. Activities in the Area shall be carried out as prescribed in paragraph 3:

(a) by the Enterprise, and

(b) in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III.

3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III and approved by the Council after review by the Legal and Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in paragraph 2(b), the plan of work shall, in accordance with Annex III, article 3, be in the form of a contract. Such contracts may provide for joint arrangements in accordance with Annex III, article 11.

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.

5. The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.

6. A contract under paragraph 3 shall provide for security of tenure. Accordingly, the contract shall not be revised, suspended or terminated except in accordance with Annex III, articles 18 and 19.

Article 154
Periodic review

Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international 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 activities in the Area, particularly with a view to administering the resources of the Area.

2. The powers and functions of the Authority shall be those expressly conferred upon it by this Convention. The Authority shall have such incidental powers, consistent with this Convention, as are implicit in and necessary for the exercise of those powers and functions with respect to activities in the Area.

3. The Authority is based on the principle of the sovereign equality of all its members.

4. All members of the Authority shall 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 the Enterprise, the organ through which the Authority shall carry out the functions referred to in article 170, paragraph 1.

3. Such subsidiary organs as may be found necessary may be established in accordance with this Part.

4. Each principal organ of the Authority and the Enterprise shall be responsible for exercising those powers and functions which are conferred upon it. In exercising such powers and functions each organ shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ.

SUBSECTION B. THE ASSEMBLY

Article 159
Composition, procedure and voting

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

2. The Assembly shall meet in regular annual sessions and in such special sessions as may be decided by the Assembly, or convened by the Secretary-General at the request of the Council or of a majority of the members of the Authority.

3. Sessions shall take place at the seat of the Authority unless otherwise decided by the Assembly.

4. The Assembly shall adopt its rules of procedure. At the beginning of each regular session, it shall elect its President and such other officers as may be required. They shall hold office until a new President and other officers are elected at the next regular session.

5. A majority of the members of the Assembly shall constitute a quorum.

6. Each member of the Assembly shall have one vote.
7. Decisions on questions of procedure, including decisions to convene special sessions of the Assembly, shall be taken by a majority of the members present and voting.

8. Decisions on questions of substance shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members participating in the session. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Assembly by the majority required for decisions on questions of substance.

9. When a question of substance comes up for voting for the first time, the President may, and shall, if requested by at least one fifth of the members of the Assembly, defer the issue of taking a vote on that question for a period not exceeding five calendar days. This rule may be applied only once to any question, and shall not be applied so as to defer the question beyond the end of the session.

10. Upon a written request addressed to the President and sponsored by at least one fourth of the members of the Authority for an advisory opinion on the conformity with this Convention of a proposal before the Assembly on any matter, the Assembly shall request the 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 per cent of total world consumption or have had net imports of more than 2 per cent of total world imports of the commodities produced from the categories of minerals to be derived from the Area, and in any case one State from the Eastern European (Socialist) region, as well as the largest consumer;

(b) four members from among the eight States Parties which have the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals, including at least one State from the Eastern European (Socialist) region;

(c) four members from among States Parties which on the basis of production in areas under their jurisdiction are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals, and least developed States;

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European (Socialist), Latin America and Western European and Others.

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

(a) land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly;

(b) coastal States, especially developing States, which do not qualify under paragraph 1(a), (b), (c) or (d) are represented to a degree which is reasonably proportionate to their representation in the Assembly;

(c) each group of States Parties to be represented on the Council is represented by those members, if any, which are nominated by that group.

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

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

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

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

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

8. (a) Decisions on questions of procedure shall be taken by a majority of the members present and voting.

(b) Decisions on questions of substance arising under the following provisions shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 2, subparagraphs (f); (g); (h); (i); (n); (p); (v); article 191.

(c) Decisions on questions of substance arising under the following provisions shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 1; article 162, paragraph 2, subparagraphs (a); (b); (o); (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.

(e) 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 organisations 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:

(ii) 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 objects 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 (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;

(k) approve plans of work submitted by the Enterprise in accordance with Annex IV, article 12, mutatis mutandis, the procedures set forth in subparagraph (j);

(l) exercise control over activities in the Area in accordance with article 153, paragraph 4, and the rules, regulations and procedures of the Authority;

(m) take, upon the recommendation of the Economic Planning Commission, necessary and appropriate measures in accordance with article 150, subparagraph (h), to provide protection from the adverse economic effects specified therein;

(n) make recommendations to the Assembly, on the basis of advice from the Economic Planning Commission, for a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 10;
(o) (i) recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status;

(ii) adopt and apply provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, and any amendments thereto, taking into account the recommendations of the Legal and Technical Commission or other subordinate organ concerned. These rules, regulations and procedures shall relate to prospecting, exploration and exploitation in the Area and the financial management and internal administration of the Authority. Priority shall be given to the adoption of rules, regulations and procedures for the exploration for and exploitation of polymetallic nodules. Rules, regulations and procedures for the exploration for and exploitation of any resource other than polymetallic nodules shall be adopted within three years from the date of a request to the Authority by any of its members to adopt such rules, regulations and procedures in respect of such resource. All rules, regulations and procedures shall remain in effect on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly;

(p) review the collection of all payments to be made by or to the Authority in connection with operations pursuant to this Part;

(q) make the selection from among applicants for production authorisations 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 specialised 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 Council shall include at least two members from developing States whose exports of the categories of
minerals to be derived from the Area have a substantial bearing upon their
economies.

2. The Commission shall:

(a) propose, upon the request of the Council, measures to implement
decisions relating to activities in the Area taken in accordance
with this Convention;

(b) review the trends of and the factors affecting supply, demand and
prices of minerals which may be derived from the Area, bearing in
mind the interests of both importing and exporting countries, and
in particular of the developing States among them;

(c) examine any situation likely to lead to the adverse effects
referred to in article 150, subparagraph (b), 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(c), 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);
(h) 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;

(i) 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 authorisations on behalf of the Authority pursuant to article 151, paragraphs 2 to 7, following any necessary selection among applicants for production authorisations by the Council in accordance with Annex III, article 7.

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

SUBSECTION D. THE SECRETARIAT

Article 166
The Secretariat

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

2. The Secretary-General shall be elected for four years by the Assembly from among the candidates proposed by the Council and may be re-elected.

3. The Secretary-General shall be the chief administrative officer of the Authority, and shall act in that capacity in all meetings of the Assembly, of the Council and of any subsidiary organ, and shall perform such other administrative functions as are entrusted to the Secretary-General by these organs.

4. The Secretary-General shall make an annual report to the Assembly on the work of the Authority.

Article 167
The staff of the Authority

1. The staff of the Authority shall consist of such qualified scientific and technical and other personnel as may be required to fulfil the administrative functions of the Authority.

2. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

3. The staff shall be appointed by the Secretary-General. The terms and conditions on which they shall be appointed, remunerated and dismissed shall be in accordance with the rules, regulations and procedures of the Authority.

Article 168
International character of the Secretariat

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials responsible only to the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. Any violation of responsibilities by a staff member shall be submitted to the appropriate administrative tribunal as provided in the rules, regulations and procedures of the Authority.

2. The Secretary-General and the staff shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III, article 14, or any other confidential information coming to their knowledge by reason of their employment with the Authority.

3. Violations of the obligations of a staff member of the Authority set forth in paragraph 2 shall, on the request of a State Party affected by such violation, or a natural or juridical person, sponsored by a State Party as provided in article 153, paragraph 2(b), and affected by such violation, be submitted by the Authority against the staff member concerned to a tribunal designated by the rules, regulations and procedures of the Authority. The Party affected shall have the right to take part in the proceedings. If the tribunal so recommends, the Secretary-General shall dismiss the staff member concerned.

4. The rules, regulations and procedures of the Authority shall contain such provisions as are necessary to implement this article.

Article 169
Consultation and co-operation with international and non-governmental organisations

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 international and non-governmental organisations 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. Procedures shall be established for obtaining the views of such organizations in appropriate cases.

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

SUBSECTION E. THE ENTERPRISE

Article 170

The Enterprise

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

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

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

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

SUBSECTION F. FINANCIAL ARRANGEMENTS OF THE AUTHORITY

Article 171

Funds of the Authority

The funds of the Authority shall include:

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

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

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

(d) funds borrowed pursuant to article 174;

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

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

Article 172

Annual budget of the Authority

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

Article 173

Expenses of the Authority

1. The contributions referred to in article 171, subparagraph (a), shall be paid into a special account to meet the administrative expenses of the Authority until the Authority has sufficient funds from other sources to meet those expenses.

2. The administrative expenses of the Authority shall be a first call upon the funds of the Authority. Except for the assessed contributions referred to in article 171, subparagraph (a), the funds which remain after payment of administrative expenses may, inter alia:

(a) be shared in accordance with article 140 and article 160, paragraph 2(g);

(b) be used to provide the Enterprise with funds in accordance with article 170, paragraph 4;

(c) be used to compensate developing States in accordance with article 151, paragraph 10, and article 160, paragraph 2(l).

Article 174

Borrowing power of the Authority

1. The Authority shall have the power to borrow funds.

2. The Assembly shall prescribe the limits on the borrowing power of the Authority in the financial regulations adopted pursuant to article 160, paragraph 2(f).

3. The Council shall exercise the borrowing power of the Authority.

4. States Parties shall not be liable for the debts of the Authority.

Article 175

Annual audit

The records, books and accounts of the Authority, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Assembly.
SUBSECTION G. LEGAL STATUS, PRIVILEGES AND IMMUNITIES

Article 176
Legal status

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

Article 177
Privileges and immunities

To enable the Authority to exercise its functions, it shall enjoy in the territory of each State Party the privileges and immunities set forth in this subsection. The privileges and immunities relating to the Enterprise shall be those set forth in Annex IV, article 11.

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 whomever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Article 180
Exemption from restrictions, regulations, controls and moratoria

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

Article 181
Archives and official communications of the Authority

1. The archives of the Authority, wherever located, shall be inviolable.

2. Proprietary data, industrial secrets or similar information and personnel records shall not be placed in archives which are open to public inspection.

3. With regard to its official communications, the Authority shall be accorded by each State Party treatment no less favourable than that accorded by that State to other international organizations.

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

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

(a) immunity from legal process with respect to acts performed by them in the exercise of their functions, except to the extent that the State which they represent or the Authority, as appropriate, expressly waives this immunity in a particular case;

(b) if they are not nationals of that State Party, the same exemptions from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travel facilities as are accorded by that State to the representatives, officials and employees of comparable rank of other States Parties.

Article 183
Exemption from taxes and customs duties

1. Within the scope of its official activities, the Authority, its assets and property, its income, and its operations and transactions, authorized by this Convention, shall be exempt from all direct taxation and goods imported or exported for its official use shall be exempt from all customs duties. The Authority shall not claim exemption from taxes which are no more than charges for services rendered.

2. When purchases of goods or services of substantial value necessary for the official activities of the Authority are made by or on behalf of the Authority, and when the price of such goods or services includes taxes or duties, appropriate measures shall, to the extent practicable, be taken by States Parties to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the State Party which granted the exemption, except under conditions agreed with that State Party.

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

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

Article 184
Suspension of the exercise of the 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 States Parties concerning the interpretation or application of this Part and the Annexes relating thereto;

(b) disputes between a State Party and the Authority concerning:

(i) acts or omissions of the Authority or of a State Party alleged to be in violation of this Part or the Annexes relating thereto or of rules, regulations and procedures of the Authority adopted in accordance therewith;

(ii) acts of the Authority alleged to be in excess of jurisdiction or a misuse of power;

(c) disputes between parties to a contract, being states parties, the Authority or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), concerning:

(i) the interpretation or application of a relevant contract or a plan of work; or

(ii) acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests;

(d) disputes between the Authority and a prospective contractor who has been sponsored by a State as provided in article 153, paragraph 2(b), and has duly fulfilled the conditions referred to in Annex III, article 4, paragraph 6, and article 13, paragraph 2, concerning the refusal of a contract or a legal issue arising in the negotiation of the contract;

(e) disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2(b), where it is alleged that the Authority has incurred liability as provided in Annex III, article 22;

(f) any other disputes for which the jurisdiction of the Chamber is specifically provided in this Convention.

Article 188
Submission of disputes to a special chamber of the International Tribunal 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. Disputes concerning the interpretation or application of a contract referred to in article 187, subparagraph (c)(i), shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree. A commercial arbitral tribunal to which the dispute is submitted shall have no jurisdiction to decide any question of interpretation of this Convention. When the dispute also involves a question of the interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question shall be referred to the 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 dispute otherwise agree.


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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 jurisdiction in this regard shall be confined to deciding claims that the application of any rules, regulations and procedures of the Authority in individual cases would be in conflict with the contractual obligations of the parties to the dispute or their obligations under this Convention, claims concerning excess of jurisdiction or misuse of power, and to claims for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its contractual obligations or its obligations under this Convention.

Article 190

Participation and appearance of sponsoring States Parties in proceedings

1. If a natural or legal 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 legal 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 legal 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 organisations, 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 organisations.

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 organisations shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimising 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 organisations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

Article 201
Scientific criteria for regulations

In the light of the information and data acquired pursuant to article 200, States shall co-operate, directly or through competent international organisations, 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 organisations:

(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 minimisation 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 minimisation of its effects, be granted preference by international organisations in:
(a) the allocation of appropriate funds and technical assistance; and
(b) the utilisation of their specialised 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 organisations, to observe, measure, evaluate and analyse, by recognised 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 organisations, 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 harmonise their policies in this connection at the appropriate regional level.

4. States, acting especially through competent international organisations 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 61.

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 harmonise their policies in this connection at the appropriate regional level.

5. States, acting especially through competent international organisations 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. 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 prior approval of the competent authorities of States.

4. States, acting especially through competent international organisations or diplomatic conferences, 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 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 organisation 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 organisation 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 entry 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 complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organisation 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 of the proposition that such special mandatory measures are required. 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 organisation 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 18 months after the submission of the communication to the organisation, provided that the organisation 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 organisations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

SECTION 6. ENFORCEMENT

Article 213
Enforcement with respect to pollution from land-based sources

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organisations 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 organisations 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 organisations 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 of or of their registry with applicable international rules and standards, established through the competent international organisation 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, if issued, 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 222, 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 endeavour to meet appropriate requests of flag States.

6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

Article 219 Enforcement by port States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.

2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.

3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.

4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

Article 220 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 222 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 concerning and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

7. Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.

8. The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

Article 221

Measures to avoid pollution arising from maritime casualties

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

SECTION 7. SAFEGUARDS

Article 222

Measures to facilitate proceedings

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

Article 224

Exercise of powers of enforcement

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

Article 225

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

In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.
Article 226
Investigation of foreign vessels

1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be 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 proceedings relate to a case of major damage to the coastal State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State previously instituting proceedings a full dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the coastal State.

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

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

Article 229
Institution of civil proceedings

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

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

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.

2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.
Article 231
Notification to the flag State and other States concerned

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

Article 232
Liability of States arising from enforcement measures

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

Article 233
Safeguards with respect to straits used for international navigation

Nothing in sections 5, 6 and 7 affects the legal 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 fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall 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 co-operate, 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 developing States through, inter alia, programmes to provide adequate education and training of their technical and scientific personnel.

SECTION 3. CONDUCT AND PROMOTION OF MARINE SCIENTIFIC RESEARCH

Article 245
Marine scientific research in the territorial sea

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.
Article 246

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

1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.

2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.

3. Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.

4. For the purposes of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the researching State.

5. Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State if that project:

(a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;

(b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;

(c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80;

(d) contains information communicated pursuant to article 248 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project.

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

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

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

Article 247

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

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

Article 248

Duty to provide information to the coastal State

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

(a) the nature and objectives of the project;

(b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;

(c) the precise geographical areas in which the project is to be conducted;

(d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;

(e) the name of the sponsoring institution, its director, and the person in charge of the project; and

(f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

Article 249

Duty to comply with certain conditions

1. States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:
(a) ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project;

(b) provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;

(c) undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;

(d) if requested, provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;

(e) ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;

(f) inform the coastal State immediately of any major change in the research programme;

(g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.

2. This article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 5, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

Article 250

Communications concerning marine scientific research projects

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

Article 251

General criteria and guidelines

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

(a) it has withheld its consent under the provisions of article 248; or

(b) the information given by that State or competent international organisation regarding the nature or objectives of the project does not conform to the manifestly evident facts; or

(c) it requires supplementary information relevant to conditions and the information provided for under articles 248 and 249; or

(d) outstanding obligations exist with respect to a previous marine scientific research project carried out by that State or organisation, 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 organisation 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 organisations authorised 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 organisation has complied with the conditions required under articles 248 and 249.
Article 254
Rights of neighbouring land-locked and geographically disadvantaged States

1. States and competent international organizations which have submitted to a coastal State a project to undertake marine scientific research referred to in article 246, paragraph 3, shall give notice to the neighbouring land-locked and geographically disadvantaged States of the proposed research project, and shall notify the coastal State thereof.

2. After the consent has been given for the proposed marine scientific research project by the coastal State concerned, in accordance with article 246 and other relevant provisions of this Convention, States and competent international organizations undertaking such a project shall provide to the neighbouring land-locked and geographically disadvantaged States, at their request and when appropriate, relevant information as specified in article 248 and article 249, paragraph 1(f).

3. The neighbouring land-locked and geographically disadvantaged States referred to above shall, at their request, be given the opportunity to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or competent international organizations conducting the marine scientific research.

4. States and competent international organizations referred to in article 249, 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 seas 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 nationals 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 endeavour, 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 favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions;

(c) hold conferences, seminars and symposia on scientific and technological subjects, in particular on policies and methods for the transfer of marine technology;

(d) promote the exchange of scientists and of technological and other experts;

(e) undertake projects and promote joint ventures and other forms of bilateral and multilateral 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 coordinate their activities, including any regional or global programmes, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.

Article 273
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, land-locked or geographically disadvantaged, shall be taken on for the purposes of training as members of the managerial, research and technical staff constituted for its undertakings;

(b) the technical documentation on the relevant equipment, machinery, devices and processes is made available to all States, in particular developing States which may need and request technical assistance in this field;

(c) adequate provision is made by the Authority to facilitate the acquisition of technical assistance in the field of marine technology by States which may need and request it, in particular developing States, and the acquisition by their nationals of the necessary skills and know-how, including professional training;

(d) States which may need and request technical assistance in this field, in particular developing States, are assisted in the acquisition of necessary equipment, processes, plant and other technical know-how through any financial arrangements provided for in this Convention.

SECTION 3. NATIONAL AND REGIONAL MARINE SCIENTIFIC AND TECHNOLOGICAL CENTRES

Article 275
Establishment of national centres

1. States, directly or through competent international organizations and the Authority, shall promote the establishment, particularly in developing coastal States, of national marine scientific and technological research centres and the strengthening of existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and to enhance their national capabilities to utilize and preserve their marine resources for their economic benefit.

2. States, through competent international organizations and the Authority, shall give adequate support to facilitate the establishment and strengthening of such national centres so as to provide for advanced training facilities and necessary equipment, skills and know-how as well as technical experts to such States which may need and request such assistance.

Article 276
Establishment of regional centres

1. States, in co-ordination with the competent international organizations, the Authority and national marine scientific and technological research institutions, shall promote the establishment of regional marine scientific and technological research centres, particularly in developing States, in order to stimulate and advance the conduct of marine scientific research by developing States and foster the transfer of marine technology.
2. All States of a region shall 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 demobilization 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.
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; and

   (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 or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.

3. The 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 promptly with any provisional measures prescribed under this article.

Article 291

Access

1. All the dispute settlement procedures specified in this Part shall be open to States Parties.

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

Article 292

Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

Article 293

Applicable law

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.

2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case ex secreto et bono, if the parties so agree.

Article 294

Preliminary proceedings

1. A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine proprio motu, whether the claim constitutes an abuse of legal process or whether prima facie it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is prima facie unfounded, it shall take no further action in the case.

2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.

3. Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.
Article 295
Exhaustion of local remedies

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

Article 296
Finality and binding force of decisions

1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.

2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

SECTION 3. LIMITATIONS AND EXCEPTIONS TO APPLICABILITY OF SECTION 2

Article 297
Limitations on applicability of section 2

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:

(a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;

(b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or

(c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.

2. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:

(i) the exercise by the coastal State of a right or discretion in accordance with article 246; or

(ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.

(b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.

3. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.

(b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that:

(i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;

(ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or

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

(c) In no case shall the conciliation commission substitute its discretion for that of the coastal State.

(d) The report of the conciliation commission shall be communicated to the appropriate international organizations.

(e) In negotiating agreements pursuant to articles 69 and 70, States Parties, unless they otherwise agree, shall include a clause on measures which they shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how they should proceed if a disagreement nevertheless arises.
Article 298
Optional exceptions to applicability of section 2

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:

(a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

(ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;

(iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;

(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

(c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.

2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in this Convention.

3. A State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in this Convention as against another State Party, without the consent of that party.

4. If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.

5. A new declaration, or the withdrawal of a declaration, does not in any way affect proceedings pending before a court or tribunal in accordance with this article, unless the parties otherwise agree.

6. Declarations and notices of withdrawal of declarations under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

Article 299
Right of the parties to agree upon a procedure

1. A dispute excluded under article 297 or excepted by a declaration made under article 298 from the dispute settlement procedures provided for in section 2 may be submitted to such procedures only by agreement of the parties to the dispute.

2. Nothing in this section impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.

PART XVI
GENERAL PROVISIONS

Article 300
Good faith and abuse of rights

States Parties shall fulfill 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 matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(e) all territories which enjoy full internal self-government, recognised 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 organisations, in accordance with Annex IX.

2. This Convention shall remain open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York.

Article 306
Ratification and formal confirmation

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

Article 307
Accession

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

Article 308
Entry into force

1. This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.

3. The Assembly of the Authority shall meet on the date of entry into force of this Convention and shall elect the Council of the Authority. The first Council shall be constituted in a manner consistent with the purpose of article 161 if the provisions of that article cannot be strictly applied.

4. The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.

5. The Authority and its organs shall act in accordance with resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment and with decisions of the Preparatory Commission taken pursuant to that resolution.
Article 309
Reservations and exceptions
No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention.

Article 310
Declarations and statements
Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonisation 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. 1

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.


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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.

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounced this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 318
Status of Annexes

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

Article 319
Depositary

1. The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.

2. In addition to his functions as depositary, the Secretary-General shall:

(a) report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention;

(b) notify the Authority of ratifications and formal confirmations of and accessions to this Convention and amendments thereto, as well as of denunciations of this Convention;

(c) notify States Parties of agreements in accordance with article 311, paragraph 4;

(d) circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;

(e) convene necessary meetings of States Parties in accordance with this Convention.

3. (a) The Secretary-General shall also transmit to the observers referred to in article 156:

(i) reports referred to in paragraph 2(a);

(ii) notifications referred to in paragraph 2(b) and (c); and
(iii) texts of amendments referred to in paragraph 2(d), for their information.

(b) The Secretary-General shall also invite those observers to participate as observers at meetings of States Parties referred to in paragraph 2(e).

Article 330
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.

[For the signatures, see volume 1835, p. 4.]

ANNEX I. HIGHLY MIGRATORY SPECIES

1. Albacore tuna: Thunnus alalunga.
2. Bluefin tuna: Thunnus thynnus.
5. Yellowfin tuna: Thunnus albacares.
7. Little tuna: Euthynnus aletiferatus; Euthynnus affinis.
8. Southern bluefin tuna: Thunnus maccoyii.
11. Marlines: Tetraprurus angustirostris; Tetraprurus belone; Tetraprurus pfluegeri; Tetraprurus albidus; Tetraprurus audax; Tetraprurus georgei; Makaira mazara; Makaira indica; Makaira nigricans.
14. Sauries: Scrobisaurus australis; Cololabis saira; Cololabis adcockii; Scrobisaurus australis ocellatus.
15. Dolphin: Coryphaena hippurus; Coryphaena equilis.
16. Oceanic sharks: Hexanchus griseus; Cetorhinus maximus; Family Alopidae; Rhincodon typus; Family Carcharhinidae; Family Sphyridae; Family Iurida.
17. Cetaceans: Family Physeteridae; Family Balaenopteridae; Family Squalidae; Family Pristidae; Family Monodontidae; Family Sphyridae; Family Delphinidae.
ANNEX II. COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Article 1

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

Article 2

1. The Commission shall consist of 21 members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to this Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities.

2. The initial election shall be held as soon as possible but in any case within 18 months after the date of entry into force of this Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties, inviting the submission of nominations, after appropriate regional consultations, within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated and shall submit it to all the States Parties.

3. Elections of the members of the Commission shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Commission shall be those nominees who obtain a two-thirds majority of the votes of the representatives of States Parties present and voting. Not less than three members shall be elected from each geographical region.

4. The members of the Commission shall be elected for a term of five years. They shall be eligible for re-election.

5. The State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties. The coastal State concerned shall defray the expenses incurred in respect of the advice referred to in article 3, paragraph 1(b), of this Annex. The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.

Article 3

1. The functions of the Commission shall be:

(a) to 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.

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 so 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, except as part of his application undertake:

(a) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and terms of his contracts with the Authority;

(b) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(c) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(d) to comply with the provisions on the transfer of technology set forth in article 5 of this Annex.

Article 5
Transfer of technology

1. When submitting a plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available.

2. Every operator shall inform the Authority of revisions in the description and information made available pursuant to paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for carrying out activities in the Area shall contain the following undertakings by the contractor:

(a) to make available to the Enterprise on fair and reasonable commercial terms and conditions, whenever the Authority so requests, the technology which he uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer. This shall be done by means of licences or other appropriate arrangements which the contractor shall negotiate with the Enterprise and which shall be set forth in a specific agreement supplementary to the contract. This undertaking may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions;

(b) to obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which is not generally available on the open market and which is not covered by subparagraph (a), that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor. If this assurance is not obtained, the technology in question shall not be used by the contractor in carrying out activities in the Area;

(c) to acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor, in carrying out activities in the Area under the contract, which the contractor is otherwise not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor’s qualification for any subsequent application for approval of a plan of work;
(d) to facilitate, upon the request of the Enterprise, the acquisition by the Enterprise of any technology covered by subparagraph (b), under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology;

(e) to take the same measures as are prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9 of this Annex and 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 XIX and, in cases of violation of these undertakings, suspension or termination of the contract or monetary penalties may be ordered in accordance with article 16 of this Annex. Disputes as to whether offers made by a contractor in the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. If the finding is that the offer made by the contractor is not within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action in accordance with article 16 of this Annex.

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

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

7. The undertakings required by paragraph 3 shall be included in such 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 specialised equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.
4. For the purpose of the standard set forth in paragraph 3(c), a plan of work submitted by a partnership or consortium shall be counted on a pro rata basis among the sponsoring States Parties involved in accordance with article 4, paragraph 3, of this Annex. The Authority may approve plans of work covered by paragraph 3(e) if it determines that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.

5. Notwithstanding paragraph 3(a), after the end of the interim period specified in article 151, paragraph 3, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

### Article 7

**Selection among applicants for production authorizations**

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration applications for production authorizations submitted during the immediately preceding period. The Authority shall issue the authorizations applied for if all such applications can be approved without exceeding the production limitation or contravening the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided in article 151.

2. When a selection must be made among applicants for production authorizations because of the production limitation set forth in article 151, paragraphs 2 to 7, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in its rules, regulations and procedures.

3. In the application of paragraph 2, the Authority shall give priority to those applicants which:

   (a) give better assurance of performance, taking into account their financial and technical qualifications and their performance, if any, under previously approved plans of work;

   (b) provide earlier prospective financial benefits to the Authority, taking into account when commercial production is scheduled to begin;

   (c) have already invested the most resources and effort in prospecting or exploration.

4. Applicants which are not selected in any period shall have priority in subsequent periods until they receive a production authorization.

5. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations so as to avoid discrimination against any State or system, to participate in activities in the Area and to prevent monopolization of those activities.

6. Whenever fewer reserved areas than non-reserved areas are under exploitation, applications for production authorizations with respect to reserved areas shall have priority.

7. The decisions referred to in this article shall be taken as soon as possible after the close of each period.

### Article 8

**Reservation of areas**

Each application, other than those submitted by the Enterprise or by any other entities for reserved areas, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the 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 or all 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 subsidised so as to be given an artificial competitive advantage with respect to land-based miners.

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

3. A contractor shall pay an annual fixed fee of $US 1 million from the date of entry into force of the contract. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorisation, 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 extracted 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 (a) 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:

<table>
<thead>
<tr>
<th>Portion of attributable net proceeds</th>
<th>Share of the Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>First period of commercial production</td>
<td>Second period of commercial production</td>
</tr>
<tr>
<td>That portion representing a return on investment which is greater than 0 per cent, but less than 10 per cent</td>
<td>35 per cent</td>
</tr>
<tr>
<td>That portion representing a return on investment which is 10 per cent or greater, but less than 20 per cent</td>
<td>42.5 per cent</td>
</tr>
<tr>
<td>That portion representing a return on investment which is 20 per cent or greater</td>
<td>50 per cent</td>
</tr>
</tbody>
</table>

(d) 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).

(e) "Attributable net proceeds" means the product of the contractor's net proceeds and the ratio of the development costs in the mining sector to the contractor's development costs. If the contractor engages in mining, transporting polymetallic nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the contractor's net proceeds. Subject to subparagraph (n), in all other cases, including those where the contractor engages in mining, transporting polymetallic nodules, and production primarily of four processed metals, namely, cobalt, copper, manganese and nickel, the Authority may, in its rules, regulations and procedures, prescribe appropriate floors which shall bear the same relationship to each case as the 25 per cent floor does to the three-metal case.

(f) "Contractor's net proceeds" means the contractor's gross proceeds less his operating costs and less the recovery of his development costs as set out in subparagraph (a).

(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.
In all cases other than those specified in subparagraphs (g), (i) and (n), "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.

"Contractor's development costs" means:

all expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract in all cases other than that specified in subparagraph (n), in conformity with generally recognized accounting principles, including, inter alia, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, prospecting and exploration of the area covered by the contract, research and development, interest, required leases, licences and fees; and

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.

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.

The contractor's development costs incurred prior to the commencement of commercial production referred to in subparagraph (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 subparagraph (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.

"Contractor's operating costs" means all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, in conformity with generally recognized accounting principles, including, inter alia, the annual fixed fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transportation, 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.

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.

"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.

If the contractor engages in mining only:

"attributable net proceeds" means the whole of the contractor's net proceeds;

"contractor's net proceeds" shall be as defined in subparagraph (f);

"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;

"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;

"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;

"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 (m) in respect of interest paid by the contractor shall be allowed to the extent that, in all the circumstances, the Authority approves, pursuant to article 4, paragraph 1, of this Annex, the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice.

(p) The costs referred to in this paragraph shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor.

7. (a) "Processed metals", referred to in paragraphs 5 and 6, means the metals in the most basic form in which they are customarily traded on international terminal markets. For this purpose, the Authority shall specify, in its financial rules, regulations and procedures, the relevant international terminal market. For the metals which are not traded on such markets, "processed metals" means the metals in the most basic form in which they are customarily traded in representative arm's length transactions.

(b) If the Authority cannot otherwise determine the quantity of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract referred to in paragraphs 5 (b) and 6 (b), the quantity shall be determined on the basis of the metal content of the nodules, processing recovery efficiency and other relevant factors, in accordance with the rules, regulations and procedures of the Authority and in conformity with generally recognized accounting principles.

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

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

(b) In order to ensure compliance with and enforcement of the provisions of this paragraph, the Authority shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the Commission on Transnational Corporations of the United Nations, the Group of Experts on Tax Treaties between Developing and Developed Countries and other international organizations, and shall, in its rules, regulations and procedures, specify uniform and internationally acceptable accounting rules and procedures, and the means of selection by the contractor of certified independent accountants acceptable to the Authority for the purpose of carrying out auditing in compliance with those rules, regulations and procedures.

10. The contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with this article.

11. All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article, shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.

12. Payments to the Authority under paragraphs 5 and 6 shall be made in freely usable currencies or currencies which are freely available and effectively usable on the major foreign exchange markets or, at the contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5(b). The freely usable currencies and currencies which are freely available and effectively usable on the major foreign exchange markets shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice.

13. All financial obligations of the contractor to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this article, shall be adjusted by expressing them in constant terms relative to a base year.

14. The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules, regulations and procedures that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1.

15. In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2.

Article 14
Transfer of data

1. The operator shall transfer to the Authority, in accordance with its rules, regulations and procedures and the terms and conditions of the plan of work, at time intervals determined by the Authority all data which are both necessary for and relevant to the effective exercise of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed proprietary, may only be used for the purposes set forth in this article. Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety, other than equipment design data, shall not be deemed proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts or contractors, deemed proprietary, shall not be disclosed by the Authority to the Enterprise or to anyone external to the Authority, but data on the reserved areas may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or to anyone external to the Authority.
**Article 15**

*Training programmes*

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

**Article 16**

*Exclusive right to explore and exploit*

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

**Article 17**

*Rules, regulations and procedures of the Authority*

1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(f) (11), and article 162, paragraph 2(o) (11), for the exercise of its functions as set forth in Part XI on, *inter alia*, the following matters:

   (a) administrative procedures relating to prospecting, exploration and exploitation in the Area;

   (b) operations:

      (i) size of area;

      (ii) duration of operations;

      (iii) performance requirements including assurances pursuant to article 4, paragraph 6(c), of this Annex;

      (iv) categories of resources;

      (v) renunciation of areas;

      (vi) progress reports;

      (vii) submission of data;

      (viii) inspection and supervision of operations;

      (ix) prevention of interference with other activities in the marine environment;

      (x) transfer of rights and obligations by a contractor;

      (xi) procedures for transfer of technology to developing States in accordance with article 144 and for their direct participation;

      (xii) mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment;

      (xiii) definition of commercial production;

      (xiv) qualification standards for applicants;

   (c) financial matters:

      (i) establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors;

      (ii) apportionment of proceeds of operations;

      (iii) the incentives referred to in article 13 of this Annex;

   (d) implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2(d).

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

   (a) Size of areas:

      The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation in order to permit intensive exploration operations. The size of area shall be calculated to satisfy the requirements of article 8 of this Annex on reservation of areas as well as stated production requirements consistent with article 151 in accordance with the terms of the contract taking into account the state of the art of technology then available for 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 presently used. 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(v), the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5.
Article 19
Revision of contract

1. When circumstances have arisen or are likely to arise which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI, the parties shall enter into negotiations to revise it accordingly.

2. Any contract entered into in accordance with article 153, paragraph 3, may be revised only with the consent of the parties.

Article 20
Transfer of rights and obligations

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

Article 21
Applicable law

1. The contract shall be governed by the terms of the contract, the rules, regulations and procedures of the Authority, Part XI and other rules of international law not incompatible with this Convention.

2. Any final decision rendered by a court or tribunal having jurisdiction under this Convention relating to the rights and obligations of the Authority and of the contractor shall be enforceable in the territory of each State Party.

3. No State Party may impose conditions on a contractor that are inconsistent with Part XI. However, the application by a State Party to contractors sponsored by it, or to ships flying its flag, of environmental or other laws and regulations more stringent than those in the rules, regulations and procedures of the Authority adopted pursuant to article 17, paragraph 2(f), of this Annex shall not be deemed inconsistent with Part XI.

Article 22
Responsibility

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

ANNEX IV. STATUTE OF THE ENTERPRISE

Article 1
Purposes

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

2. In carrying out its purposes and in the exercise of its functions, the Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to this Convention, operate in accordance with sound commercial principles.

Article 2
Relationship to the Authority

1. Pursuant to article 170, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or make the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

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

Article 4
Structure

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

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2(c). In the election of the members of the Board, due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.
2. Members of the Board shall be elected for four years and may be re-elected; and due regard shall be paid to the principle of rotation of membership.

3. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, in accordance with article 160, paragraph 2(c), elect a new member for the remainder of his predecessor's term.

4. Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any government or from any other source. Each member of the Authority shall respect the independent character of the members of the Board and shall refrain from all attempts to influence any of them in the discharge of their duties.

5. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

6. The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

7. Two thirds of the members of the Board shall constitute a quorum.

8. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of its members. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on that matter.

9. Any member of the Authority may ask the Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

**Article 6**

**Powers and functions of the Governing Board**

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

(a) to elect a Chairman from among its members;

(b) to adopt its rules of procedure;

(c) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3, and article 162, paragraph 2(j);

(d) to develop plans of work and programmes for carrying out the activities specified in article 170;

(e) to prepare and submit to the Council applications for production authorizations in accordance with article 151, paragraphs 2 to 7;

(f) to authorize negotiations concerning the acquisition of technology, including those provided for in Annex III, article 5, paragraph 3 (a), (c) and (d), and to approve the results of those negotiations;

(g) to establish terms and conditions, and to authorize negotiations, concerning joint ventures and other forms of joint arrangements referred to in Annex III, articles 9 and 11, and to approve the results of such negotiations;

(h) to recommend to the Assembly what portion of the net income of the Enterprise should be retained as its reserves in accordance with article 160, paragraph 2(f), and article 10 of this Annex;

(i) to approve the annual budget of the Enterprise;

(j) to authorize the procurement of goods and services in accordance with article 12, paragraph 3, of this Annex;

(k) to submit an annual report to the Council in accordance with article 9 of this Annex;

(l) to submit to the Council for the approval of the Assembly draft rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise and to adopt regulations to give effect to such rules;

(m) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2, of this Annex;

(n) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13 of this Annex;

(o) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

**Article 7**

**Director-General and staff of the Enterprise**

1. The Assembly shall, upon the recommendation of the Council and the nomination of the Governing Board, elect the Director-General of the Enterprise who shall not be a member of the Board. The Director-General shall hold office for a fixed term, not exceeding five years, and may be re-elected for further terms.

2. The Director-General shall be the legal representative and chief executive of the Enterprise and shall be directly responsible to the Board for the conduct of the operations of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff of the Enterprise in accordance with the rules and regulations referred to in article 6, subparagraph (i), of this Annex. He shall participate, without the right to vote, in the meetings of the Board and may participate, without the right to vote, in the meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise.
3. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency and of technical competence. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on an equitable geographical basis.

4. In the performance of their duties the Director-General and the staff shall not seek or receive instructions from any government or from any other source external to the Enterprise. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Director-General and the staff and not to seek to influence them in the discharge of their responsibilities.

5. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

**Article 8**

*Location*

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

**Article 9**

*Reports and financial statements*

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The Enterprise shall publish its annual report and such other reports as it finds appropriate.

3. All reports and financial statements referred to in this article shall be distributed to the members of the Authority.

**Article 10**

*Allocation of net income*

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under Annex III, article 13, or their equivalent.

2. The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as reserves of the Enterprise. The remainder shall be transferred to the Authority.

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

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.
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).

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.

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.

States Parties shall, upon receipt of the notification, make available their respective shares of debt guarantees for the Enterprise in accordance with subparagraph (b).

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).

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.

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

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.

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

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

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

Article 12
Operations

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

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. (a) If the Enterprise does not possess the goods and services required for its operations it may procure them. For that purpose, it shall issue invitations to tender and award contracts to bidders offering the best combination of quality, price and delivery time.

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with:

(i) the principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency; and

(ii) guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in developing States, including the land-locked and geographically disadvantaged among them.

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may, in the best interests of the Enterprise, be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.
6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

7. The Enterprise shall not interfere in the political affairs of any State Party; nor shall it be influenced in its decisions by the political character of the State Party concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1 of this Annex.

Article 13
Legal status, privileges and immunities

1. To enable the Enterprise to exercise its functions, the status, privileges and immunities set forth in this article shall be accorded to the Enterprise in the territory of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.

2. The Enterprise shall have such legal capacity as is necessary for the exercise of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) to enter into contracts, joint arrangements or other arrangements, including agreements with States and international organisations;

(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 whomever 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 whomever held, shall be immune from requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.
ANNEX V. CONCILIATION

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

Article 1
Institution of proceedings

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

Article 2
List of conciliators

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

Article 3
Constitution of conciliation commission

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

(a) Subject to subparagraph (g), the conciliation commission shall consist of five members.

(b) The party instituting the proceedings shall appoint two conciliators to be chosen preferably from the list referred to in article 2 of this Annex, one of whom may be its national, unless the parties otherwise agree. Such appointments shall be included in the notification referred to in article 1 of this Annex.

(c) The other party to the dispute shall appoint two conciliators in the manner set forth in subparagraph (b) within 21 days of receipt of the notification referred to in article 1 of this Annex. If the appointments are not made within that period, the party instituting the proceedings may, within one week of the expiration of that period, either terminate the proceedings by notification addressed to the other party or request the Secretary-General of the United Nations to make the appointments in accordance with subparagraph (e).

(d) Within 30 days after all four conciliators have been appointed, they shall appoint a fifth conciliator chosen from the list referred to in article 2 of this Annex who shall be chairman. If the appointment is not made within that period, either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment in accordance with subparagraph (e).

(e) Within 30 days of the receipt of a request under subparagraph (c) or (d), the Secretary-General of the United Nations shall make the necessary appointments from the list referred to in article 2 of this Annex in consultation with the parties to the dispute.

(f) Any vacancy shall be filled in the manner prescribed for the initial appointment.

(g) Two or more parties which determine by agreement that they are in the same interest shall appoint two conciliators jointly. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint conciliators separately.

(h) In disputes involving more than two parties having separate interests, or where there is disagreement as to whether they are of the same interest, the parties shall apply subparagraphs (a) to (f) in so far as possible.

Article 4
Procedure

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

Article 5
Amicable settlement

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

Article 6
Functions of the commission

The commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.
Article 7

Report

1. The commission shall report within 12 months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement. The report shall be deposited with the Secretary-General of the United Nations and shall immediately be transmitted by him to the parties to the dispute.

2. The report of the commission, including its conclusions or recommendations, shall not be binding upon the parties.

Article 8

Termination

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

Article 9

Fees and expenses

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

Article 10

Right of parties to modify procedure

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

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

Article 11

Institution of proceedings

1. Any party to a dispute which, in accordance with Part XV, section 3, may be submitted to conciliation under this section, may institute the proceedings by written notification addressed to the other party or parties to the dispute.

2. Any party to the dispute, notified under paragraph 1, shall be obliged to submit to such proceedings.

Article 12

Failure to reply or to submit to conciliation

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

Article 2
Composition

1. The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognised 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 fulfill 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 fulfill 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

"1. The expenses of the Tribunal shall be borne by the States Parties and by the Authority on such terms and in such a manner as shall be decided at meetings of the States Parties.

2. When an entity other than a State Party or the Authority is a party to a case submitted to it, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal."

SECTION 2. COMPETENCE

Article 20

Access to the Tribunal

1. The Tribunal shall be open to States Parties.

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

Article 21

Jurisdiction

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

Article 22

Reference of disputes subject to other agreements

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

Article 23

Applicable law

The Tribunal shall decide all disputes and applications in accordance with article 293.
SECTION 3. PROCEDURE

Article 24
Institution of proceedings

1. Disputes are submitted to the Tribunal, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith notify the special agreement or the application to all concerned.

3. The Registrar shall also notify all States Parties.

Article 25
Provisional measures

1. In accordance with article 200, the Tribunal and its See-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 13, 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 Authority may adopt recommendations of a general nature relating to such representation and distribution.

3. The members of the Chamber shall be selected every three years and may be selected for a second term.

4. The Chamber shall elect its President from among its members, who shall serve for the term for which the Chamber has been selected.

5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.

6. If a vacancy occurs in the Chamber, the Tribunal shall select a successor from among its seated 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 Chamber

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 II, section 5.

Article 38
Applicable law

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

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

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

Article 39
Enforcement of decisions of the Chamber

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

Article 40
Applicability of other sections of this Annex

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

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

SECTION 5. AMENDMENTS

Article 41
Amendments

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

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

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

Article 1
Institution of proceedings

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

Article 2
List of arbitrators

1. A list of arbitrators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four arbitrators, each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list.

2. If at any time the arbitrators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary.

3. The name of an arbitrator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such arbitrator shall continue to serve on any arbitral tribunal to which that arbitrator has been appointed until the completion of the proceedings before that arbitral tribunal.

Article 3
Constitution of arbitral tribunal

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

(a) Subject to subparagraph (g), the arbitral tribunal shall consist of five members.

(b) The party instituting the proceedings shall appoint one member to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national. The appointment shall be included in the notification referred to in article 1 of this Annex.

(c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint one member to be chosen preferably from the list, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointment be made in accordance with subparagraph (e).

(d) The other three members shall be appointed by agreement between the parties. They shall be chosen preferably from the list and shall be nationals of third States unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 60 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 60-day period.

(e) Unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments. If the President is unable to act under this subparagraph or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is available and is not a national of one of the parties. The appointments referred to in this subparagraph shall be made from the list referred to in article 2 of this Annex within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

(f) Any vacancy shall be filled in the manner prescribed for the initial appointment.

(g) Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.

(h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

Article 4
Functions of arbitral tribunal

An arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention.
Article 5
Procedure

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

Article 6
Duties of parties to a dispute

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

(a) provide it with all relevant documents, facilities and information; and

(b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Article 7
Expenses

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

Article 8
Required majority for decisions

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

Article 9
Default of appearance

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

Article 10
Award

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

Article 11
Finality of award

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

Article 12
Interpretation or implementation of award

1. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.

2. Any such controversy may be submitted to another court or tribunal under article 287 by agreement of all the parties to the dispute.

Article 13
Application to entities other than States Parties

The provisions of this Annex shall apply mutatis mutandis to any dispute involving entities other than States Parties.
ANNEX VIII. SPECIAL ARBITRATION

Article 1
Institution of proceedings

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

Article 2
Lists of experts

1. A list of experts shall be established and maintained in respect of each of the fields of (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping.

2. The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the 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, articles 4 to 13, apply mutatis mutandis to the special arbitration proceedings in accordance with this Annex.

Article 5
Fact finding

1. The parties to a dispute concerning the interpretation or application of the provisions of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may at any time agree to request a special arbitral tribunal constituted in accordance with article 3 of this Annex to carry out an inquiry and establish the facts giving rise to the dispute.

2. Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with paragraph 1, shall be considered as conclusive as between the parties.

3. If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute.

4. Subject to paragraph 2, the special arbitral tribunal shall act in accordance with the provisions of this Annex, unless the parties otherwise agree.

ANNEX IX. PARTICIPATION BY INTERNATIONAL ORGANIZATIONS

Article 1
Use of terms

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

Article 2
Signature

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

Article 3
Formal confirmation and accession

1. An international organization may deposit its instrument of formal confirmation or of accession if a majority of its member States deposit or have deposited their instruments of ratification or accession.

2. The instruments deposited by the international organization shall contain the undertakings and declarations required by articles 4 and 5 of this Annex.

Article 4
Extent of participation and rights and obligations

1. The instrument of formal confirmation or of accession of an international organization shall contain an undertaking to accept the rights and obligations of States under this Convention in respect of matters relating to which competence has been transferred to it by its member States which are Parties to this Convention.

2. An international organization shall be a Party to this Convention to the extent that it has competence in accordance with the declarations, communications of information or notifications referred to in article 5 of this Annex.

3. Such an international organization shall exercise the rights and perform the obligations which its member States which are Parties would otherwise have under this Convention, on matters relating to which competence has been transferred to it by those member States. The member States of that international organization shall not exercise competence which they have transferred to it.
4. Participation of such an international organization shall in no case entail an increase of the representation to which its member States which are States Parties would otherwise be entitled, including rights in decision-making.

5. Participation of such an international organization shall in no case confer any rights under this Convention on member States of the organization which are not States Parties to this Convention.

6. In the event of a conflict between the obligations of an international organization under this Convention and its obligations under the agreement establishing the organization or any acts relating to it, the obligations under this Convention shall prevail.

Article 5
Declarations, notifications and communications

1. The instrument of formal confirmation or of accession of an international organization shall contain a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to the organization by its member States which are Parties to this Convention.

2. A member State of an international organization shall, at the time it ratifies or accedes to this Convention or at the time when the organization deposits its instrument of formal confirmation or of accession, whichever is later, make a declaration specifying the matters governed by this Convention in respect of which it has transferred competence to the organization.

3. States Parties which are member States of an international organization which is a Party to this Convention shall be presumed to have competence over all matters governed by this Convention in respect of which transfers of competence to the organization have not been specifically declared, notified or communicated by those States under this article.

4. The international organization and its member States which are States Parties shall promptly notify the depositary of this Convention of any changes to the distribution of competence, including new transfers of competence, specified in the declarations under paragraphs 1 and 2.

5. Any State Party may request an international organization and its member States which are States Parties to provide information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. The organization and the member States concerned shall provide this information within a reasonable time. The international organization and the member States may also, on their own initiative, provide this information.

6. Declarations, notifications and communications of information under this article shall specify the nature and extent of the competence transferred.

Article 6
Responsibility and liability

1. Parties which have competence under article 5 of this Annex shall have responsibility for failure to comply with obligations or for any other violation of this Convention.

2. Any State Party may request an international organization or its member States which are States Parties for information as to who has responsibility in respect of any specific matter. The organization and the member States concerned shall provide this information. Failure to provide this information within a reasonable time or the provision of contradictory information shall result in joint and several liability.

Article 7
Settlement of disputes

1. At the time of deposit of its instrument of formal confirmation or of accession, or at any time thereafter, an international organization shall be free to choose, by means of a written declaration, one or more of the means for the settlement of disputes concerning the interpretation or application of this Convention, referred to in article 287, paragraph 1(a), (c) or (d).

2. Part XV applies mutatis mutandis to any dispute between Parties to this Convention, one or more of which are international organizations.

3. When an international organization and one or more of its member States are joint parties to a dispute, or parties in the same interest, the organization shall be deemed to have accepted the same procedures for the settlement of disputes as the member States; when, however, a member State has chosen only the International Court of Justice under article 287, the organization and the member State concerned shall be deemed to have accepted arbitration in accordance with Annex VII, unless the parties to the dispute otherwise agree.

Article 8
Applicability of Part XVII

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

(a) the instrument of formal confirmation or of accession of an international organization shall not be taken into account in the application of article 308, paragraph 1;

(b) (i) an international organization shall have exclusive capacity with respect to the application of articles 312 to 315, to the extent that it has competence under article 5 of this Annex over the entire subject-matter of the amendments; (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;

(e) (1) 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.
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No. 31364

MULTILATERAL


MULTILATÉRAL


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,

1 Come into force provisionally on 16 November 1994 for the following States and regional economic integration organization which had by that date consented to its adoption in the General Assembly of the United Nations (*)

1994

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 I

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.

(footnote 1 continued from page 42)

Article 2

Relationship between this Agreement and Part XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3

Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1 (a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4

Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:

   (a) Signature not subject to ratification, formal confirmation or the procedure set out in article 5;

   (b) Signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

   (c) Signature subject to the procedure set out in article 5; or

   (d) Accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1 (f), of the Convention shall be in accordance with Annex IX of the Convention.

5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5

Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3 (c), shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3 (b).

Article 6

Entry into force

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1 (a) of resolution II of the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.
2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7

Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;

(c) States and entities which consent to its provisional application by so notifying the depositary in writing;

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in Article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II has not been fulfilled.


Article 8

States Parties

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies mutatis mutandis to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9

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.

[For the signatures, see p. 132 of this volume.]
ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The International Seabed Authority (hereinafter referred to as "the Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

   (a) Processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

   (b) Implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

   (c) Monitoring of compliance with plans of work for exploration approved in the form of contracts;

   (d) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

   (e) Study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

   (f) Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17, paragraph 2 (b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

   (g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;

   (h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

   (i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
(j) Assessment of available data relating to prospecting and exploration;

(k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof, and this Agreement, and subject to the following:

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1 (a) (i) or (ii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8 (a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of 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) (v).

(b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.
8. An application for approval of a plan of work for exploration, subject to paragraph 6 (a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

(i) The obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;

(ii) The right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c) (ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.
13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171, subparagraph (a), and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2 (c) (ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

(a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2 (a), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

(a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;

(c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;

(d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(e) Evaluation of information and data relating to areas reserved for the Authority;

(f) Assessment of approaches to joint-venture operations;

(g) Collection of information on the availability of trained manpower;
(h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

2. The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint-venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint-venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

3. The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.

4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

5. A contractor which has contributed a particular area to the Authority as a reserved area has the right of first refusal to enter into a joint-venture arrangement with the Enterprise for exploration and exploitation of that area. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within 15 years of the commencement of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers in good faith to include the Enterprise as a joint-venture partner.

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this section.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8 (b) and (c), of the Convention shall not apply.
9. (a) Each group of States elected under paragraph 15 (a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State 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 more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

(b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(c) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) Six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

(e) Eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.
SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

SECTION 5. TRANSFER OF TECHNOLOGY

1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:

   (a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;

   (b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

   (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

2. The provisions of Annex III, article 5, of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

   (a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

   (b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;

   (c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

   (d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:

      (i) By the use of tariff or non-tariff barriers; and

      (ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

   (e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

   (f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

      (i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;
(ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1 (b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1 (b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1 (f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1 (b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2 (q), article 165, paragraph 2 (n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

(b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2 (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 contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system:
(b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(e) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$ 250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15 (a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2 (e), of the Convention;
(c) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) The administrative budget;

(e) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

9. The requirement of article 162, paragraph 2 (y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.
Agreement for the Implementation of the Provisions of the
United Nations Convention on the Law of the Sea of
10 December 1982 relating to the Conservation and Management
of Straddling Fish Stocks and Highly Migratory Fish Stocks
(Straddling Fish Stocks Agreement), 1995
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No. 37924

Multilateral

Agreement for the Implementation of the Provisions of the United Nations
Convention on the Law of the Sea of 10 December 1982 relating to the
Conservation and Management of Straddling Fish Stocks and Highly Migratory
Fish Stocks (with annexes). New York, 4 August 1995

Entry into force: 11 December 2001, in accordance with article 40 (1) (see following
page)

Authentic texts: Arabic, Chinese, English, French, Russian and Spanish

Registration with the Secretariat of the United Nations: ex officio. 11 December 2001

Multilatéral

Accord aux fins de l'application des dispositions de la Convention des Nations Unies
sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la
gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur
qu'au delà de zones économiques exclusives (stocks chevauchants) et des stocks
de poissons grands migrateurs (avec annexes). New York, 4 août 1995

Entrée en vigueur : 11 décembre 2001, conformément au paragraphe 1 de l'article 40
(voir la page suivante)

Textes authentiques : arabe, chinois, anglais, français, russe et espagnol
AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

The States Parties to this Agreement,


Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end, calling for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

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

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1
Use of terms and scope

1. For the purposes of this Agreement:

   (b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

   (c) "fish" includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

   (d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.
(b) This Agreement applies mutatis mutandis:
(i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and
(ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent "States Parties" refers to those entities.

3. This Agreement applies mutatis mutandis to other fishing entities whose vessels fish on the high seas.

Article 2
Objective
The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3
Application
1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply mutatis mutandis the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 3, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies mutatis mutandis in respect of areas under national jurisdiction.

Article 4
Relationship between this Agreement and the Convention
Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II
CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5
General principles
In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with
(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6
Application of the precautionary approach
1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:
   (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
   
   (b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

   (c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

   (d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans
which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7
Compatibility of conservation and management measures
1. Without prejudice to the sovereign rights of coastal

States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such mea-
sures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III
MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8
Cooperation for conservation and management
1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or
regional fisheries management organizations or arrangements, taking into account the specific characteristics of the sub-region or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation, nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9
Subregional and regional fisheries management organization and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:
(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or
region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

Article 10
Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

(d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target

and associated or dependent species;

(e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;

(f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

(g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;

(h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;

(j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;

(k) promote the peaceful settlement of disputes in accordance with Part VIII;

(l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and

(m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11
New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:
(a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;

(b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;

(c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;

(d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

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Article 12

Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.

2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such proce-

cedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13

Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14

Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

(a) to agree on the specification of data and the format in which they are to be provided to such organizations or
arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15
Enclosed and semi-enclosed seas
In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16
Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

PART IV
NON-MEMBERS AND NON-PARTICIPANTS

Article 17
Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to coop-
erate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V
DUTIES OF THE FLAG STATE
Article 18
Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations:
   (i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfill any subregional, regional or global obligations of the flag State;

   (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;

   (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

   (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
(c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transhipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:

(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the pro-

grammes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transhipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI
COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;
(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20
International cooperation in enforcement
1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional proce-
dures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

**Article 21**

Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accor-

dance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

   (a) fulfill, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or

   (b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that inves-
tigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);

(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.
13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies *mutatis mutandis* to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

**Article 22**

**Basic procedures for boarding and inspection pursuant to article 21**

1. The inspecting State shall ensure that its duly authorized inspectors:
   (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
   (b) initiate notice to the flag State at the time of the boarding and inspection;
   (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
   (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
   (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
   (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State
shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:
(a) accept and facilitate prompt and safe boarding by the inspectors;
(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
(f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23
Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII
REQUIREMENTS OF DEVELOPING STATES

Article 24
Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:
(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25
Forms of cooperation with developing States
1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:
(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and
(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26
Special assistance in the implementation of this Agreement
1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII
PEACEFUL SETTLEMENT OF DISPUTES
Article 27
Obligation to settle disputes by peaceful means
States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrange-
ments, or other peaceful means of their own choice.

Article 28
Prevention of disputes
States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29
Disputes of a technical nature
Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30
Procedures for the settlement of disputes
1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31
Provisional measures
1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted
under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32
Limitations on applicability of procedures for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX
NON-PARTIES TO THIS AGREEMENT
Article 33
Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X
GOOD FAITH AND ABUSE OF RIGHTS
Article 34
Good faith and abuse of rights
States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not con-
stitute an abuse of right.

PART XI
RESPONSIBILITY AND LIABILITY
Article 35
Responsibility and liability
States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII
REVIEW CONFERENCE
Article 36
Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII
FINAL PROVISIONS
Article 37
Signature
This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.
Article 38
Ratification
This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39
Accession
This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40
Entry into force
1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41
Provisional application
1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42
Reservations and exceptions
No reservations or exceptions may be made to this Agreement.

Article 43
Declarations and statements
Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44
Relation to other agreements
1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification
or suspension for which it provides.

**Article 45**

**Amendment**

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and
(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

**Article 46**

**Denunciation**

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfill any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

**Article 47**

**Participation by international organizations**

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply mutatis mutandis to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) article 2, first sentence; and
(b) article 3, paragraph 1.

2. In cases where an international organization referred to
in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 48

Annexes

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

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

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

OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

ANNEX I

STANDARD REQUIREMENTS FOR THE COLLECTION AND SHARING OF DATA

Article 1

General principles

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These
data include catch and fishing effort statistics and other
fishery-related information, such as vessel-related and
other data for standardizing fishing effort. Data collected
should also include information on non-target and associated
or dependent species. All data should be verified to ensure
accuracy. Confidentiality of non-aggregated data shall be
maintained. The dissemination of such data shall be subject
to the terms on which they have been provided.

2. Assistance, including training as well as financial and
technical assistance, shall be provided to developing States
in order to build capacity in the field of conservation and
management of living marine resources. Assistance should
focus on enhancing capacity to implement data collection and
verification, observer programmes, data analysis and
research projects supporting stock assessments. The fullest
possible involvement of developing State scientists and man-
agers in conservation and management of straddling fish
stocks and highly migratory fish stocks should be promoted.

Article 2

Principles of data collection, compilation and exchange

The following general principles should be considered in
defining the parameters for collection, compilation and
exchange of data from fishing operations for straddling fish
stocks and highly migratory fish stocks:
(a) States should ensure that data are collected from ves-
sels flying their flag on fishing activities according to
the operational characteristics of each fishing method
(e.g., each individual tow for trawl, each set for long-line
and purse-seines, each school fished for pole-and-line and
each day fished for troll) and in sufficient detail to facil-
itate effective stock assessment;

(b) States should ensure that fishery data are verified
through an appropriate system;

(c) States should compile fishery-related and other support-
ing scientific data and provide them in an agreed format and
in a timely manner to the relevant subregional or regional
fisheries management organization or arrangement where one
exists. Otherwise, States should cooperate to exchange data
either directly or through such other cooperative mechanisms
as may be agreed among them;

(d) States should agree, within the framework of subregional
or regional fisheries management organizations or arrange-
ments, or otherwise, on the specification of data and the
format in which they are to be provided, in accordance with
this Annex and taking into account the nature of the stocks
and the fisheries for those stocks in the region. Such organi-
izations or arrangements should request non-members or non-
participants to provide data concerning relevant fishing
activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data
and make them available in a timely manner and in an agreed
format to all interested States under the terms and condi-
tions established by the organization or arrangement; and

(f) scientists of the flag State and from the relevant subre-
gional or regional fisheries management organization or
arrangement should analyse the data separately or jointly, as
appropriate.

Article 3

Basic fishery data

1. States shall collect and make available to the relevant
subregional or regional fisheries management organization or
arrangement the following types of data in sufficient detail
to facilitate effective stock assessment in accordance with
agreed procedures:

(a) time series of catch and effort statistics by fishery and
fleet;
(b) total catch in number, nominal weight, or both, by spe-
cies (both target and non-target) as is appropriate to each
fishery. [Nominal weight is defined by the Food and Agricu-
ture Organization of the United Nations as the live-weight
equivalent of the landings];
(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

(d) effort statistics appropriate to each fishing method; and

(e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

(a) composition of the catch according to length, weight and sex;

(b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Article 4
Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

(a) vessel identification, flag and port of registry;

(b) vessel type;

(c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and

(d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

(a) navigation and position fixing aids;

(b) communication equipment and international radio call sign; and

(c) crew size.

Article 5
Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

Article 6
Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

(a) position verification through vessel monitoring systems;

(b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;

(c) vessel trip, landing and transshipment reports; and

(d) port sampling.

Article 7
Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database
systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

ANNEX II
GUIDELINES FOR THE APPLICATION OF PRECAUTIONARY REFERENCE-POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH- STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.
Report of the Secretary-General on oceans and the law of the sea, A/67/79, 4 April 2012
Summary

The present report has been prepared pursuant to paragraph 249 of General Assembly resolution 66/231, with a view to facilitating discussions on the topic of focus of the thirteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, namely marine renewable energies. It constitutes the first part of the report of the Secretary-General to the Assembly at its sixty-seventh session on developments and issues relating to ocean affairs and the law of the sea. It is also being submitted to States parties to the United Nations Convention on the Law of the Sea pursuant to article 319 of the Convention.
I. Introduction

1. In paragraph 234 of its resolution 66/231, the General Assembly recalled its decision in resolution 65/37 that, in its deliberations on the report of the Secretary-General on oceans and the law of the sea, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea ("the Informal Consultative Process") would focus its discussions at its thirteenth meeting on marine renewable energies. The present report addresses that topic.

2. The heavy dependence on fossil fuel, with rising costs and the associated environmental concerns, is making alternative sources of energy a vital component of future development. According to the International Energy Agency, energy demand will increase by 40 per cent over the next 20 years, with the most notable rise occurring in developing countries. Global interest in new and renewable energy technologies has been growing rapidly.

3. The 2002 World Summit on Sustainable Development adopted the Johannesburg Plan of Implementation, which calls for substantially increasing, with a sense of urgency, the global share of energy obtained from renewable sources. New and renewable sources of energy thus constitute an integral element of the global vision for sustainable development and the achievement of the Millennium Development Goals.

4. The oceans, covering more than 70 per cent of the Earth’s surface, are attracting increased attention as a vast source of potential renewable energy. Oceans have a capacity for trapping heat as thermal energy, producing offshore powerful winds, currents and waves. The thermal and kinetic energy stored in the oceans represents a considerable opportunity for producing energy, particularly in nearshore areas. In recent years, a number of technologies have been developed and extensive industrial and academic research has been carried out to determine the technical and economic viability of these technologies.

5. However, ocean energy technologies face considerable challenges in their development. Although their cost is expected to become lower than coal in the next decade, their current development requires considerable government incentives. Moreover, the use of ocean energy today faces an uncertain state of regulation under domestic legal systems, including issues related to managing hazards to navigation, providing further financial incentives for wide-scale commercialization of this technology (such as increased research and development funding and feed-in tariffs) and managing its relatively benign environmental impacts.

II. Background

A. Sources of marine renewable energy

8. Renewable energy is any form of energy from solar, geophysical or biological sources that is replenished by natural processes at a rate that equals or exceeds its rate of use. Renewable energy technologies are diverse and can serve the full range of energy service needs. Unlike fossil fuels, most forms of renewable energy produce few or no carbon dioxide emissions.

9. Marine renewable energy is a subset of renewable energy involving natural processes in the marine environment. There are four types of marine renewable energy: ocean energy; wind energy from turbines located in offshore areas; geothermal energy derived from submarine geothermal resources; and bioenergy derived from marine biomass, particularly ocean-derived algae.

10. Ocean energy is derived from the potential, kinetic, thermal and chemical energy of seawater, which can be transformed to provide, inter alia, electricity, or thermal energy, as well as potable water. The renewable energy resource in the ocean comes from six distinct sources, each with different origins and requiring different technologies for conversion: waves; tidal range; tidal current (also known as tidal stream); ocean currents; ocean thermal energy conversion; and salinity gradients.

11. The contributions whose authors have authorized them to be posted online are available at www.un.org/Depts/los/general_assembly/general_assembly_reports.htm.
11. Ocean waves are generated by the transfer of energy from wind blowing over water. Tidal range refers to the cyclical rise and fall of tides, and tidal currents are created by the horizontal movement of water resulting from the rise and fall of the tide. Ocean currents occur in the open ocean and are driven by winds and, on a global level, by the rotation of the Earth and the related natural physical forces acting on bodies of water. Ocean thermal energy conversion is driven by the temperature differences which occur between the upper layers of seawater, in which about 15 per cent of total solar input is retained as thermal energy, and colder, deeper waters existing side by side. A salinity gradient is present where the mixing of freshwater and seawater occurs, for example at river mouths; this mixing releases energy as heat. Wind energy is energy which is harnessed from the kinetic energy of moving air, bioenergy is energy produced from biomass through a variety of processes and geothermal energy is energy harnessed from the thermal energy of the Earth’s interior.

B. Technology overview

12. There are currently a wide range of technology options to harness ocean energy. The level of development of such technologies ranges from conceptual, through research and development, to the prototype stage. Tidal range technology is the only ocean energy technology which can be considered mature.

13. There is also a wide array of technologies for both capturing and converting wave energy into electricity. The devices can be classified by the way they interact with different wave motions, namely heaving, surging and pitching; the depth of water in which they are placed, from shallow to deep; and the distance from shore at which the device operates, from shoreline to offshore.

14. Tidal range technology consists of a barrage built across an estuary or mouth of a bay where this is a large tidal range. The barrage dams seawater when the tide changes and, in a controlled fashion, allows water to flow through turbines in the barrage producing electricity. A 240-megawatt (MW) plant has been operational in La Rance, France, since 1966, only being surpassed recently by the Sihwa Lake Tidal Power Station in the Republic of Korea, at 254 MW. Another much larger plant of 812 MW at Incheon, Republic of Korea, is due for completion in 2015.

15. Tidal and ocean current technologies place devices within the current directly and do not work by the damming of water. There are a number of different principles of operation for such devices and hence there are more than 50 tidal current devices which are in proof-of-concept or prototype stages. There are no pilots or demonstration plants to harness ocean currents as technologies which can capture slower velocity currents are not yet available.

16. Ocean thermal energy conversion is a marine renewable energy technology that harnesses the solar energy absorbed by the oceans and is therefore expected to be potentially significant in equatorial and tropical regions. Trials of small-scale ocean thermal energy conversion systems, however, continue to experience engineering challenges related to pumping, vacuum retention and piping. Salinity gradient energy is harnessed either through the reversed electro-dialysis process which works on the difference in chemical potential between fresh and salt water, or the osmotic power process which is driven by the natural mixing tendency of fresh and salt water. The first prototype osmotic power device became operational in 2009 in Norway.

17. Offshore wind energy, while less mature than onshore technologies, is still developing and has opportunities for continued advancements. Offshore turbines are usually larger than onshore installations but are otherwise functionally similar in design. With increasing technology and experience, offshore turbines are being employed in deeper and more distant waters, allowing more exposed locations with stronger winds to be utilized.

C. Status of deployment and potential

18. Marine renewable energy is still at an early stage of development (see also sect. II.C below). In 2008 it represented less than 1 per cent of all renewable energy production. However, the Intergovernmental Panel on Climate Change (IPCC) has highlighted that the potential of technically exploitable marine renewable energies, excluding offshore wind energy, was estimated at 7,400 exajoules (EJ) per annum, well exceeding current and future human energy needs. The first offshore wind power plant was installed in 1991, consisting of 11 450-kW turbines and, as at the end of 2009, 1.3 per cent of installed global wind power capacity, totalling 2,100 MW, was offshore. Estimates for near-shore offshore wind energy generation ranges from 15 to 130 EJ per annum with a greater potential expected from deeper waters. To contextualize these numbers, it should be noted that in 2008, there was a total world energy supply of 492 EJ. The chart below shows, for 2008, the sources of global energy.

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12 Ibid., p. 506.
13 Ibid., p. 507.
15 IPCC (note 7 above), p. 501. One EJ equals 10^{18} joules. It is a large-scale unit of energy used in describing national or global energy budgets. A terawatt-year is the energy transferred or expended in one year by one terawatt (1 terawatt=10^{12} watts) of power. One terawatt-year equals 31.54 EJ.
16 Ibid., chap. 6.3 and 6.4.
17 Ibid.
18 Ibid., p. 90.
19 Ibid., chap. 7.3.
21 IPCC (note 7 above), p. 501. One EJ equals 10^{18} joules. It is a large-scale unit of energy used in describing national or global energy budgets. A terawatt-year is the energy transferred or expended in one year by one terawatt (1 terawatt=10^{12} watts) of power. One terawatt-year equals 31.54 EJ.
22 Ibid., p. 539.
23 Ibid., p. 9.
24 Ibid., p. 174, figure 1.10. The largest renewable energy contributor was biomass (10.2 per cent), with the majority (roughly 60 per cent) being traditional biomass used in cooking and heating applications in developing countries but with rapidly increasing use of modern biomass (38 per cent) as well. In addition to this 60 per cent share of traditional biomass, there is biomass use estimated to amount to 20 to 40 per cent not reported in official primary energy databases, such as dung, unaccounted production of charcoal, illegal logging, fuelwood gathering and agricultural residue use.
19. Small island developing States, with large coastal populations, little infrastructure in the coastal zones and few alternative energy resources, are well situated for growth of ocean thermal energy conversion. As long as the temperature between the warm surface water and the cold deep water differs by about 20°C (36°F), an ocean thermal energy conversion system can produce a significant amount of power with little impact on the surrounding environment. The oceans are thus a vast renewable resource with the potential to help small island developing States, characterized by limited land and land-based natural resources, produce billions of watts of electric power. This potential is estimated to be about 10^13 watts of base load power generation, according to some experts. The distinctive feature of ocean thermal energy conversion systems is that the end products include not only energy in the form of electricity, but also several other synergistic products. The Ocean Thermal Energy Corporation is currently designing the world's first two commercial ocean thermal energy conversion plants in the Bahaman, enhancing the development of marine renewable technology in the Western Caribbean region.

20. For ocean energy, the installed capacity is unlikely to become significant until after 2020. Canada’s Marine Renewable Energy Technology Roadmap, launched in December 2010, envisages a rapid deployment of marine renewable technologies to reach the installed-capacity goals of 75 MW by 2016, 250 MW by 2020 and 2,000 MW by 2030. However, tidal and wave energies have been noted to be nearing commercial reality.

21. In Europe, the ocean energy resources that are expected to make the most significant contributions to the energy system are wave, offshore wind, tidal current and tidal range. Osmotic systems are being developed in Norway and the Netherlands, while ocean thermal resources are under study in several European countries.

22. Marine renewable energy technology has recently moved beyond the pilot project stage in Europe. Prominent among the leaders in the development and commercialization of this technology are Belgium, Denmark, Finland, France, Ireland, Italy, Norway, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland. The latter currently has 3.4 MW of installed capacity and more project leases awarded than the rest of the world combined. Recent estimates indicate that 27 Gigawatts (GW) of ocean energy could be reached in the United Kingdom by 2050. Germany completed its first offshore wind park in 2009 and simultaneously launched a research programme.

23. Wind energy capacity has been developed to a commercial scale and has been installed in offshore locations, primarily in Europe, with a total worldwide capacity of 2,100 MW installed by the end of 2009. Wave and tidal current (or tidal stream) energy units, which are mainly in the demonstration phase, some with limited deployment, have been reported at 2 and 4 MW respectively, as at the end of 2010 by several States. No technologies are currently in use for submarine geothermal energy generation. Although research has started on the extraction of biofuels from algae, its potential role as a source of bioenergy is highly uncertain.

III. Policy framework and legal aspects

24. Renewable energy has featured prominently in sustainable development discussions, with an array of commitments made and initiatives developed since the United Nations Conference on Environment and Development held in Rio de Janeiro,
Brazil, in June 1992. For example, Agenda 21 recognized that energy was essential
to economic and social development and improved quality of life, but that much of
the world’s energy was produced and consumed in ways that could not be sustained.
It therefore called for a number of steps and actions to develop environmentally
sound energy systems, particularly new and renewable sources of energy.\(^47\) The
2002 Johannesburg Plan of Implementation, adopted at the World Summit on
Sustainable Development, also addresses renewable energy with commitments to
increase substantially its global share in total energy supply.\(^48\)

25. In 2011, the Secretary-General launched a new initiative entitled “Sustainable
Energy for All” to mobilize urgent global action on three linked initiatives, including
doubling the share of renewable energy in the global energy mix by 2030.
This initiative aims at contributing to the International Year of Sustainable Energy
for All in 2012 (see General Assembly resolution 65/151) by mobilizing action from
all key stakeholders.

26. To date, none of these commitments has, however, specifically addressed
marine renewable energy.

27. The legal framework for marine renewable energy is anchored in the United
Nations Convention on the Law of the Sea, which is complemented by an array of
relevant instruments and measures at the global, regional and national levels.

A. International law

28. The international legal framework for marine renewable energy primarily relates
to the rights and obligations of States in the various maritime zones and in relation
to the resources found therein; the establishment and use of installations and
structures in the maritime zones for the exploitation of the energy; the transport of
the energy produced; and the protection and preservation of the marine environment
from the known or likely impacts of activities aimed at the development,
deployment, exploitation and transmission of such energies. In this regard, the
development of marine renewable energy requires a careful balance between the
interests of various users of ocean space and resources and the rights and obligations
of States under a number of instruments.


Treaty Series, vol. 1833, No. 31363) provides the legal framework within which all
activities in the oceans and seas must be carried out. As such, its provisions and the
jurisdictional framework that it establishes also apply to the development and
exploitation of marine renewable energy.

30. In their internal waters, coastal States enjoy full sovereignty and are free to
regulate the placing of marine renewable energy facilities, subject to the right of
innocent passage and the obligation to protect and preserve the marine environment
(see below). This also applies where the establishment of a straight baseline has the
effect of enclosing as internal waters areas which had not previously been
considered as such (articles 2 and 8). Similarly, the sovereignty of the coastal State
over its territorial sea carries with it the sovereign right to exploit that zone for the
production of renewable energy from marine sources, subject to the right of
innocent passage (article 17). The coastal State may adopt laws and regulations
related to innocent passage, including in respect of the safety of navigation, the
protection of cables and pipelines and the protection of the marine environment, for
example through the designation of sea lanes and traffic separation schemes around
renewable energy facilities (articles 21-22).

31. The Convention specifically recognizes the sovereign rights of the coastal State
in the exclusive economic zone with regard to activities for the economic
exploration and exploitation of the zone, such as the production of energy from the
water, currents and winds (article 56). The reference to energy in article 56 is not
exhaustive and can reasonably be understood as encompassing any type of energy
produced from the marine environment. The rights of the coastal State in the
exclusive economic zone must be exercised with due regard to the rights and duties
of other States under the Convention, including navigation (article 56). Of relevance
to the facilities for the exploitation and transportation of renewable energy from the
marine environment, the Convention also includes provisions on the establishment
and use of artificial islands, installations and structures in the exclusive economic
zone and on the continental shelf, including the establishment of safety zones
around them (articles 56, 60 and 80), and the laying of submarine cables and
pipelines on the continental shelf (article 79).

32. The laying of submarine cables and pipelines and the construction of other
installations permitted under international law also fall under the freedom of the high
seas, subject to Part VI on the continental shelf (articles 87 and 112).

33. The general obligation of States to protect and preserve the marine environment
under the Convention (article 192) is also to be borne in mind as marine renewable
energy projects may impact the marine environment (see Part V). This includes the
obligation to take measures to prevent, reduce and control pollution of the marine
environment from any source (article 194) and from the use of technologies under
States’ jurisdiction or control (article 196). States are also required to monitor the
risks or effects of pollution (article 204) and assess potential effects of activities
under their jurisdiction or control which may cause substantial pollution of, or
significant and harmful changes to, the marine environment (article 206). Parts XIII
and XIV of the Convention, which address marine scientific research and the
development and transfer of marine technology, respectively, are also relevant to the
development and exploitation of marine renewable energy. Similarly, the Agreement
relating to the Implementation of Part XI of the Convention may also apply to
marine renewable energy projects that may be pertinent for the exploration and
exploitation of marine mineral resources and the protection of the marine
environment in the Area.

2. Other instruments

34. A number of global sectoral instruments, while not directly or specifically
addressing marine renewable energy, are also applicable to the development and
exploitation of such energy.

3-14 June 1992, vol. 1, Resolution Adopted by the Conference (United Nations publication, Sales
No. E.93.18 and corrigendum), resolution 1, annex II, paras. 4.18, 9.9-9.12 and 9.18.
\(^48\) See Johannesburg Plan of Implementation (note 3 above), paras. 7 (c), 9 (a) and (c), 20, 59 (b)
and 62 (j).
35. Global rules and regulations governing safety of navigation are developed primarily by the International Maritime Organization (IMO). In particular, as regards installations, these include the International Convention for the Safety of Life at Sea, 1974; IMO resolution A.572(14) of 20 November 1985 on general provisions on ships’ routing, as amended; IMO resolution A.671(16) of 19 October 1989 on safety zones and safety of navigation around offshore installations and structures; and IMO resolution A.672(16) of 19 October 1990 on guidelines and standards for the removal of offshore installations and structures on the continental shelf and in the exclusive economic zone.

36. In light of the extension of offshore wind farms above the surface of the water into the superjacent airspace, the provisions of the 1944 Convention on International Civil Aviation (Treaty Series, vol. 15, No. 102) and the rules developed by the International Civil Aviation Organization (ICAO) are relevant insofar as they allow civilian aircraft to fly over the land and water territory of a coastal State, subject to compliance with safety and air navigation regulations promulgated by ICAO and domestic regulatory authorities.

37. With regard to the transmission and transport of the renewable energy produced, the 1884 International Convention for the Protection of Submarine Cables, as amended by the Declaration on the Protection of Submarine Cables of 1 December 1886 and the Protocol on the Protection of Submarine Cables of 7 July 1887, is also relevant.

38. In relation to the environmental impacts of activities related to marine renewable energy, the provisions on environmental impact assessments in article 14 of the Convention on Biological Diversity (Treaty Series, vol. 1760, No. 30619), which apply to processes and activities, regardless of where their effects occur, carried out under its parties’ jurisdiction or control, are to be borne in mind. A number of the regional seas conventions or their protocols contain provisions relevant to offshore installations and pipelines and/or to the conduct of environmental impact assessments.49

39. The United Nations Framework Convention on Climate Change (Treaty Series, vol. 1771, No. 30822), insofar as it directs parties to stabilize greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system, also provides context for the development of marine renewable energy. Under the Clean Development Mechanism (CDM) established pursuant to article 12 of the Kyoto Protocol to the Convention (Treaty Series, vol. 2303, No. 30822), parties listed in annex I to the Protocol can implement emission reduction projects to benefit parties not included in annex I, thereby earning certified emission reduction credits, with each credit being equivalent to one ton of carbon dioxide. In that regard, marine renewable energy projects have the potential to be developed as Clean Development Mechanism activities.

B. National enabling frameworks

40. It is advisable for Governments to adopt renewable energy policies as drivers of the growth in renewable energy use. The number of countries with such policies or legislation has more than doubled from an estimated 55 in early 2005 to 119 by early 2011.50 At the domestic level, the regulatory experience worldwide has been a matter of “learning from doing”.51 Regulatory and policy measures include legislation or regulations that govern the consent or approval process (including any special processes for demonstration projects); procedure for obtaining a lease or rights to use space for the project; review of project impacts, including environmental, navigation, fishing and recreational use; and grid access. In many States there appears to be no single identifiable licensing agency, and projects have to be undertaken in the context of a patchwork of sectoral laws and regulatory processes. Governments are increasingly putting in place incentives for new renewable energy developments such as feed-in tariffs, grants, subsidies and tax credits.52

41. The following non-exhaustive examples aim to provide information on certain aspects of policies, legislation and measures currently in place or in elaboration in some regions.53

42. In Africa, the example of South Africa reveals that while there is no specific national policy for ocean energy, feed-in tariffs for ocean energy are used in the context of the regulatory guidelines of 2009 relating to the renewable energy feed-in tariff under the 2004 National Energy Regulator Act.54

43. In Asia and the Pacific, several States have introduced incentives and support measures for renewable energy, including, in most cases, wind and ocean energy. Australia’s Victorian Renewable Energy Target Scheme is a market-based measure to increase the share of electricity consumption in Victoria from renewable energy sources to 10 per cent by 2016. New Zealand’s national energy strategy released in 2011 aims to increase the proportion of electricity generated from renewable sources to 90 per cent by 2025. In 2004, legislative amendments were introduced to streamline the consent processes for renewable energy projects.55 New Zealand has also launched a national policy statement on renewable electricity generation.56 The Philippines Executive Order 462 on new and renewable energy (1997, modified 2000) aims to, inter alia, accelerate the exploration, development, utilization and commercialization of ocean, solar and wind energy. Following a 2009 amendment to the Renewable Energy Law (2005), which covers all the main sources of renewable

energy, China drew up an ocean energy development plan and incentive policies for marine energy. The Republic of Korea has put in place differentiated feed-in tariffs for wind energy and tidal/ocean energy.

44. Within the European Union, directive 2009/28/EC on the promotion of the use of energy from renewable sources establishes the basis for the achievement of the 20 per cent renewable energy target by 2020. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is also applicable to renewable sources of energy and requires strategic environmental assessments in the early stages in the decision-making process.

45. A number of European Union members have also extended feed-in tariffs to renewable energy generated from wave and tidal energy. More specifically, in Denmark, the Danish Energy Agency is the authority responsible for coordinating the authorization process among relevant agencies and granting coordinated permits for offshore energy. Environmental monitoring programmes are in place to ensure that substantial adverse impacts can be avoided or diminished.

46. In Germany, the latest amendment to the Renewable Energy Sources Act, which entered into force on 1 January 2012, establishes a system of spatial planning, including the designation of priority areas where uses which are not compatible with the designated priority are disallowed or denied authorization, thereby ring-fencing potential locations for offshore wind farms. Similarly, in 2008, a maritime pilot zone was created off the Portuguese coast for wave energy extraction to support the deployment of offshore wave energy prototypes and farms. This zone is meant to guarantee simplified and fast licensing and permitting through a managing body that will also identify and promote the establishment of offshore corridors and the construction and maintenance of surrounding (including land-based) sector infrastructure.

47. The 2004 Energy Act and the 2009 Marine and Coastal Access Act of the United Kingdom established a renewable energy zone extending up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The 2009 Act also establishes a marine planning system and a marine management organization to act as the main planning and management body. A marine energy programme was also set up in 2011 with a view to developing and deploying wave and tidal devices at a commercial scale.

48. Elsewhere in Europe, the 2010 Norway Offshore Energy Act financially supports research and prototypes projects. It also provides for project licensing processes and infrastructure deployment and creates specific assessment guidelines for offshore resources exploitation.

49. In Latin America, Chile adopted the Non-Conventional Renewable Energy Law in 2008, which applies to renewable energy sources such as geothermal, wind and tidal energies. It establishes a quota system requiring companies providing energy to show that, by 2024, 10 per cent of their total energy trade will be in the form of renewable energy sources.

50. In North America, in 2010, Canada initiated the development of a strategy to support an efficient regulatory framework for ocean renewable and clean energy initiatives. A marine renewable energy technology road map was launched to provide a clear strategic vision for Canada’s participation and key capabilities to support the marine renewable industry and move it towards commercialization.

51. The United States of America is endeavouring to streamline permitting processes and resolve regulatory uncertainty concerning the development of marine renewable technologies. The United States Final Rule on Renewable Energy and Alternative Uses of Existing Facilities on the Outer Continental Shelf was issued in 2009. The National Ocean Council has released a draft national ocean policy implementation plan, which includes supporting steps for emerging sustainable uses of resources including renewable energy. Two reports released by the Department of Energy in January 2012 demonstrated that wave and tidal energy production off the coasts of the United States could provide 15 per cent of the country’s electricity by 2030. The Federal Energy Regulatory Commission issued its first pilot project licence for a tidal energy project located in New York City’s East River on 23 January 2012.

52. These examples show the role of Governments in promoting marine renewable energy by creating a predictable and stable environment for research, development and investment. Measures may include introducing research and innovation policies, establishing market-based policies that provide an enabling market framework and developing clear regulatory frameworks for streamlined permitting processes. The development of an appropriate legal framework and suitable financial incentives could provide a transparent process that will benefit community stakeholders, the emerging industry and regulators.

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59 Contribution of the European Union.

60 Ibid.


62 Decree Law No. 5/2008.


64 See www.cne.cl/cnewww/opencms/03_Energias/Renovables_no_Covencionales/tipos_energia.html.


66 See www.iea.org/textbase/pn/?mode=r&id=4445&action=detail.

67 See www.whitehouse.gov/administration/eop/oceans/implementationplan.

68 See “Mapping and assessment of the United States ocean wave energy resource” and “Assessment of energy production potential from tidal streams in the United States” at http://energy.gov.


IV. Developments at the global and regional levels

53. A combination of factors, including climate change, higher oil prices, population growth, increasing energy demands and the search for affordable, clean and secure energy, has stimulated the progressive development of marine renewable energies. At the seventeenth Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Durban, South Africa, from 28 November to 11 December 2011, renewed commitments were made towards limiting or reducing greenhouse gas emissions. The development of renewable energy, including marine renewable energy, is therefore likely to advance. Governments agreed on a second commitment period under the Kyoto Protocol that will start in January 2013. Governments also affirmed the mitigation pledges made by 89 countries, both industrialized and developing, under the Framework Convention, covering 80 per cent of global emissions over the time period from now until 2020. Parties also agreed on an immediate work programme to increase mitigation action.71

A. Global level

54. The International Renewable Energy Agency (IRENA) is an intergovernmental organization mandated to promote the widespread and increased adoption and sustainable use of all forms of renewable energy, including the ocean’s wave, tidal and thermal energies. IRENA was founded in 2009 by 75 States which signed its statute. As of January 2012, its membership comprised 153 States and the European Union, of which 86 States and the European Union have ratified the statute. IRENA positions itself as a platform for all-inclusive cooperation aimed at creating a central hub for a range of reliable services to the renewable energy community.72 Economic and structural challenges associated with renewable energy sources are particularly challenging for developing countries. For this purpose, IRENA promotes the exchange of information and capacity-building in this field. Similarly, the United Nations Industrial Development Organization has established a trust fund for renewable energies aimed at scaling up the use of renewable energy for productive uses in developing countries and countries with economies in transition.

55. Ocean Energy Systems (also known as the Ocean Energy Systems Implementing Agreement), launched in 2001, is an intergovernmental collaboration operating under the International Energy Agency. Currently, it consists of 18 member States.73 It has set a global target of 748 GW of ocean energy by 2050, which could save up to 5.2 billion tons of carbon dioxide by that year and create 160,000 direct jobs by 2030. In its report entitled “An international vision for ocean energy”,74 Ocean Energy Systems describes the current status, opportunities and challenges for global uptake of ocean energy.

56. The Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization sponsors the Global Ocean Observing System, which provides ocean and coastal observations, including socio-economic data, for climate services and science. It has the potential of providing baseline data needed by marine spatial planning for ocean energy projects. IOC noted that, given the variety of marine renewable energy technologies utilizing tidal currents, wave action, ocean thermal gradients and even the osmotic pressure of salt water, detailed environmental information is required to match the technology to the site and make effective environmental impact assessments.75

57. Since the development of renewable energy depends on the availability of metals (copper, nickel, cobalt and manganese) at affordable prices, the International Seabed Authority noted that it was well placed to contribute to policies related to marine renewable energies.76 In addition, the industrial production of renewable energy technologies requires increasing amounts of rare earth elements and other metals. Recently, the Authority initiated a study to investigate the economic and technical viability of extracting rare earth elements from seabed deposits, as well as a resource assessment. The Authority also indicated that the use of renewable energies, such as floating or drifting ocean thermal energy plants to generate electric power for mining operations, as well as the use of wind turbines and wave energy, was being considered on future mining platforms.

58. The development of marine renewable energies requires detailed hydrographic information if the activity is to be conducted in a safe, efficient and environmentally friendly manner. The required information includes, but is not limited to, seabed topography and composition, water level variation, wave statistics and the occurrence of severe marine conditions. On the basis of this information a wide range of nautical charts and other products can be prepared to assist in the establishment of the infrastructure required for generating marine renewable energy. The International Hydrographic Organization (IHO) is the international body that brings together the national hydrographic agencies responsible for the conduct of hydrographic surveys, the production of nautical charts and the distribution of maritime safety information. IHO member States have established 15 regional hydrographic commissions covering the globe that provide regional cooperation and support for these hydrographic activities.77

59. The United Nations Environment Programme (UNEP) has undertaken assessments of wind energy resources and research studies to inform public and private sector decision-making. It also, inter alia, provides advice to developing countries on broad policy approaches to bolster renewable sources of energy and supports the creation of an enabling environment for small and microbusinesses in the area of renewable energy.78

60. The secretariat of the Convention on the Conservation of Migratory Species of Wild Animals noted that marine renewable energy production could mitigate the effects of climate change, which has potentially severe consequences for the quality, suitability and availability of the habitats of many marine migratory species, as well as direct effects on the species themselves. However, marine renewable energy

71 Contribution of the secretariat of the United Nations Framework Convention on Climate Change.
73 Belgium, Canada, China, Denmark, Germany, Ireland, Italy, Japan, Mexico, New Zealand, Norway, Portugal, Republic of Korea, South Africa, Spain, Sweden, United Kingdom, United States.
74 Available at www.ocean-energy-systems.org/news/international_vision_for_ocean_energy/.
75 Contribution of IOC.
76 Contribution of the Authority.
77 Contribution of IHO.
could also cause severe disturbance to marine migratory species, in particular cetaceans and migratory birds, by introducing underwater noise, a higher risk of collision with turbines or service craft and habitat alterations, including alterations to water flow and sea level. A number of resolutions have been adopted to address these issues. 79

### B. Regional level

61. In Asia and the Pacific, a number of research and development projects are being implemented, in particular in Australia, Japan, New Zealand and the Republic of Korea. 80 To further explore marine renewable energy technology the IOC Subcommission for the Western Pacific held a workshop on the status of marine renewable energy technology development in the Western Pacific, in Melaka, Malaysia, from 16 to 18 February 2012. The workshop aimed at facilitating the establishment of a research and development network, development and implementation of marine renewable energy technologies, sharing of best practices and identification of pilot projects among the member States. 81

62. The European Commission has supported 48 energy research programmes in the past 20 years. 82 In 2010, the European Ocean Energy Association published a road map for the potential development of ocean energy (wave and tidal stream) in Europe, envisaging the realization of approximately 188 GW of installed capacity, or 15 per cent of projected European consumption, by 2050. 83 In September 2011, on behalf of the Offshore Renewable Energy Conversion Platform Coordination Action Project funded by the European Commission, 84 the University of Edinburgh (United Kingdom) published a combined road map up to 2030 for the offshore wind, wave and tidal stream energy sectors. The road map reported on the location of such resources across Europe, projected different development timelines for the ocean energy and offshore wind sectors and revealed the potential for combined resources. 85

63. More recently, the European Commission has funded the Marine Renewables Infrastructure Network, which aims at accelerating the development of marine renewable energy technology by bringing together a network of specialist marine research facilities in various countries. 86

64. In the Americas, the Organization of American States (OAS) is collaborating with the Agence Française de Développement (AFD) and UNEP in the Eastern Caribbean Geothermal Development Project. 87 The project countries are Dominica and France in respect of Guadeloupe and Martinique. In terms of hydrothermal potential, the occurrence of seismicity beneath southern Dominica suggests that an active hydrothermal system exists and fracture permeability at depth could enhance geothermal exploitation potential. 88

65. In September 2011, the Economic Commission for Latin America and the Caribbean (ECLAC), the Development Bank of Latin America, and the Governments of Canada and the United Kingdom co-organized the First Latin American Regional Conference on Marine Energy at ECLAC headquarters in Santiago. The meeting addressed marine energy research and development in Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador and Venezuela. It also provided a regional overview of the work of ECLAC in renewable energy. 89

66. In Africa, ocean thermal energy conversion, as well as wave and ocean current energies, constitute an important potential for the continent. 90 In East Africa, pilot conversion plants and ocean current power projects are being developed, while commercial devices are currently available for wave and tidal stream power. 91 In South Africa, recent assessments suggest that the potential resource of wave power could contribute between 8,000 and 10,000 MW of South Africa’s future electricity supply. More specifically, wave power potential could contribute 84 Gigawatt-hours (GWh) to the overall target of 10,000 GWh set for 2013 by the South African Department of Minerals and Energy. 92

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81 Contribution of IOC. See also the workshop announcement at http://kocean.or.kr/admin/upFile/Announcement_Workshop_Marine_Renewable_Energy_edit2010-final.pdf.

82 Contribution of the European Union.


84 European Union-funded research within the Seventh Research Framework Programme is aimed at supporting offshore renewable energy development and optimizing marine spatial planning. See also European Commission communication COM (2010) 771 final of 17 December 2010 and www.oereca.eu.

85 The road map is structured around five key streams, namely: resource; finance; technology; infrastructure; and environment, regulation and legislation. See ORECCA, European Offshore Renewable Energy Roadmap, 2011, at http://oereca.eu/web/guest.

86 See www.fp7-marinet.eu/. Other EU-funded relevant projects include NER 300 (www.ner300.com/), WaveTrain2 (http://www.wavetrain2.eu/) and WavePlam (www.waveplam.eu/page/).

87 The Global Environment Facility provided funds for the project in the amount of $700,000 from 2003 to 2007. While the OAS role in the project has completed, AFD has continued its work.

88 Contribution of OAS.


91 See report No. 2011-3, Chalmers University of Technology, Department of Energy and Environment (Gothenburg, 2011).

V. Opportunities and challenges of marine renewable energies within the context of sustainable development

67. The development and use of renewable energy sources can enhance diversity in energy supply markets, contribute to securing long-term sustainable energy supplies, help reduce local and global atmospheric emissions and provide commercially attractive options to meet specific energy service needs, particularly in developing countries and rural areas, helping to create new employment opportunities there.93

68. The promotion of marine renewable energy provides both opportunities and challenges of a technological, financial, environmental, social, legal and institutional nature, as outlined below.

A. Potential benefits

69. The potential benefits of renewable sources of energy have received increasing attention at global conferences and summits. For example, the Johannesburg Plan of Implementation called for a major focus on energy for poverty eradication, for changing unsustainable patterns of consumption and production and for the sustainable development of particular regions and groups of countries, including African States and small island developing States.94

1. Environmental aspects

70. The study of the potential environmental benefits of using marine renewable energy is at a nascent stage. It has been noted that the information base needed to study the positive impacts of marine renewable energy remains poor, and that further multi- and interdisciplinary research is needed,95 especially biodiversity-oriented studies.96

71. However, a clear benefit that would result from the development of the use of marine renewable energy is a lesser dependence on traditional sources of non-renewable energy. The use of new and renewable sources of energy for electricity generation offers important options for reducing anthropogenic emissions of greenhouse gases that result from the combustion of fossil fuels in both developed and developing countries.97 Renewable energy sources will become more desirable when their exploitation is cost-effective and they can compete with traditional sources which have a higher availability and complexity and thus may augment local colonization and recruitment rates of many marine organisms.98 Fishing vessels may also be dissuaded from using many gear types in the immediate vicinity of marine renewable energy installations, even in the absence of formal enforcement, owing to the possibility of collision and gear entanglement, thereby limiting the negative impacts of certain destructive fishing practices.99 However, further research is needed to balance these positive effects with the potential negative effects, including attraction of non-native species, modification of the benthic habitat and overpopulation by predators.100

72. Recent studies focusing on the possible benefits of marine renewable energies to biodiversity have noted that artificial structures placed on the seabed or in the water column can increase substrate availability and complexity and thus may augment local colonization and recruitment rates of many marine organisms.99 Fishing vessels may also be dissuaded from using many gear types in the immediate vicinity of marine renewable energy installations, even in the absence of formal enforcement, owing to the possibility of collision and gear entanglement, thereby limiting the negative impacts of certain destructive fishing practices.100 However, further research is needed to balance these positive effects with the potential negative effects, including attraction of non-native species, modification of the benthic habitat and overpopulation by predators.

73. Renewable energy has become, over the last decade, an international industry with supply chains spreading around the world. Important wind turbine manufacturers operate in both developed and developing countries. Renewable energy projects are under way on all continents, often as a result of private-public partnerships. Financing is provided by domestic and foreign institutions and by international financial institutions.101 Global investment in renewable energy jumped 32 per cent in 2010, to a record $2.11 billion.102 Technology improvements and market maturity are driving down the costs of most renewable energy technologies.

74. There is a potential for job creation in the renewable energy sector, as these technologies typically involve processing of raw materials; the manufacture of technology; project design and management; installation and/or plant construction; operations and maintenance; and eventual decommissioning.103 A recent working paper from IRENA estimated gross employment in the renewable energy industry for 2010 at over 3.5 million jobs.104

75. While specific figures for marine renewable energy are not available, the patterns and trends outlined above for renewable energy in general provide an indication of the future potential in the sector.

93 Antonia V. Herzog, Timothy E. Lipman and Daniel M. Kammen, "Renewable energy resources", at www-fa.upc.es/personals/fluids/oriol/ale/eolss.pdf.
94 Johannesburg Plan of Implementation (note 2 above), paras. 7 (e), 9 (a) and (c), 20 (c), (d), (e), (g), (j), (k), (o) and (o), 40 (b), 59 (b) and 62 (j).
97 See A/62/208.
99 Inger (note 96 above), pp. 1148-1149.
100 Ibid., p. 1149.
101 See Boehlert and Gill (note 95 above).
103 UNEP (note 98 above), p. 28.
104 Ibid., p. 12.
105 Ibid.
3. Social benefits

76. Marine renewable energy sources may be a viable and sustainable solution for coastal communities that have limited or no access to modern energy services. One of the greatest technical problems for marine renewable sources that must be overcome lies in the fact that the energy generated by offshore wind farms or wave, tide, salinity or thermal devices must be cabled to shore and connected to the existing energy grids. Moreover, renewable energy equipment used in that regard must also conform to certain standards of grid voltage, frequency and waveform purity requirements so that its benefits can be accessed by remote communities.107

77. The IPCC noted that access to modern energy services is an important precondition for many fundamental determinants of human development, including health, education, gender equality and environmental safety.108 In fact, the experiences of many countries during the past several decades show that higher levels of development are linked to sufficiently high levels of energy consumption.109 The achievement of the Millennium Development Goals and of more equitable socio-economic development will depend on providing the poor with increased access to modern energy services to enable them to meet their basic needs and for income-generation.110 The persistent lack of access to energy is seriously impeding socio-economic development, particularly in sub-Saharan Africa and in countries of South Asia, but also in many other developing countries, including many of the small island developing States.111

B. Potential challenges of marine renewable energies, including for developing States

78. There are a number of challenges to the full realization of the promises and opportunities which the development and use of marine renewable sources of energy are expected to bring.

79. This stems largely from the fact that such sources are still at an early stage of development. Therefore, their impact is not entirely known and their status in the legal, institutional and market frameworks remains unclear.

80. Developing and developed countries face environmental, economic and social challenges. However, the costs associated with research and development as well as the gaps in scientific research and technological know-how represent a special challenge for developing countries.

81. Of the various ocean energy technologies, wave and tidal energies are attracting most of the investments, which are in the form of venture capital or government grants rather than asset financing. It has been noted that current investments are insufficient to fully develop the potential of marine renewable energies. Even with an assumption of improving technologies for newer energy sources, energy production costs using average estimates in the European Union are higher for most marine renewable energies when compared to many currently employed technologies. For example, when projected to 2020, only offshore wind production is estimated to be cheaper than coal. In addition to the high capital costs required for marine renewable energies to become commercially viable, there are also costs related to the storage of energy and its transmission into the grid.112 Research and development is therefore occurring in these related fields.113

1. Environmental challenges

82. The monitoring of the effects of these sources is rendered even more challenging by the absence of baseline data concerning prospective development sites.

83. The identification of environmental impacts is further compounded by the fact that each type of marine renewable energy device may have specific effects requiring individualized assessments. It is still largely unknown whether these effects are simply proportional to the number of devices employed or more complex. For example, by interacting with other uses and the ecological conditions of an area, these devices might produce an impact on marine life greater than expected for any renewable energy unit or source, or even greater than the sum of all existing stressors present in that area.

84. In the assessment of marine renewable sources of energy, the duration of their impacts should also be taken into account. The activities and effects associated with the construction and decommissioning of energy source devices and installations (e.g. seismic explorations; construction noise caused by drilling, use of explosives, ramming and piling; dredging; cable laying; water turbidity; construction vessel activities) may have short- or medium-term impacts. The electromagnetism and physical presence of structures could have long-term impacts.114

85. Researchers, industry experts and government agencies recognize that the most common environmental impacts of renewable energy technologies may include reduction of the velocity of marine currents and decrease in the heights of waves resulting from extraction of wave or tidal energy; alteration of benthic habitats and sediment transport or deposition by the construction activities and the continuous presence of marine renewable energy devices; killings or change in the behaviour of fish and mammals from noise and electromagnetic fields; interference with the movement, feeding, spawning and migration paths of fish, mammals and birds, which may get hurt or entangled or may be attracted or hauled out; and release of toxic chemicals as a result of accidental spills and leaks or the accumulation of metals or organic compounds. Other uses of the oceans, including enjoyment of their visual appearance, may be hindered by the installation and presence of renewable energy devices and sites.

86. It is believed that the only effective way to fill the existing knowledge gap is by testing the devices in situ and monitoring and evaluating their impacts, taking into account the precautionary approach.

87. In addressing the environmental impacts of marine renewable energy sources, due consideration should be given to mitigation measures. Marine spatial planning,
for instance, can be applied to the areas in which renewable energy technologies would be employed, including with a view to minimizing interference with other uses of the oceans. Measures taken in the context of marine spatial planning include the avoidance of protected areas, sensitive habitats, migratory pathways, spawning, nursery, overwintering and feeding grounds and of areas with contaminated sediments. Other measures may be specific to the various types of devices, installations or sites. They include shielding; cable burial and/or sheathing; optimization of device shapes and design as well as of the spacing between individual devices; sound-insulation; installation of thick mooring lines which pose smaller risks of entanglement than thin and slack lines; minimization of horizontal surfaces above water to reduce perching and haul-out; utilization of measures to contain and reduce spills; and utilization of non-biocidal coatings.

2. Economic and institutional challenges

88. The high costs of the scientific and technological development of installations for marine renewable energy sources as well as the long-term nature of the projects required to bring them to fruition pose economic challenges. The current comparative market cost of energy derived from renewable marine sources, as compared to traditional sources of energy, remains high.

89. As is typical for new technologies that require large up-front financial investments, private-public partnerships are considered critical for the launch of marine renewable energy sources as well as for the development of a market for them. Since the world economic crisis began in 2008, however, private funding has progressively declined, rendering the public component more critical. In this connection, it should be noted that the importance of public sector support is not confined to the funding of the early stages of development of new technologies. The creation of a favourable private investment environment through financial and fiscal incentives, renewable portfolio standards, offsets or “feed-in” tariffs has proved equally, if not more, important. The ultimate increase in the costs of fossil fuels will also inevitably lead to greater interest by the private sector in renewable sources of energy.

90. The patchwork of existing legal, policy and administrative frameworks poses additional difficulties to private investors. In the absence of legislation tailored to the specific needs of a new technology, developers and investors may find that licensing and fiscal policies are inadequate because of the lack of a centralized authority or competent government agency.

91. Renewable resources such as wind, waves, salinity and tides are variable by nature. While this problem can be addressed through supply and production forecasting, a regulatory framework can both make forecasting mandatory and establish mechanisms to defray its costs.

3. Social challenges

92. The deployment of wind farms and other installations for the production of offshore renewable energy sources has been perceived as a challenge by local communities. The concerns expressed relate to the adverse impact on the aesthetics of the landscape, a consequent potential decline of coastal property values, public safety risks and environmental impacts that may not be offset by the possible increase in the number of jobs created by the new energy technologies.

93. In certain cases, marine renewable energy sources may have cultural impacts by reason of their placement in historic properties, archaeological sites or sites devoted to traditional uses. For this reason, it is very important that local communities be directly involved in identifying the sites for the installation of generators of marine renewable energy as well as the landing sites of related cables, and assessing benefits and costs connected with them. Dissemination of information and education of stakeholders are crucial for a meaningful involvement of local communities in this decision-making process.

C. Opportunities for enhanced cooperation and coordination, including for capacity development

94. As marine renewable energy is a nascent and diverse sector, research, development and demonstration programmes are sometimes undertaken in isolation from one another or with limited cooperation and coordination. New technologies frequently require significant investments which are often leveraged in the hopes of securing patents and obtaining new market shares. Furthermore, the development of the sector necessarily requires enabling policies, legal frameworks and financial support at the local and international levels.

95. To date, the sector appears to be characterized to some extent by a patchwork of research, technologies and regulatory and financing frameworks. Thus enhanced cooperation and coordination across all components of the sector, and at all levels, is increasingly necessary as the sector continues to develop.

96. Many States are in the process of adopting and/or implementing renewable energy programmes. Still, it appears that an important institutional and human capacity gap may need to be addressed. Particular attention must be paid to capacity-building.

1. Global level

97. At the global level, opportunity for enhanced cooperation and coordination lies in a number of intergovernmental bodies. IRENA is mandated by its member States to promote the widespread and increased adoption and sustainable use of all forms of renewable energy, and could eventually serve as a focal point for intergovernmental cooperation, coordination and capacity development (see also sect. IV.A above). Other intergovernmental organizations are also active in this field and include, inter alia, the International Energy Agency and the Organization for Economic Cooperation and Development. The recently launched initiative of the

Secretary-General, Sustainable Energy for All, also seeks to mobilize urgent global action through all sectors of society.

98. As regards cooperation and coordination in relation to the environmental aspects of marine renewable energies, the secretariat of the Convention on the Conservation of Migratory Species highlighted the need for close cooperation at the national level, between focal points for that Convention and for the United Nations Framework Convention on Climate Change in providing expert guidance on how migratory species can be affected by adaptation and mitigation activities, such as renewable energy and bio-energy development, and in developing joint actions aimed at reducing negative impacts on migratory species. It also drew attention to the need to develop voluntary guidelines on offshore construction activities, which should wherever possible be harmonized and developed in cooperation between different intergovernmental instruments.

99. An example of global capacity development opportunities can be found in the IRENA policy advisory and capacity-building programme, which aims to strengthen countries’ abilities to design and implement appropriate policies and supportive financial frameworks as well as build the human and institutional capacities necessary for a rapid deployment of renewable energies. Another example is the Transfer Renewable Energy and Efficiency programme, which has as its goal to train relevant stakeholders on technical, economic, financial and legal aspects of renewable energy and energy efficiency technologies and to provide an effective framework for market growth in the countries of origin, so as to develop sustainable capacity-building strategies in cooperation with the partner countries, especially developing and emerging countries.

100. Capacity development also may take the form of formal academic training. For example, in the field of natural sciences, the IRENA scholarship programme offers, in partnership with the Government of the United Arab Emirates, 20 annual Master of Science scholarships to be undertaken at the Masdar Institute of Science and Technology in the United Arab Emirates. In the field of financial, legal and institutional capacity development, the Masters in Business Administration in Renewables is offered by the Renewables Academy in cooperation with the Beuth University of Applied Sciences (Berlin).

101. There are examples of international industry associations and non-governmental organizations operating globally (some focusing on specific technologies or geographical regions) to promote international cooperation in the fields of research, development, deployment, policy and finance. Certain associations and organizations are active in capacity-building in the finance and regulatory areas, while others support standardized research, development and deployment methodologies. Generally, these initiatives are ultimately aimed at fostering cooperation, coordination and integration, harmonizing regulatory frameworks and opening of capital markets in accordance with their respective areas of focus.

2. Regional and national levels

102. Programmes of cooperation and coordination within the marine renewable energy sector appear to lie in particular, in the realms of scientific research, technology development and deployment, and the accompanying policy and regulatory regimes.

103. While cooperation and coordination, even harmonization, can already be observed within numerous States and in some regions of the world, the development of human capacity remains of utmost importance.

104. Beyond building the capacity to develop, deploy and monitor new technologies, there is a need to reinforce capacity in several key areas including: institutional, policy and regulatory; financing; private-sector actors; and technical and data management. The capacity of communities and end users also needs reinforcing.

105. There are examples of industry associations and non-governmental organizations conducting in-country specialized training programmes aimed at relevant institutions and individuals. Bilateral and multilateral programmes of assistance are also undertaken, and may include private sector participation.

106. The same capacity needs have been identified at the regional level. It has also been noted that capacity-development initiatives must reach from the regional to the national level, involve all stakeholders, and be customized to national circumstances.

107. Furthermore, as the renewable energy sector is developing, capacity-building initiatives must remain flexible and responsive to the rapidly changing needs.

VI. Conclusions

108. A sustainable future will involve a combination of renewable energy and energy efficiency solutions. The oceans contain a large amount of energy with different origins that can usefully be exploited. These gifts of nature can assist in alleviating poverty, promoting green growth, combating climate change and enhancing energy security. Renewable energy, including marine renewable energies, can play a significant role in meeting sustainable development goals, enhancing energy security, creating jobs and meeting the Millennium Development Goals. Yet, marine renewable energies constitute untapped potential in many regions of the world.

109. Economic, regulatory and policy mechanisms are needed to support the wide dissemination of renewable energy technologies, unleash innovation and investments and promote the scaling up of successful models. Marine renewable energy sources are crucial alternatives for sustainable development.

110. Countries could consider systematically increasing the use of renewable energy sources, including marine renewable energies, according to their specific social, economic, natural, geographical and climatic conditions. In order to support the development and deployment of marine renewable energies, further investments in technology, research and development are required together with

118  Special address by Sha Zukang, Under-Secretary-General for Economic and Social Affairs and Secretary-General of the 2012 United Nations Conference on Sustainable Development, at the second session of the IRENA Assembly, Abu Dhabi, 14 January 2012.


120  Programme for the Further Implementation of Agenda 21 (General Assembly resolution S/19-2, annex), para. 46.
increased efforts to undertake resource potential assessments and mapping, data collection and monitoring and economic modelling. Building the technological know-how and establishing regulatory frameworks that encourage investments, cooperation and coordination, capacity-building and technology transfer, could facilitate the scaling up of marine renewable energy to its full commercial potential. Such measures are necessary if we are to reach the goal of doubling the renewable energy share in the overall global energy mix by 2030 as envisioned in the Secretary-General’s initiative “Sustainable Energy for All”.

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Summary

The present report is submitted pursuant to paragraph 249 of General Assembly resolution 66/231, in which the Assembly requested the Secretary-General to prepare a report on developments and issues relating to ocean affairs and the law of the sea, including the implementation of resolution 66/231, for consideration at its sixty-seventh session. It is also being submitted to States parties to the United Nations Convention on the Law of the Sea, pursuant to article 319 of the Convention. Intergovernmental organizations, the specialized agencies, funds and programmes of the United Nations engaged in activities relating to ocean affairs and the law of the sea and funding institutions contributed to this report.
I. Introduction

1. The present report provides an overview of developments in ocean affairs and the law of the sea. Its purpose is to assist the General Assembly in its annual review of the implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 (the Convention) and other developments related to ocean affairs and the law of the sea. This report should be read in conjunction with (a) the report of the Secretary-General on oceans and the law of the sea (A/67/79 and Corr.1), which addressed the topic of focus at the thirteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea; (b) the report on the work of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (A/67/87); (c) the report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its thirteenth meeting (A/67/120); (d) the letter dated 8 June 2012 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction addressed to the President of the General Assembly (A/67/95); and (e) the report of the twenty-second Meeting of States Parties to the Convention (SPLOS/251). The present report covers the period between 1 September 2011 and 31 August 2012.


A. Status of the Convention and its implementing agreements

2. Since my previous report, the status of the Convention, of the Agreement relating to the implementation of Part XI of the Convention (the Part XI Agreement) and the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the United Nations Fish Stocks Agreement) remained unchanged. As at 31 August 2012, there were 162 parties to the Convention, including the European Union; 141 parties to the Part XI Agreement; and 78 parties to the United Nations Fish Stocks Agreement.

3. Thirty years ago, on 10 December 1982, the Convention was opened for signature in Montego Bay, Jamaica. On the occasion of the thirtieth anniversary of this significant instrument, in a letter dated 26 January 2012, I addressed an invitation to all Member States which are not yet parties to the Convention to consider becoming parties. Throughout the year, I also organized, in cooperation with States, United Nations agencies, funds and programmes, intergovernmental and non-governmental organizations and other relevant bodies, a series of activities to mark this occasion.2

B. Meeting of States Parties to the Convention

4. The twenty-second Meeting of States Parties to the Convention was held in New York from 4 to 11 June 2012. The States parties approved the budget of the International Tribunal for the Law of the Sea (the Tribunal) in the amount of $21.24 million and adopted a declaration on the thirtieth anniversary of the opening of signature of the Convention. At the Meeting, 20 new members of the Commission on the Limits of the Continental Shelf (the Commission) were elected for a term of five years. At the request of the Group of Eastern European States, the election of one member of the Commission was postponed in order to allow for additional nominations from that Group.3 The period for nominations was established from 15 July to 16 October 2012.

III. Bodies established by the United Nations Convention on the Law of the Sea

A. Commission on the Limits of the Continental Shelf and its workload

5. The Commission held its twenty-eighth, twenty-ninth and thirtieth sessions from 1 August to 9 September 2011, 19 March to 27 April 2012 and 30 July to 24 August 2012, respectively.4

6. To date, the Commission has adopted 18 sets of recommendations. Three States, Ireland, Mexico and the Philippines, have established the outer limits of their continental shelf on the basis of the recommendations of the Commission.

B. International Seabed Authority

7. The Assembly of the International Seabed Authority held its eighteenth session in Kingston from 16 to 27 July 2012. The Assembly elected Nii Oduton as Secretary-General for a second four-year term. It also adopted the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (ISBA/18/CWP.1). The Council of the Authority approved a workplan elaborating regulations for exploitation of polymetallic nodules in the Area by 2016.

8. A special session was held on 24 July to commemorate the thirtieth anniversary of the opening for signature of the Convention.

C. International Tribunal for the Law of the Sea

9. Information on major developments in the work of the Tribunal is contained in its annual report for 2011 (SPLOS/241). See also section XV of the present report.

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2 See SPLOS/251, para. 85.
3 See CLCS/72, CLCS/74 and CLCS/76.
IV. Maritime space

10. The sustainable management of oceans and their resources is a critical underpinning of sustainable development. Clearly defined and publicized limits of maritime zones under national jurisdiction are an essential basis for such management, as they provide certainty with regard to the extent of the sovereignty or sovereign rights and jurisdiction of coastal States.

11. In recent years, there has been an increase in the number of actions relating to the delineation and delimitation of maritime zones. During the reporting period, I received a number of communications from States depositing charts and geographical coordinates of points pursuant to the Convention (articles 16 (2), 47 (9), 75 (2) and 84 (2)), or reacting to such deposits. Laws and regulations regarding innocent passage through the territorial sea or the suspension of such passage were also received, pursuant to the obligations established in articles 21 (3) and 42 (3) of the Convention. These communications provide evidence of the implementation of the relevant provisions of the Convention, as well as of a continuous trend towards the assertion of national jurisdiction and sovereignty over ocean space.

12. The economic promises offered by the exploitation of seabed resources and the end, on 13 May 2009, for many States parties to the Convention, of the 10-year period for making submissions to the Commission as set out in article 4 of annex II to the Convention, have also led to a steep increase in the number of submissions to the Commission and greater political attention paid, at the highest level, to supporting the process to establish the outer limits of the continental shelf. During the reporting period, 5 States have made submissions to the Commission, bringing the total number of submissions to 61.9

13. While there are still a number of outstanding maritime disputes, there has also been progress in that some of these disputes have been resolved through negotiation and conclusion of boundary delimitation treaties through third-party dispute settlement (see section XV below).

14. Information on these and other developments has been published in the Law of the Sea bulletin Nos. 77-79. Actions by States parties in implementing the Convention were given publicity through Law of the Sea information circulars Nos. 34 and 35. The information on State practice is available on the website on the maritime space of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs (the Division).10 The Division assists States in fulfilling their other obligations related to the deposit of charts and geographical coordinates under the Convention.

V. Developments relating to international shipping

15. According to the United Nations Conference on Trade and Development (UNCTAD), the world merchant fleet reached almost 1.4 billion dead-weight tons in January 2011, which represented an increase of 120 million dead-weight tons over 2010.11

16. Developing countries expanded their participation in a range of maritime businesses, in particular the more capital-intensive or technologically advanced sectors, such as ship construction and ship-owning. For example, 9 of the 20 largest ship-owning countries were also developing countries. Nevertheless, many least developed countries still lack the capacity to fully participate in maritime businesses, which increasingly require advanced technological capacities and industrial or service clusters.

17. A number of intergovernmental organizations continued to take measures to improve the safety and efficiency of international shipping. At its twenty-seventh session, in November 2011, the Assembly of the International Maritime Organization (IMO) adopted a high-level action plan for 2012-2013 and a six-year strategic plan.12

18. Safety of navigation. At its ninetieth session, held in May 2012, the IMO Maritime Safety Committee adopted a range of measures to improve safety of navigation, including amendments to the 1974 International Convention for the Safety of Life at Sea, 1974.13 In particular, the regulation on enhanced surveys will make mandatory the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011.14 Amendments were also made to the International Code of Safety for High-Speed Craft and the International Code for Fire Safety Systems, 2000.15

19. In the wake of the Costa Concordia incident off the coast of Italy in January 2012, the Maritime Safety Committee adopted a resolution recommending operational measures aimed at enhancing the safety of large cruise passenger ships.16

20. With regard to the system for long-range identification and tracking of ships, the International Data Exchange for Maritime Purposes (IMDG) is in operation. As of 9 March 2012, 97 out of 161 parties to the International Convention for the Safety of Life at Sea were part of the system and 66 data centres for long-range identification and tracking of ships were connected to the Exchange.17

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9. See, for example, decree No. 6433 on the delineation of the boundaries of the exclusive economic zone of Lebanon, 2011.

10. Regulation of the innocent passage of ships in the territorial waters, law of Cyprus, 2011 (L.28 (I) of 2011); and communications dated 23 January 2012 and 10 and 20 April 2012 from Mexico regarding the suspension of innocent passage through the territorial sea.

11. See also the decision contained in SLOPS/72.

12. See, for example, the treaty of 15 September 2010 between Norway and the Russian Federation concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean; and the agreement of 3 October 2011 between the Bahamas and Cuba for the delimiting line between their maritime zones.


15. See also IMO Assembly resolution A.1049(27) and Corr.1.

16. Ibid., resolution MSC.336(90).

17. Resolutions A.1037(27) and A.1038(27).

18. See, for example, the treaty of 15 September 2010 between Norway and the Russian Federation concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean; and the agreement of 3 October 2011 between the Bahamas and Cuba for the delimiting line between their maritime zones.

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22. At its nineteenth session, in May 2012, the IMO Maritime Safety Committee adopted amendments to the International Maritime Dangerous Goods Code, which included harmonization with amendments to the United Nations Recommendations on the Transport of Dangerous Goods — Model Regulations. The amendments will enter into force on 1 January 2014 and can be applied on a voluntary basis from 1 January 2013.17

23. Hydrographic surveying and charting. The next generation of electronic nautical chart product specification, S-101, is being developed by the International Hydrographic Organization (IHO), with the main part being planned for completion by early 2013.18

24. Implementation and enforcement. At its twenty-seventh session, in November 2011, the IMO Assembly adopted resolution A.1052(27) on procedures for port state control, 2011, and A.1053(27) on the survey guidelines under the harmonized system of survey and certification, 2011.

25. Wreck removal. In November 2011, the IMO Assembly adopted resolution A.1057(27) aimed at removing ambiguity on the issuing of wreck removal certificates to bareboat-registered vessels under the Nairobi International Convention on the Removal of Wrecks, 2007. The purpose of the resolution is to assist States in ratifying the Convention, which has not yet entered into force.

VI. People at sea

A. Seafarers and fishers

26. Seafarers. In November 2011, the IMO Assembly adopted resolution A.1033(27) establishing 25 June of each year as the Day of the Seafarer and resolution A.1056 (27) on the promotion of the application of the 2006 guidelines on fair treatment of seafarers in the event of a maritime accident.

27. As at 20 August 2012, the Maritime Labour Convention, 2006, had received 31 ratifications, representing nearly 60 per cent of the global gross tonnage of ships. It is expected to enter into force in 2013. In June 2012, the International Labour Organization (ILO) undertook gap analyses of national legislation in five member States and published handbooks containing a model for legal provisions that implement the Maritime Labour Convention19 and guidance on implementing the Convention and social security for seafarers.20

28. With a five-year transitional period until 1 January 2017, the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and its associated code entered into force on 1 January 2012.


30. The Work in Fishing Convention, 2007, requires eight more ratifications to enter into force.

B. International migration by sea

31. Irregular migration. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that in 2011, irregular arrivals by sea amounted to 1,030 from Turkey to Greece; 61,000 from North Africa, Greece and Turkey to Italy; 1,574 from North Africa to Malta; 5,443 from North and West Africa to Spain; and 103,000 from Somalia to Yemen. It is also estimated that 1,500 people have died attempting to flee from Libya to Europe.21

32. Focusing on the reality of irregular “mixed” movements,22 UNHCR organized an expert meeting on responses to refugees and asylum-seekers in distress at sea in November 2011 in Djibouti. At the meeting, the existing legal framework was discussed, including the United Nations Convention on the Law of the Sea; gaps in implementation were addressed; and operational tools to enhance international cooperation were proposed.23

33. Smuggling by sea. While smuggling by sea accounts for a small proportion of overall migrant smuggling, the particular dangers of irregular travel at sea make it a priority for response.24 In April 2012, the United Nations Office on Drugs and Crime (UNODC) organized an international conference in Mexico on the challenges of and progress in the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. This conference facilitated the dissemination and better knowledge of international instruments and promoted international cooperation.

34. Stowaways. The IMO Facilitation Committee adopted revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases. The revised guidelines encourage public authorities, port authorities, ship owners and masters to cooperate in order to resolve stowaway cases expeditiously and secure the early return or repatriation of the stowaway.25

17 Ibid., resolution MSC.328(90).
18 IHO, CONG/18/WP.2, element 2.11, paras. 4.3-4.4.
index.htm.
index.htm.
22 As defined by UNHCR, “mixed” migration consists of movements where refugees, asylum-seekers, victims of trafficking, unaccompanied and separated children and other persons travel internationally, frequently in an irregular manner.
25 FAL/37/17, resolution FAL.11(37).
VII. Maritime security

A. Piracy and armed robbery at sea

35. Acts or attempted acts of piracy and armed robbery at sea. In the first six months of 2012, 206 attacks were reported worldwide, compared with 316 attacks during the same period in 2011.26 The total number of acts or attempted acts of piracy and armed robbery at sea worldwide, as reported to IMO in 2011, was 544, compared with 489 in 2010.27

36. At the regional level, in 2011 IMO received 223 incident reports for East Africa; 63 for the Indian Ocean; 28 for the Arabian Sea; 113 for the South China Sea; 22 for the Straits of Malacca and Singapore; 29 for South America and the Caribbean; and 61 for West Africa.


38. Piracy and armed robbery against ships off the coast of Somalia. The International Maritime Bureau of the International Chamber of Commerce reported that in the first six months of 2012, it had received reports of 69 attacks, attributable to Somali pirates, compared with 163 for the same period in 2011. The Contact Group on Piracy off the Coast of Somalia reported at its eleventh plenary meeting, on 29 March 2012, that the reduction in overall attacks could be attributed to a number of factors, such as the application of best management practices by the shipping industry, the continuing naval presence and the deployment of military vessel protection detachments and privately contracted armed security personnel. IMO has issued interim recommendations and guidance with respect to these personnel and continues to work on this issue.28

39. Owing to the current situation off the coast of Somalia, the Security Council decided in its resolution 2020 (2011) to renew the authorizations as set out in paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851 (2008), as renewed by paragraph 7 of resolution 1897 (2009) and paragraph 7 of resolution 1950 (2010), granted to States and regional organizations cooperating with the Transitional Federal Government of Somalia in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the Transitional Federal Government to the Secretary-General.

40. There have been concerns that allegations of illegal fishing and dumping of toxic waste may have been used by pirates to justify their criminal activities. In response to a request by the Security Council in resolution 1976 (2011), in October 2011 I issued a report on the protection of Somali natural resources and waters (S/2011/661).

B. Transnational organized crime

42. At its twentieth session, in April 2011, the Commission on Crime Prevention and Criminal Justice of UNODC called for practical action against organized crime and adopted a resolution in which it urged Member States to strengthen international cooperation at all levels in combating transnational organized crime committed at sea.29


44. In relation to the proliferation of nuclear, chemical and biological weapons, the Security Council Committee established pursuant to resolution 1540 (2004) engaged in outreach and capacity-building activities focusing on border controls and law enforcement efforts to combat illicit trafficking in nuclear, chemical and biological weapons at sea and in ports.

VIII. Marine science and technology

A. Marine science

45. Intergovernmental Oceanographic Commission Advisory Body of Experts on the Law of the Sea. Following consideration of the report of the intersessional open-ended working group to review the Advisory Body of Experts on the Law of the Sea of the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO),30 at its forty-fifth session, held in June 2012, the IOC Executive Council decided that the Advisory Body of Experts would continue its work with a focus on priorities as tasked by the IOC governing bodies.

46. Research project. In February 2012, IOC/UNESCO announced a partnership with the research schooner Tara to promote awareness of the oceans and emphasize their importance at the United Nations Conference on Sustainable Development, held in Rio de Janeiro from 20 to 22 June 2012. The cooperation focuses on

26 See IMO monthly reports on acts of piracy and armed robbery against ships, MSC.4/Circ. 167, 168, 170-175 and 181-186.
27 MSC.4/Circ. 180.
29 Official Records of the Economic and Social Council, 2011, Supplement No. 10 (E/2011/30-
E/CN.15/2011/21), resolution 20/5.
30 IOC/EC-XXX/2 annex 7.
scientific research, education and public awareness of the role the oceans play in climate change and the importance of sustainable management practices.

47. Ocean observing programmes. The Global Oceans Observing System has surpassed its target of 60 per cent completion and has demonstrated that better ocean observations and services could be provided with increased funding. The first meeting of the Global Oceans Observing System Steering Committee, held in June 2012, emphasised the importance of sustaining present observations, affirmed the importance of expanding the System into new variables and recognized the need to develop the capacity of member States to participate in it. The Global Oceans Observing System has surpassed its target of 60 per cent completion and has demonstrated that better ocean observations and services could be provided with increased funding. The first meeting of the Global Oceans Observing System Steering Committee, held in June 2012, emphasised the importance of sustaining present observations, affirmed the importance of expanding the System into new variables and recognized the need to develop the capacity of member States to participate in it. 

48. At its forty-fifth session, the Executive Council of IOC established an interessional consultation of all IOC member States to identify scientific and technical issues within the IOC mission and mandate to improve its activities in the area of sustained ocean observations and services. The participants at the United Nations Conference on Sustainable Development also called for international cooperation in the observation of ocean acidification and vulnerable ecosystems. The relevance of global mapping and the collection of environmental data through the Global Earth Observation System of Systems were also noted.

B. Capacity-building in marine science

49. The United Nations Conference on Sustainable Development recognized the importance of building the capacity of developing countries and emphasized the need for cooperation in marine scientific research to implement the provisions of the United Nations Convention on the Law of the Sea and the outcomes of the major summits on sustainable development, as well as for the transfer of technology, taking into account the IOC criteria and guidelines on the transfer of marine technology.

50. At its forty-fifth session, the IOC Executive Council took note of the conclusions of the Ad Hoc Advisory Group for the IOC Ocean Sciences Section, which had recommended that the Section focus on supporting local and global initiatives to address scientific gaps and improving inclusiveness through national capacity-building, especially in Africa, and, consistent with UNESCO priorities, supporting the interdisciplinary nature of research.

C. Early warning systems

51. Indian Ocean. The Indian Ocean Tsunami Warning and Mitigation System reached full operational stage in October 2011. A regional tsunami advisory service provided by Australia, India and Indonesia also became operational.

52. North-East Atlantic and Mediterranean. At its eighth session, held in November 2011, the Intergovernmental Coordination Group for the Tsunami Early Warning and Mitigation System in the North-Eastern Atlantic, the Mediterranean and Connected Seas acknowledged the steady progress made towards the provision of tsunami watch services for the region.

53. Caribbean. At its seventh session, held in April 2012, the Intergovernmental Coordination Group for the Tsunami and Other Coastal Hazards Warning System for the Caribbean and Adjacent Regions highlighted significant progress in the area of sea-level monitoring, with 38 sea-level stations available for tsunami monitoring. Seismic monitoring has also improved significantly, with over 100 stations delivering real-time data for tsunami monitoring. The Group recommended to the forty-fifth session of the IOC Executive Council, in June 2012, that it consider enlarging the area of responsibility to the West Atlantic, including Greenland, Brazil, Uruguay and Argentina.

54. Pacific. New experimental tsunami forecast products are being developed by the Pacific Tsunami Warning and Mitigation System, including maps indicating the level(s) of threat for each country.

55. Since the great East Japan earthquake and tsunami on 11 March 2011, many national and international post-tsunami field surveys and performance analyses of tsunami early-warning systems have been carried out, leading to an improvement in preparedness for tsunamis in the region. On 16 and 17 February 2012, UNESCO/IOC co-organized with the Government of Japan and the United Nations University an international symposium entitled “The great East Japan tsunami on 11 March 2011 and tsunami warning systems: policy perspectives”.

D. Recent developments in marine technology

56. The field of marine technology continues to be of particular interest. In my report on oceans and the law of the sea (A/67/79), I focused on marine renewable energies.

E. Submarine cables and pipelines

57. The International Telecommunication Union, IOC/UNESCO and the World Meteorological Organization have created a joint task force to explore the technical, business and legal issues involved in the use of submarine cables for climate monitoring and disaster warning.

F. Protection of archaeological and historical objects

58. In December 2011, the tenth anniversary of the Convention on the Protection of the Underwater Cultural Heritage was celebrated through a high-level scientific colloquium on the factors impacting underwater cultural heritage and to explore ways of collaborating in the mitigation of activities adversely affecting this heritage.

31 See IOC/GOOS-SC-1/3s.
32 EC-XLV/Dec.4.2.
33 See General Assembly resolution 66/288, annex, paras. 166 and 274.
34 Ibid., para. 160.
35 See EC-XLV/Dec.4.4.
36 See IOC/INF-1294, para. 15.
37 Paras. 12-17.
IX. Conservation and management of marine living resources

A. Marine fishery resources

59. Sustainable fisheries make a significant contribution to food security, income, wealth and poverty alleviation. Maintaining and, where possible, increasing the contribution of fish production and trade is therefore an important element of economic and food security policies for many countries, especially small island developing States and coastal low-income countries in food deficit. Regrettably, the proportion of fully exploited stocks increased from 43 per cent in 1989 to 57 per cent in 2009. Approximately 30 per cent of stocks are also overexploited. The remaining 13 per cent of stocks are not fully exploited, but these stocks often lack high production potential.

60. Several intergovernmental organizations are taking measures to improve the conservation and management of marine fishery resources, including by promoting scientific research on fisheries, addressing unsustainable practices, such as illegal, unreported and unregulated fishing, enhancing cooperation and coordination and supporting capacity-building activities. Increasingly, emphasis is being placed on the development of “green economy” policies in fisheries and aquaculture, in order to contribute to wider social and environmental sustainability goals. Greening the fisheries and aquaculture will require the overall recognition of the wider societal roles of fishers and fish farmers, in particular that of small-scale operations for local economic growth, poverty reduction and food security. Supporting development and investment in green technologies and raising industry and consumer awareness of the sustainability of fisheries and aquaculture are also essential.

61. The United Nations Conference on Sustainable Development reaffirmed the need to promote sustainable fisheries and aquaculture and stressed the crucial role of healthy marine ecosystems, sustainable fisheries and sustainable aquaculture for food security and nutrition and in providing for the livelihoods of millions of people. The Conference also recognized the important contributions that can be made by small-scale fisherfolk to sustainable development through production activities that are environmentally sound, enhance food security and the livelihood of the poor and invigorate production and sustained economic growth.

62. A wide range of commitments were also made to improve the conservation and management of marine fishery resources, including by restoring fish stocks, eliminating illegal, unreported and unregulated fishing, improving the performance of regional fisheries management organizations and arrangements, eliminating subsidies that contribute to overcapacity and overfishing and assisting developing countries in developing their national capacity to conserve, sustainably manage and realize the benefits of sustainable fisheries.

63. At its sixty-sixth session, the General Assembly conducted a review of the actions taken by States and regional fisheries management organizations and arrangements in response to the relevant paragraphs of resolutions 61/105 and 64/72 to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks. In order to assist the General Assembly in its review, the Secretary-General prepared a report on the actions taken by States and regional fisheries management organizations and arrangements in response to resolutions 61/105 and 64/72 (A/66/307).

64. Pursuant to paragraph 128 of resolution 64/72, the Secretary-General also convened a two-day workshop on 15 and 16 September 2011, to discuss the implementation of the relevant paragraphs of the two resolutions. The discussions that were held during the workshop were taken into account by the General Assembly in deciding on further urgent actions regarding bottom fishing in areas beyond national jurisdiction.

65. The results of the review are reflected in General Assembly resolution 66/68, which was adopted on 6 December 2011. The Assembly also decided to conduct a further review in 2015 of the actions taken by States and regional fisheries management organizations and arrangements in response to resolutions 64/72 and 66/68, with a view to ensuring effective implementation of the measures and making further recommendations, where necessary.

Food and Agriculture Organization of the United Nations Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

66. The 2009 Food and Agriculture Organization of the United Nations (FAO) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Port State Measures Agreement) will enter into force 30 days after the date of deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession. As of 29 June 2012, there were four parties to the Agreement, including the European Union.

67. FAO launched a series of regional capacity-development workshops to support the implementation of the Port State Measures Agreement. The first such workshop was convened in Bangkok in April 2012 for South-East Asian countries.

68. At its thirtieth session, held in July 2012, the FAO Committee on Fisheries endorsed the terms of reference for the ad hoc working group under part 6 of the Port State Measures Agreement, which are to be applied when that Agreement enters into force.
International guidelines on securing sustainable small-scale fisheries

69. Following approval, at the twenty-ninth session of the Committee on Fisheries, of the development of a new international instrument on small-scale fisheries, draft international guidelines for securing sustainable small-scale fisheries were developed, based on stakeholder consultations in 2011 and 2012. At its thirtieth session, the Committee debated the scope and aim of the guidelines and called for further consultations, as well as the convening of an intergovernmental technical consultation in May 2013.

Assessing the performance of flag States

70. The second FAO technical consultation on flag State performance, held in March 2012, continued the drafting of the criteria for assessing flag State performance. The technical consultation recommended that work should continue as soon as possible to finalize and adopt the criteria. At its thirtieth session, the Committee on Fisheries noted the need for further progress and requested FAO to convene the second resumed session of the technical consultation as soon as possible.

B. Whales and other cetaceans

71. At its sixty-fourth annual meeting, the International Whaling Commission reviewed the status of a number of whale stocks, with continued attention paid to grey whales in the western north Pacific whose feeding grounds coincide with major oil and gas operations. The Commission endorsed draft conservation management plans for right whales in the south-west Atlantic and in the south-east Pacific and expressed grave concern about the right whale population in the western North Atlantic. The status of a number of small cetacean populations was also reviewed.

72. The Commission also addressed ship strikes, whale-watching, marine debris and welfare issues associated with entanglement.

73. The Commission adopted resolution 2012-X on the importance of continued scientific research with regard to the degradation of the marine environment on the health of cetaceans and related human health effects. However, it did not reach consensus on a proposed resolution on highly migratory cetaceans in the high seas, which invited parties to the International Convention for the Regulation of Whaling to consider the issue in collaboration with the General Assembly, with a view to contributing to the conservation efforts of the Commission.

74. The Commission will now meet biennially, while the Scientific Committee will continue to meet annually.

46 See IWC/64/13Rev2.

X. Marine biological diversity

75. The United Nations Conference on Sustainable Development reaffirmed the critical role of biodiversity in sustainable development and committed to protect and restore the health, productivity and resilience of oceans and marine ecosystems and to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations. In the light of the vital ecosystem services provided by marine biodiversity, it was particularly relevant that marine biodiversity was the theme of this year’s International Day for Biological Diversity, celebrated on 22 May.

A. Measures to address impacts on marine biological diversity

76. A number of forums continue to discuss measures to address impacts on marine biodiversity. The Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction held its fifth meeting, in May 2012, and formulated recommendations for consideration by the General Assembly at its sixty-seventh session (A/67/85). The Subsidiary Body on Scientific, Technical and Industrial Consultations of the Conference of the Parties to the Convention on Biological Diversity, at its sixteenth meeting, held from 30 April to 5 May 2012 in Montreal, Canada, adopted a number of recommendations on, or of relevance to, marine and coastal biodiversity.

77. A number of initiatives have also supported research related to, and the conservation and sustainable use of, marine biodiversity. For example, the ecosystems and biodiversity programme of the United Nations Development Programme (UNDP) supports the integration of marine biodiversity considerations into relevant sectors such as fisheries and tourism at the national level; and IAEA is studying the consequences of rising CO\textsubscript{2} levels and ocean acidification on marine biodiversity, with a view to assessing the scale of socioeconomic risks associated with the impacts of ocean acidification.

78. On 21 April 2012, 94 States established the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services as an independent intergovernmental body to strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development and decided on its functions, operating principles and institutional arrangements.

47 General Assembly resolution 66/288, annex, para. 158.
49 See Report of the second session of the plenary meeting to determine modalities and institutional arrangements for an intergovernmental science-policy platform on biodiversity and ecosystem services (UNEP/IPBES/M.1/29).
B. Measures for specific ecosystems and species

79. Seabed marine biodiversity. In the context of its work on the protection and preservation of the marine environment of the Area from mining activities, in January 2012 the International Seabed Authority initiated a review of the quality of environmental data provided by contractors. The Council of the Authority, at its eighteenth session, in July 2012, adopted a decision to establish an environmental management plan for the Clarion-Clipperton Zone, which, inter alia, provides that for a period of five years, or until further review by the Legal and Technical Commission or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in the areas of particular environmental interest. 50

80. Wetlands. A number of coastal areas around the world were added to the Ramsar List of Wetlands of International Importance, illustrating the significance of the benefits that those sites provide to people and the coastal environment.

81. Corals. The importance of corals and coral reefs to sustainable development continues to be emphasized at the highest level, including by the General Assembly in resolution 66/194. At the United Nations Conference on Sustainable Development, the significant vulnerability of coral reefs to climate change, ocean acidification, overfishing, destructive fishing practices and pollution was recognized. Support was expressed for international cooperation to realize the social, economic and environmental benefits of coral reefs. 51

82. Cetaceans and other migratory species. At its tenth meeting, in November 2011 in Bergen, the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals adopted resolutions on, or of relevance to, cetaceans and other migratory marine species and added several marine species to the Appendices to the Convention. 52

83. Convention on International Trade in Endangered Species of Wild Fauna and Flora. At its sixty-second session, held in July 2012, the Standing Committee of the Convention on International Trade in Endangered Species of Wild Fauna and Flora agreed to transmit the results of the work of the Working Group on Introduction from the Sea to the sixteenth meeting of the Conference of the Parties, to be held in March 2013, recognizing the reservations expressed by certain Parties. 53

84. At its twenty-sixth meeting in March 2012, the Animals Committee of the Convention on International Trade in Endangered Species of Wild Fauna and Flora made a number of recommendations relating to sturgeons, 54 sharks and sea cucumbers. 55 It also considered the reviews of significant trade in marine specimens of Appendix II species, including the Caribbean monk seal (monachus tropicalis). 56

50 See decision of the Council contained in ISBA/18/C/22.
51 General Assembly resolution 66/194.
53 See document prepared by the Standing Committee, “Introduction from the Sea” (SC62 Doc. 31).
54 See executive summary, sixty-sixth meeting of the Standing Committee (SC62 Sum. 6 (Rev. 1)).
55 See A/C26 WG4 Doc. 1 and A/C26 Sum. 3.
56 See A/C26 WG4 Doc. 1 and A/C26 Sum. 4 (Rev. 1).
57 See A/C26 DG1 Doc. 1 and A/C26 Sum. 4 (Rev. 1).

C. Marine genetic resources

85. Interest in marine genetic resources and marine biotechnology is expanding. As a result, a number of initiatives are seeking to assess their social, economic, environmental and commercial potential. For example, the “marine bioprospector” web-based database of the United Nations University Institute of Advanced Studies, which includes 105 records of activities related to marine genetic resources, provides information on the applications and commercialization, including actual or potential value and market information, for sourced material. In the context of its work on marine biotechnology, the Organization for Economic Cooperation and Development hosted a global forum on biotechnology, with partners, in May 2012 in Vancouver, Canada, to consider the potential of marine biotechnology in addressing food and fuel security, population health, green growth and sustainable industries.

86. Issues related to marine genetic resources in areas beyond national jurisdiction continued to be discussed at the fifth meeting of the Ad Hoc Open-ended Informal Working Group.

87. In the context of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol, at its second meeting, in July 2012, considered the need for and modalities of a global multilateral benefit-sharing mechanism as provided for under article 10 of the Nagoya Protocol. It recommended, inter alia, that the Conference of the Parties invite views with respect to article 10 as well as other perspectives on the matter. 57

88. At its twentieth session, in February 2012, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) developed the “Consolidated document relating to intellectual property and genetic resources”, for transmission to the WIPO General Assembly for its consideration in October 2012. 58

XI. Protection and preservation of the marine environment and sustainable development

A. Degradation of the marine environment from land-based activities and marine debris

89. At the Third Intergovernmental Review Meeting on the Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, held in January 2012, the Manila Declaration on Furthering the Implementation of the Global Programme of Action was adopted. The participants in the meeting also decided on priorities for the work programme of the

58 See IP/CBD/COP/11/6.
Global Programme of Action for 2012-2016, including nutrients, litter and wastewater.  

90. At its tenth meeting, held in November 2011, the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals adopted resolution 10.4, calling on member States to identify hotspots for debris accumulation and implement national plans of action to address and report on the problem of marine debris. The South Pacific Permanent Commission is also actively involved in raising awareness of the issue of marine debris. 

91. The United Nations Conference on Sustainable Development noted with concern that the health of oceans and marine biodiversity was negatively affected by marine pollution, including from land-based sources. Commitments were made to take action to reduce the incidence and impacts of such pollution on marine ecosystems through follow-up on the relevant initiatives such as the Global Programme of Action.

B. Pollution from ships

Discharge of substances

92. At its sixty-third session, held from 27 February to 2 March 2012, the IMO Marine Environment Protection Committee adopted a range of measures relating to the discharge of substances and the implementation of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and as further amended by the Protocol of 1997. In particular, in its resolution relating to the designation of the Baltic Sea as a Special Area under annex IV (sewage) to the amended Convention, the Committee called for the development of technical on-board equipment to meet the new discharge standards for passenger ships operating in special areas under the annex. The Committee also adopted guidelines for the implementation of annex V (garbage) and for the development of garbage management plans. The guidelines will assist in the implementation of the 2011 revised annex V regulations, which are expected to enter into force on 1 January 2013.

93. In addition, the Committee adopted amendments to annexes I, II, IV, V and VI to the amended Convention relating to port reception arrangements, which are aimed at enabling small island developing States to comply with requirements for port States to provide reception facilities for ship waste through regional arrangements. The amendments are expected to enter into force on 1 August 2013. Guidelines for the development of a regional reception facilities plan were also adopted.

Air pollution from ships

94. At its sixty-third session, the Committee also adopted four sets of guidelines to assist in the implementation of the mandatory regulations on energy efficiency for ships in annex VI to the amended Convention, which were adopted in July 2011 and are expected to enter into force on 1 January 2013. The Committee further adopted amendments to the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines.

C. Waste

95. Disposal of wastes. At the thirty-third Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the London Convention) and the sixth Meeting of Contracting Parties to the 1996 Protocol to the Convention (the London Protocol), held in October 2011, the Contracting Parties reviewed options to regulate ocean fertilization and agreed that further work should be undertaken by the intersessional Working Group on Ocean Fertilization.

96. Transboundary movement of wastes. Following decision BC-10/3 of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the technical expert group to develop a framework for the environmentally sound management of wastes held its first meeting in April 2012. The group tentatively agreed on the basic structure of the framework and elaborated a preliminary list of elements to be included in the framework. The second meeting of the group was scheduled to be held during the week immediately following the eighth session of the Open-ended Working Group of the Convention in September 2012.

D. Ship-breaking, dismantling, recycling and scrapping

97. At its sixty-third session in March 2012, the IMO Marine Environment Protection Committee adopted the 2012 guidelines for safe and environmentally sound ship recycling and the 2012 guidelines for the authorization of ship recycling facilities, which are intended to assist the implementation of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, which was adopted in May 2009 but has not yet entered into force. IMO organized two workshops, in the Philippines in October 2011 and in China in May 2012, to improve understanding of the requirements of the Hong Kong Convention with a view to facilitating its ratification.
E. Introduction of invasive alien species

98. At its sixty-third session, the Marine Environment Protection Committee granted basic approval to three ballast water management systems, which make use of active substances, and final approval to five other such systems. As of April 2012, the Committee had granted basic approval to 37 ballast water management systems which make use of active substances and final approval to 25 such systems.

99. The Committee also adopted revised guidelines on design and construction to facilitate sediment control on ships to assist in the implementation of the 2004 International Convention for the Control and Management of Ships’ Ballast Water and Sediments. As of May 2012, 35 States, with an aggregate merchant shipping tonnage of 27.95 per cent of the world total, had ratified this Convention.

100. A number of other intergovernmental organizations continued to take measures to prevent the introduction of invasive alien species in the marine environment, including in the context of the Global Environment Facility (GEF)-UNDP-IMO GloBallast Partnerships.

101. The United Nations Conference on Sustainable Development noted the significant threat that alien invasive species pose to marine ecosystems and resources and committed to implement measures to control and manage the adverse environmental impacts of alien invasive species, including those adopted in the framework of IMO.

F. Ocean noise

102. Since 2005, the General Assembly has consistently recognized the fact that human-generated underwater noise is a source of marine pollution and poses a threat to marine ecosystems and living resources. During the reporting period, no additional scientific studies on the impacts of ocean noise on marine living resources were received by the Division for Ocean Affairs and the Law of the Sea pursuant to paragraph 107 of General Assembly resolution 61/222.

103. However, a number of other forums also continued to consider underwater noise, encouraging increased research and cooperation and coordination among various organizations to address its impacts. For example, at the global level, at its tenth meeting, the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals adopted resolution 10.24 on underwater noise pollution and at its sixteenth meeting, the Subsidiary Body on Scientific, Technical and Technological Advice of the Conference of the Parties to the Convention on Biological Diversity also addressed the impacts of anthropogenic underwater noise on marine and coastal biodiversity in its recommendation.

104. In relation to noise-quieting technologies, at its sixty-third session, the IMO Marine Environment Protection Committee noted the decision of the fifty-sixth session of the IMO Design and Equipment Subcommittee to establish a correspondence group to examine available options for ship-quieting technologies and operational practices in order to develop non-mandatory draft guidelines for reducing underwater noise from commercial ships. The International Organization for Standardization has also been working to develop standards for the measurement of underwater noise from ships.

105. At the regional level, enhanced coordination is also taking place to address noise pollution as evidenced by the joint work of the working groups on noise of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area (ACCOBAMS) and the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS).

G. Management tools

1. Environmental impact assessment

106. Environmental impact assessments and strategic environmental assessments are critical tools to inform decision-making and promote sustainable development by ensuring that planned activities do not cause substantial pollution of, or significant changes to, the marine environment. A number of global forums continue to work towards the development of practical guidance for the implementation of impact assessments in the marine environment.

107. At its sixteenth meeting, the Subsidiary Body on Scientific, Technical and Technological Advice of the Conference of the Parties to the Convention on Biological Diversity adopted recommendation XVI/6 on model voluntary guidelines for the consideration of biodiversity in environmental impact and strategic environmental assessments in marine and coastal areas, to be considered by the Conference of the Parties to the Convention at its eleventh meeting. At its fifteenth meeting, held in November 2011, the Subsidiary Body on Scientific, Technical and Technological Advice had also recommended that the Conference of
the Parties to the request further development of indicators for the Aichi biodiversity targets, including environmental impact assessments, as an important operational indicator for assessing progress at the global level.\(^\text{84}\) At its tenth meeting, held in November 2011, the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals, in resolution 10.24 on underwater noise pollution, urged the parties to the Convention to ensure that environmental impact assessments take, inter alia, full account of the effects of activities on cetaceans and consider potential impacts on marine biota and their migration routes.\(^\text{85}\)

108. Fishing activities. The United Nations Conference on Sustainable Development noted the need to enhance protection of vulnerable marine ecosystems, including through the use of impact assessments consistent with international law, General Assembly resolutions and FAO guidelines.\(^\text{86}\) FAO member States are giving increasing importance to assessing the impact of fisheries on sharks and seabirds in relation to the implementation of the international plans of action for sharks and for seabirds.\(^\text{87}\) However, assessment of the impacts of aquaculture development still requires improvement.\(^\text{88}\) The thirteenth meeting of the FAO Committee on Fisheries, held in July 2012, encouraged further studies of the impact of industrial fishing activities on species corresponding to low trophic levels, in order to support the establishment of appropriate levels of catch and effort to mitigate their impact on the ecosystem.

109. Prospecting for and exploration of mineral resources. From 29 November to 2 December 2011, the International Seabed Authority, in collaboration with the Government of Fiji and the secretariat of the Pacific Commission, held a workshop on environmental management needs for exploration of deep seabed minerals, which led to a draft template for an environmental impact assessment for seabed mining.\(^\text{89}\) At the eighteenth session of the Authority, held in July 2012, the Legal and Technical Commission agreed to take the assessment of possible environmental impacts arising from exploration for minerals in the Area as a priority matter at its next meeting.

110. Other activities. In considering a document summarizing the current state of knowledge on ocean fertilization, at the thirty-third Consultative Meeting of Contracting Parties to the London Convention and sixth meeting of Contracting Parties to the London Protocol, held in October 2011, the parties concluded that there was still a need for a “state of the science” document relevant to assessing environmental impacts, and instructed the Scientific Groups to investigate the feasibility of developing a (web-based) repository of references relating to the application of the Ocean Fertilization Assessment Framework.\(^\text{90}\) At the meeting it was also agreed that further intersessional work was needed on whether to develop generic assessment guidelines for placement activities.\(^\text{91}\)

2. Ecosystem approaches and integrated management

111. The United Nations Conference on Sustainable Development called for effectively applying an ecosystem approach and the precautionary approach, in accordance with international law, in the management of activities having an impact on the marine environment.\(^\text{92}\)

112. At the global level, FAO has continued to assist in the implementation of the ecosystem approach to fisheries and aquaculture at the national and regional levels. A tool box to assist the implementation of the ecosystem approach to fisheries has been developed,\(^\text{93}\) and a tool box for the approach to aquaculture is being finalized. Guidelines and tools for the expansion of coastal aquaculture within an ecosystem approach are also being developed.

113. The twenty-sixth session of the IOC Assembly endorsed programmes objectives for the IOC-UNESCO Integrated Coastal Area Management Programme, which include further development of ecosystem-based management and the large marine ecosystem approach.\(^\text{94}\)

114. At the regional level, UNDP, through the large marine ecosystem programme, is providing capacity-building and technical advisory support to 65 countries bordering 10 large marine ecosystems in Asia and the Pacific, Latin America and Africa.

115. The South East Atlantic Fisheries Organization reported that the ecosystem approach is incorporated in its Convention. The Permanent Commission for the South Pacific also reported that it is now using an ecosystem approach in undertaking assessments on the impacts of economic activities on critical marine habitats in the region.

3. Area-based management tools

116. The United Nations Conference on Sustainable Development reaffirmed the importance of area-based conservation measures as a tool for the conservation of biodiversity and the sustainable use of its components.\(^\text{95}\) In this connection, activities at the global, regional and national levels continue to support the implementation of area-based management and conservation.

117. In relation to areas beyond national jurisdiction, the Ad-Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction further considered issues related to area-based management beyond areas of national jurisdiction, including marine protected areas.\(^\text{96}\)

\(^{84}\) See report of the Subsidiary Body on Scientific, Technical and Technological Advice on the work of its fifteenth meeting (UNEP/CBD/COP/11/2), recommendation XV/1.

\(^{85}\) General Assembly resolution 66/288, annex, para. 168.

\(^{86}\) See FAO Committee on Fisheries report on progress in the implementation of the Code of Conduct for Responsible Fisheries and related instruments, including international plans of action and strategies, and other matters (COFI/2012/3), paras 39, 40 and 51.

\(^{87}\) See Ibid., paras. 22 and 55.

\(^{88}\) See report on the international workshop on environmental management needs for exploration and exploitation of deep sea minerals (ISBA/18/LTC/4).

\(^{89}\) See LC 33/3/5, paras. 4.25 to 4.28.

\(^{90}\) Ibid., para. 4.13.

\(^{91}\) General Assembly resolution 66/288, annex, para. 158.


\(^{93}\) See A/67/95, annex.

\(^{94}\) See COFI/2012/3, paras 39, 40 and 51.

\(^{95}\) See report on the twenty-sixth session of the Assembly, decision 8.2.

\(^{96}\) See A/67/95, annex.
Ecologically or biologically significant marine areas in need of protection


118. Ecologically or biologically significant marine areas in need of protection

119. Fisheries closures. The South East Atlantic Fisheries Organisation adopted routeing measures (Associated Protective Measure) for the Strait of Bonifacio Particularly Sensitive Sea Area, which will take effect on 1 July 2014.

120. At the regional level, the OSPAR Commission, at its June 2012 meeting, adopted Decision 2012/1 on the establishment of the Charlie-Gibbs North High Seas Marine Protected Area. The Commission also noted the outcome of the meeting of competent national jurisdiction, and agreed that a third informal meeting should be held in 2013/2014 to consider von North Atlantic marine protected areas in 35 countries.

121. The Commission for the Conservation of Antarctic Marine Living Resources, at its thirtieth meeting, held from 24 October to 4 November 2011, continued consideration of marine protected areas, including proposals for the Ross Sea region and the East Antarctic planning domain. The Commission also adopted, to be held in 2012, a general conservation measure, as well as proposals for the Ross Sea region and the East Antarctic planning domain, and adopted resolution 13-47841.

122. The Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals adopted resolution 10.3 on the role of ecological networks in the conservation of migratory species, recognizing the importance of networks to protect vulnerable marine ecosystems.

123. Fisheries closures. The South East Atlantic Fisheries Organisation Organisation Organization established the Charlie-Gibbs North High Seas Marine Protected Area, which will enter into force on 14 January 2013.

124. Ecological networks. At its tenth meeting, held on 14 January 2013, the Conference of the Parties to the Convention on Biological Diversity, adopted a resolution on the development of technical on-board equipment in relation to the designation of the high seas as a Special Area. The Conference adopted resolution 10.3 on the role of ecological networks in the conservation of migratory species, including the establishment of marine protected areas.

125. World Heritage Sites. The number of marine and coastal sites recognized as World Heritage Sites continues to grow with the addition, at the thirty-sixth session of the World Heritage Committee, held from 24 June to 6 July 2012, of two marine and coastal sites to the World Heritage List.

126. Biosphere reserves. Similarly, the number of biosphere reserves with a coastal or marine component has increased with the addition, by the International Coordinating Council of the UNESCO Man and the Biosphere Programme, at its sixth session in July 2012, of several coastal and marine sites to the World Network of Biosphere Reserves.

127. Marine protected areas. The United Nations, in the context of the adoption of the Aichi Biodiversity Targets, adopted a decision on the establishment of marine protected areas. The decision was adopted at the United Nations Conference on Sustainable Development, held in Rio de Janeiro in June 2012.

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and capacity-building activities to support the implementation of marine spatial planning. 109

H. Liability and compensation

128. **Convention on Limitation of Liability for Maritime Claims.** At its ninety-ninth session, in April 2012, the IMO Legal Committee adopted amendments to increase the liability limits in the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims. The new limits are expected to enter into force 36 months from the date of notification under the tacit acceptance procedure.

129. **International Convention on Civil Liability for Bunker Oil Pollution Damage.** The Bunkers Convention, 2001, establishes a liability and compensation regime for spills of oil carried as fuel in ships’ bunkers. The IMO Assembly, in 2011, adopted resolution A.1055(27) on the issuance of bunkers certificates to ships that are also required to hold a Civil Liability Convention certificate.

130. **International Oil Pollution Compensation Funds.** On 14 October 2011, a global settlement was reached in respect of the Erika (1999) incident. 110

131. **Hazardous and Noxious Substances Convention.** The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the 2010 Protocol has been signed by eight States to date. The Director of the International Oil Pollution Compensation Funds has been requested to carry out the tasks necessary for the setting-up of the Hazardous and Noxious Substances Fund and to make preparations for the first session of the associated Assembly.

132. **Other liability regimes.** The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety concluded its signature period on 6 March 2012 with 51 signatures. Two States have ratified the Protocol so far with 40 ratifications needed for entry into force.

XII. Major trends in regional cooperation

133. **Antarctic.** At the thirty-fifth Antarctic Treaty Consultative Meeting, held in June 2012, the parties continued to focus on climate change and the promotion of scientific research to understand global climate change implications. They also agreed on actions in regard to safe and environmentally friendly tourism and yachting and on the development of a manual on practical approaches to cleaning up sites. 111

134. **Arctic.** The Deputy Ministers’ Meeting of the Arctic Council, held in May 2012, mandated the senior officials of the Arctic Council to start negotiations on a political Kiruna statement. A binding agreement on oil pollution preparedness and response is expected to be signed in Kiruna, Sweden, in 2013. 112

135. **Baltic Sea.** At its meeting in March 2012, the Baltic Marine Environment Protection Commission (Helsinki Commission) discussed the need for cooperation in response to oil spills and incidents involving harmful substances. The Commission also recommended the adoption of guidelines on a unified interpretation in relation to the HELCOM Automatic Identification System, which aims to facilitate exchange and deliveries of data for improved safety of navigation and protection of the Baltic marine environment. 113

136. **Black Sea.** In cooperation with the Commission on the Protection of the Black Sea against Pollution, UNDP is developing a project addressing ecosystem-based management, environmental governance and climate change in the region, with a view to, inter alia, developing a legally binding document on fisheries, adopting new protocols to the Convention, and promoting stakeholders participation.

137. **East Asian and South Asian Seas.** Through assistance provided by UNDP, eight countries in East Asia drafted their national five-year implementation plans for the Sustainable Development Strategy for the Seas of East Asia, which outline strategies to bring 20 per cent of each country’s coastline under integrated coastal management.

138. **North-west Pacific.** At the sixteenth intergovernmental meeting of the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region, held in December 2011, member States considered the draft Medium-term Strategy 2012-2017. 114

140. **South-west Pacific.** At the sixteenth intergovernmental meeting of the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region, held in December 2011, member States considered the draft Medium-term Strategy 2012-2017. 114

141. The action plan on marine pollution under the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region continues to be implemented in partnership with its regional activity centres, with a view to developing, over the next two years, a compilation on legislation related to civil liability and compensation for marine pollution damage in the region, a manual on how to respond to oil spills, and a manual of policies on prevention of coastal and marine pollution, among others.

142. **Pacific.** In line with its regional strategy for disaster risk management and climate change, on 21 June 2012, the secretariat of the Pacific Regional

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114 See UNEP/NOWPAP PG. 16/12.
Environment Programme signed a memorandum of understanding with the Indian Ocean Commission to promote partnerships between Small Island Developing States to adapt to climate change and minimise the impact of natural disasters.

143. **Red Sea and Gulf of Aden.** The Regional Organization for the Conservation of the Red Sea and Gulf of Aden undertook a number of multidisciplinary training programmes and workshops on subjects including ecosystem-based adaptation to climate change, ecosystem-based management of oceans and coasts, and effective management of marine protection areas. The Second Regional Meeting on the Status of Elasmobranchs (Sharks and Rays) agreed on the framework, objectives and short- and long-term actions to be considered under the Regional Plan for Conservation of Sharks in the Red Sea and Gulf of Aden, which is under development.

144. **Wider Caribbean.** In May 2012, representatives of the Southeast and Northeast Pacific, North America and Wider Caribbean discussed the transboundary management of marine mammal corridors and priorities for transboundary management action.

### XIII. Small island developing States

145. The United Nations Conference on Sustainable Development reaffirmed that small island developing States remain a special case for sustainable development, in view of their unique and particular vulnerabilities. It called for continued and enhanced efforts to assist them, particularly in implementing the Barbados Programme of Action and the Mauritius Strategy.


### XIV. Climate change and oceans

#### A. Impacts of climate change on oceans

147. Climate change continues to impact coastal communities, including through extreme weather events, sea-level rise, coastal erosion and ocean acidification. This threatens food security and the efforts of developing countries to eradicate poverty and achieve sustainable development. As global emissions of greenhouse gases continue to rise, intergovernmental organizations are working to improve the scientific understanding of the impacts of climate change on the oceans and reduce the vulnerability of coastal communities to these impacts.

#### B. Mitigating the impact of climate change

148. **Reduction of greenhouse gas emissions from ships.** At its sixty-third session, in 2012, the Marine Environment Protection Committee continued its consideration of proposed market-based measures to complement the technical and operational measures adopted at its sixty-second session to reduce greenhouse gas emissions from ships. The Committee also considered undertaking an impact assessment of the proposals and the methodology and criteria on which such assessment should be based.

149. Following recommendations made at the twenty-ninth session of the FAO Committee on Fisheries in 2011, FAO has been working to provide practical guidance to industry practitioners and steer FAO activities on the understanding and enabling mitigation of greenhouse gas emissions in fisheries and aquaculture production systems and supply chains.

150. **Ocean fertilization.** The United Nations Conference on Sustainable Development expressed concern over the potential environmental impacts of ocean fertilization, recalled the decisions related to ocean fertilization adopted by the relevant intergovernmental bodies and resolved to continue addressing with the utmost caution ocean fertilization, consistent with the precautionary approach.

151. **Carbon sequestration.** The sixth meeting of Contracting Parties to the London Protocol continued to review the Specific Guidelines for assessment of carbon dioxide streams for disposal into sub-seabed geological formations. Further review of the scientific and technical aspects and policy and legal issues will be conducted intersessionally and prior to the seventh Meeting of Contracting Parties.

### XV. Settlement of disputes

#### A. International Tribunal for the Law of the Sea

152. On 14 March 2012, in case No. 16, “Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),” the Tribunal delivered its judgment in its first maritime delimitation case determining a single maritime boundary between Bangladesh and Myanmar in the Bay of Bengal with respect to the territorial sea, the exclusive economic zone and the continental shelf.

#### B. Arbitral tribunals

153. On 13 April 2012, the Arbitral Tribunal established by the Arbitration Agreement of 4 November 2009 between Croatia and Slovenia and the representatives of these two States discussed the procedural framework for the arbitration.

### XVI. International cooperation and coordination
154. The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea held its thirteenth meeting in New York from 29 May to 1 June 2012 and focused its discussions on marine renewable energies.\footnote{General Assembly resolution 65/37 A, para. 231, and resolution 66/231, para. 234.} The Co-Chairs’ summary of discussions at the meeting has been issued as document A/67/120.

155. In accordance with paragraph 230 of resolution 66/231, the General Assembly is expected, at its sixty-seventh session, to further review the effectiveness and utility of the Informal Consultative Process.

156. The Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic Aspects, held its third meeting from 23 to 27 April 2012 and provided recommendations to the General Assembly at its sixty-seventh session (A/67/87). The Bureau of the Ad Hoc Working Group of the Whole, which was established to put into practice the decisions and guidance of the Ad Hoc Working Group of the Whole during the intersessional period, was fully composed and held its first meeting in May 2012.\footnote{The Bureau is comprised of the following Member States: Argentina, Bulgaria, Chile, China, Ecuador, Estonia, Ghana, Greece, Kenya, Republic of Korea, Spain, Sri Lanka, Ukraine, United Republic of Tanzania and United States of America.}

157. Workshops have been organized in order to support the first cycle of the Regular Process, in accordance with paragraph 207 of General Assembly resolution 66/231, in Santiago in September 2011, Sanya, China, in February 2012, and Brussels in June 2012. Additional workshops are being planned in the United States of America in November 2012, Mozambique in December 2012 and Australia in February 2013. I would like to express my appreciation for the technical, scientific and financial support for the workshops provided by, inter alia, the Permanent Commission of the South Pacific, UNESCO/IOC and UNEP.

158. Following the adoption of the Criteria for the Appointment of Experts by the General Assembly, pursuant to paragraph 202 of resolution 66/231, Member States were requested to appoint individuals to the Pool of Experts of the Regular Process through the United Nations Regional Groups. As at end of August 2012, there were 208 experts in the Pool of Experts. I would like to appeal to Member States that have not yet done so to make the necessary appointments.

159. The United Nations Conference on Sustainable Development expressed support for the Regular Process and looked forward to the completion of its first global integrated assessment of the state of the marine environment by 2014 and its subsequent consideration by the Assembly.\footnote{General Assembly resolution 66/288, annex, para. 161.}

160. On 12 August 2012, at the International Conference Commemorating the thirtieth anniversary of the Opening for Signature of the United Nations Convention on the Law of the Sea, organized at the Yeosu World Expo, Republic of Korea, I launched the Oceans Compact, an initiative aimed at strengthening United Nations system-wide coherence and fostering synergies in oceans matters.\footnote{The text of the Compact is available from http://www.un.org/Depts/los/ocean_compact/oceans_compact.htm.} The Oceans Compact sets out a strategic vision for the United Nations system to deliver more coherently and effectively on its mandates related to oceans, consistent with the outcome document of the United Nations Conference on Sustainable Development, entitled “The future we want”.\footnote{General Assembly resolution 67/288, annex.} It provides a platform for all stakeholders to collaborate towards achieving “healthy oceans for prosperity”. The Compact has three inter-related objectives to advance this goal: protecting people and improving the health of the oceans; protecting, recovering and sustaining the environment and natural resources of the oceans and restoring their full food production and livelihood services; and strengthening ocean knowledge and the management of oceans.

161. Realizing the objectives of the Oceans Compact will require the implementation of an integrated and results-oriented Action Plan. To elaborate the Plan, to facilitate stakeholder dialogue and to catalyze support, I propose to create, in consultation with stakeholders, a time-bound Oceans Advisory Group, composed of the executive heads of the organizations of the United Nations system which are involved, high-level policymakers, scientists, leading ocean experts, private sector representatives, representatives of non-governmental organizations and civil society organizations.

162. Pursuant to the request made by the General Assembly in resolution 66/231, paragraph 239, the Joint Inspection Unit conducted a review of UN-Oceans and is expected to submit its report for consideration by the Assembly at its sixty-seventh session.

163. In the same paragraph, the General Assembly also requested UN-Oceans to submit to the Assembly draft terms of reference for its work, for consideration at its sixty-seventh session. The draft Terms of Reference were prepared by UN-Oceans, taking into account the findings, conclusions and recommendations of the Joint Inspection Unit review.

164. UN-Oceans held its tenth meeting on 11 August 2012 in Yeosu, Republic of Korea.\footnote{The report of the meeting was not available at the time of writing.}
165. The Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection held its thirty-ninth session in April 2012 in New York. Among other things, a decision was made to strengthen the interactions between the Joint Group of Experts and the Group of Experts established under the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-Economic Aspects, particularly through information exchange.

XVII. Capacity-building activities of the Division for Ocean Affairs and the Law of the Sea

166. The Division for Ocean Affairs and the Law of the Sea continued to carry out capacity-building activities, mainly through the management of fellowship programmes, trust funds and, upon request, training or seminar events. The Division also continued to compile information on the capacity-building activities of international organizations, donor agencies and States, as available and appropriate. Relevant information has been reflected in my previous reports on oceans and the law of the sea. 127 Following a request made by the General Assembly with regard to the Regular Process in paragraph 204 of resolution 66/231, the Division prepared a preliminary inventory of capacity-building for assessments. 128 All published reports and studies are available on the website of the Division.

A. Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea

167. Following a recommendation of the Selection Committee composed of Argentina, Monaco, Morocco, Namibia, Slovenia, Spain and Sri Lanka, in July 2012 Miguel Enrique Tesoro Torres of Cuba was awarded the twenty-fifth Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea. Mr. Torres is expected to commence his three-month practicum at the Division in the latter part of 2012. He will then continue with the research phase of the fellowship for three months at the Institute of International Studies of the University of Chile.

168. In 2012, contributions to the fellowship fund were made by Argentina, Cyprus, Monaco, Sri Lanka and the United Kingdom of Great Britain and Northern Ireland. I wish to express my appreciation for their generous contributions. As at 18 June 2012, the balance of the Fellowship fund was approximately $62,700. To ensure that the fellowship continues to be awarded every year, I strongly encourage Member States and others in a position to do so to contribute generously to this important fellowship.

169. The Division continues to undertake robust fund-raising initiatives. In 2011 and 2012, it has sent a number of communications to Member States and private institutions seeking contributions.

B. The United Nations-Nippon Foundation on the Law of the Sea

170. The Division continues to successfully administer the United Nations-Nippon Foundation of Japan Fellowship Programme. Since its inception in 2004, the Programme has trained 70 individuals from 54 Member States. Currently, individuals from the following States are undertaking the Programme: Barbados, Brazil, Comoros, Fiji, Ghana, Indonesia, Madagascar, Papua New Guinea, Philippines and Solomon Islands.

C. Trust funds

1. Commission on the Limits of the Continental Shelf

171. Voluntary Trust Fund for the purpose of facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, in particular the least developed countries and small island developing States, in compliance with article 76 of the United Nations Convention on the Law of the Sea. During the reporting period, contributions to the Trust Fund were received from Costa Rica, Côte d’Ivoire and Iceland. According to the statement of accounts, the Trust Fund balance as at 18 June 2012 was approximately $1.237 million.

172. Voluntary Trust Fund for the purpose of defraying the cost of participation of the members of the Commission on the Limits of the Continental Shelf from developing States in the meetings of the Commission. During the reporting period, contributions to the Trust Fund were received from China, Côte d’Ivoire, Denmark, Iceland, Japan and Mexico. At the twenty-second Meeting of States Parties to the United Nations Convention on the Law of the Sea, Japan made a pledge for a future contribution. According to the statement of accounts, the Trust Fund balance as at 18 June 2012 was estimated to be $720,630. Assistance from the Trust Fund was provided to six members of the Commission to facilitate their participation in the twenty-ninth session of that body.

2. Voluntary Trust Fund for the purpose of assisting developing countries, in particular least developed countries, small island developing States and landlocked developing States, to attend meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea

173. During the period under review, representatives from the following 11 countries, including 6 panelists, received assistance from the Trust Fund in the form of airfares to attend the thirteenth meeting of the Consultative Process, in accordance with General Assembly resolution 62/215: Bahamas, Brazil, Burkina Faso, China, Democratic Republic of the Congo, Jamaica, Malaysia, Mauritius, Philippines, Togo and United Republic of Tanzania. According to the statement of accounts for the period ending June 2012, the Trust Fund balance was estimated at $19,000.00.

3. Voluntary Trust Fund for the International Tribunal for the Law of the Sea

174. There have been no applications to the Voluntary Trust Fund since the submission of an application by Guinea-Bissau in 2004. Contributions to the Trust Fund were received from Côte d’Ivoire and Finland. As at 18 June 2012, according to the statement of accounts, the Trust Fund balance was estimated at $175,605.
4. Voluntary Trust Fund for the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects

175. During the period under review, contributions were made by Jamaica, New Zealand, Republic of Korea and UNEP. According to the statement of accounts for the period ending 18 June 2012, the Trust Fund balance was estimated at $9,000.00.

5. Assistance Fund under Part VII of the United Nations Fish Stocks Agreement

176. In accordance with the financial report of FAO on the status of the Assistance Fund under Part VII of the United Nations Fish Stocks Agreement, as at 31 December 2011 the balance in the Assistance Fund was $534,046. In 2011, 27 applications were funded, for a total expenditure of $61,385. The breakdown of that expenditure was as follows: 85 per cent was used to support attendance at the technical and annual sessions of regional and subregional fisheries management organizations and arrangements; 8 per cent was used to support participation in the meeting of the tuna regional fisheries management organizations (Kobe III); and 7 per cent was used to meet FAO administrative expenses.

177. I wish to express my appreciation to all the Governments which made contributions to these trust funds.

XVIII. Conclusions

178. Oceans play a key role in our lives whether or not we live in coastal areas. They are integral to sustainable development, offering many development opportunities such as achieving food security, facilitating trade, creating employment and generating tourism. Oceans are also vital for supporting life on Earth through oxygen generation, climate regulation, carbon sequestration and nutrient cycling. However, oceans are facing growing challenges, pressures and threats. These range from depleted fishery resources, the impacts of climate change, the deterioration of the marine environment and biodiversity loss, to challenges to maritime safety and security including piracy, irregular migration by sea and poor labour conditions for seafarers.

179. Action at all levels is being undertaken by a number of actors, including Governments, intergovernmental organizations, non-governmental organizations, the scientific community and local communities to address these challenges. I am encouraged by this action. However, if we are to safeguard the capacity of the oceans to continue to sustain the increasing demands of humankind for energy, food and recreation, we have to step up and better coordinate our efforts. Notably, we need to encourage and facilitate greater adherence to, and implementation and enforcement of, the United Nations Convention on the Law of the Sea and its implementing Agreements as well as other relevant instruments. We have to develop sufficient capacity to undertake the research necessary to better inform our policy decisions. We must ensure that technology is available to those who still need it to benefit from the oceans. We ought carefully to address emerging issues before they become serious challenges. We should continue to raise awareness of the opportunities stemming from the oceans.

180. It is with those challenges in mind that I decided to launch this year the Oceans Compact to strengthen United Nations system-wide coherence and foster synergies in oceans matters.

181. This is a critical year for sustainable development and the oceans. Not only has it seen the assessment of progress made in achieving sustainable development goals at the United Nations Conference on Sustainable Development, but it also marks the thirtieth anniversary of the United Nations Convention on the Law of the Sea. The Convention is a stepping stone to guide all activities in the oceans and seas and one of the most significant multilateral treaties ever concluded. I am disheartened by the absence of new adhesions to the Convention or to its implementing Agreements this year and reiterate my appeal to all States that have not yet done so to become parties thereto. I am, however, encouraged in particular this year by the important progress in the work of the three institutions established under the Convention, namely, the Authority, the Tribunal and the Commission. Their work is critical in assisting the efforts of the international community towards ensuring peace and security and an orderly management of the oceans and their resources.

182. The support of Member States for the Oceans Compact will be crucial to advancing towards a more sustainable future and to ensuring healthy oceans for prosperity. We have seen renewed political momentum at the United Nations Conference on Sustainable Development in support of action towards sustainable development, including in relation to oceans and seas. Together, we must continue to engage our individual and collective responsibility to protect the marine environment and manage its resources in a sustainable manner for present and future generations.
United Nations

General Assembly

Sixty-seventh session
Agenda item 75 (a)
Oceans and the law of the sea

Oceans and the law of the sea

Report of the Secretary-General

Addendum


With reference to paragraphs 2, 3 and 181 of my report on oceans and the law of the sea (A/67/79/Add.1), I am pleased to report that, on 24 September 2012, Swaziland ratified the United Nations Convention on the Law of the Sea of 10 December 1982 and Ecuador acceded to it, bringing the number of parties to the Convention to 164, including the European Union, and the number of parties to the Agreement relating to the implementation of Part XI of the Convention to 143. Morocco and Bangladesh ratified the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on 19 September and 5 November 2012, respectively, bringing the number of parties to the Agreement to 80, including the European Union.
International Tribunal for the Law of the Sea

Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)

Judgment of 14 March 2012
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Present: President JESUS; Vice-President TÜRĶ; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Judges ad hoc MENSÅH, OXMAN; Registrar GAUTIER.

In the Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal

between

The People’s Republic of Bangladesh,

represented by

H.E. Ms Dipu Moni, Minister of Foreign Affairs,

as Agent;

Mr Md. Khurshed Alam, Rear Admiral (Ret’d), Additional Secretary, Ministry of Foreign Affairs,

as Deputy Agent;

and

H.E. Mr Mohamed Mijraul Quayes, Foreign Secretary, Ministry of Foreign Affairs,

H.E. Mr Mosud Mannan, Ambassador of the People’s Republic of Bangladesh to the Federal Republic of Germany,

Mr Payam Akhavan, Professor of International Law, McGill University, Canada, Member of the Bar of New York, United States of America,

Mr Alan Boyle, Professor of International Law, University of Edinburgh, Member of the Bar of England and Wales, United Kingdom,

Mr James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, United Kingdom, Member of the Bar of England and Wales, United Kingdom, Member of the Institut de droit international,

Mr Lawrence H. Martin, Foley Hoag LLP, Member of the Bars of the United States Supreme Court, the Commonwealth of Massachusetts and the District of Columbia, United States of America,

Mr Lindsay Parson, Director, Maritime Zone Solutions Ltd., United Kingdom,

Mr Paul S. Reichler, Foley Hoag LLP, Member of the Bars of the United States Supreme Court and the District of Columbia, United States of America,

Mr Philippe Sands, Q.C., Professor of International Law, University College London, Member of the Bar of England and Wales, United Kingdom,

as Counsel and Advocates;

Mr Md. Gomal Sarwar, Director General, Ministry of Foreign Affairs,

Mr Jamal Uddin Ahmed, Assistant Secretary, Ministry of Foreign Affairs,

Ms Shahanara Monica, Assistant Secretary, Ministry of Foreign Affairs,

Mr M. R. I. Abedin, Lt. Cdr., System Analyst, Ministry of Foreign Affairs,

Mr Robin Clevery, Law of the Sea Consultant, United Kingdom Hydrographic Office, United Kingdom,

Mr Scott Edmonds, Cartographic Consultant, International Mapping, United States of America,

Mr Thomas Frogh, Senior Cartographer, International Mapping, United States of America,

Mr Robert W. Smith, Geographic Consultant, United States of America,

as Advisers;

Mr Joseph R. Curray, Professor of Geology, Emeritus, Scripps Institution of Oceanography, University of California, United States of America,

Mr Hermann Kudrass, Former Director and Professor (Retired), German Federal Institute for Geosciences and Natural Resources (BGR), Germany,

as Independent Experts;

Ms Solène Guggisberg, Ph.D. Candidate, International Max Planck Research School for Maritime Affairs, Germany,

Mr Vivek Krishnamurthy, Foley Hoag LLP, Member of the Bars of New York and the District of Columbia, United States of America,

Mr Bjarni Már Magnússon, Ph.D. Candidate, University of Edinburgh, United Kingdom,

Mr Yuri Parkhomenko, Foley Hoag LLP, United States of America,

Mr Remi Reichhold, Research Assistant, Matrix Chambers, London, United Kingdom,

as Junior Counsel;
and

The Republic of the Union of Myanmar,

represented by

H.E. Mr Tun Shin, Attorney General,

as Agent;

Ms Hla Myo Nwe, Deputy Director General, Consular and Legal Affairs Department, Ministry of Foreign Affairs,
Mr Kyaw San, Deputy Director General, Attorney General’s Office of the Republic of the Union of Myanmar,

as Deputy Agents;

and

Mr Mathias Forteau, Professor, University of Paris Ouest, Nanterre La Défense, France,
Mr Coalter Lathrop, Attorney-Adviser, Sovereign Geographic, Member of the North Carolina Bar, United States of America,
Mr Daniel Müller, Consultant in Public International Law, Researcher, Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre La Défense, France,
Mr Alain Pellet, Professor, University of Paris Ouest, Nanterre La Défense, France, Member and former Chairman of the International Law Commission, Associate Member of the Institut de droit international,
Mr Benjamin Samson, Researcher, Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre La Défense, France,
Mr Eran Sthoeger, LL.M., New York University School of Law, United States of America,
Sir Michael Wood, K.C.M.G., Member of the English Bar, United Kingdom, Member of the International Law Commission,

as Counsel and Advocates;

H.E. Mr U Tin Win, Ambassador Extraordinary and Plenipotentiary of the Republic of the Union of Myanmar to the Federal Republic of Germany,
Mr Min Thein Tint, Captain, Commanding Officer, Myanmar Naval Hydrographic Center,
Mr Thura Oo, Pro-Rector of the Meiktila University, Myanmar,
Mr Maung Maung Myint, Counselor, Embassy of the Republic of the Union of Myanmar to the Federal Republic of Germany,
Mr Kyaw Htin Lin, First Secretary, Embassy of the Republic of the Union of Myanmar to the Federal Republic of Germany,
Ms Khin Oo Hlaing, First Secretary, Embassy of the Republic of the Union of Myanmar to the Kingdom of Belgium,
THE TRIBUNAL,

composed as above,

after deliberation,

delivers the following Judgment:

I. Procedural history

1. The Minister of Foreign Affairs of the People’s Republic of Bangladesh, by a letter dated 13 December 2009, notified the President of the Tribunal that, on 8 October 2009, the Government of Bangladesh had instituted arbitral proceedings against the Union of Myanmar (now the Republic of the Union of Myanmar, see paragraph 18) pursuant to Annex VII of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”) “to secure the full and satisfactory delimitation of Bangladesh’s maritime boundaries with […] Myanmar in the territorial sea, the exclusive economic zone and the continental shelf in accordance with international law”. This letter was filed with the Registry of the Tribunal on 14 December 2009.

2. By the same letter, the Minister of Foreign Affairs of Bangladesh notified the President of the Tribunal of declarations made under article 287 of the Convention by Myanmar and Bangladesh on 4 November 2009 and 12 December 2009, respectively, concerning the settlement of the dispute between the two Parties relating to the delimitation of their maritime boundary in the Bay of Bengal. The letter stated:

[g]iven Bangladesh’s and Myanmar’s mutual consent to the jurisdiction of ITLOS, and in accordance with the provisions of UNCLOS Article 287(4), Bangladesh considers that your distinguished Tribunal is now the only forum for the resolution of the parties’ dispute.

On that basis, the Minister of Foreign Affairs of Bangladesh invited the Tribunal “to exercise jurisdiction over the maritime boundary dispute between Bangladesh and Myanmar”.

3. The declaration of Myanmar stated:

In accordance with Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Government of the Union of Myanmar hereby declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of dispute between the Union of Myanmar and the People’s Republic of Bangladesh relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal.

4. The declaration of Bangladesh stated:

Pursuant to Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea, the Government of the People’s Republic of Bangladesh declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of the dispute between the People’s Republic of Bangladesh and the Union of Myanmar relating to the delimitation of their maritime boundary in the Bay of Bengal.

5. In view of the above-mentioned declarations, and the letter of the Minister of Foreign Affairs of Bangladesh dated 13 December 2009 referred to in paragraphs 1 and 2, the case was entered in the List of cases as Case No. 16 on 14 December 2009. On that same date, the Registrar, pursuant to article 24, paragraph 2, of the Statute of the Tribunal (hereinafter “the Statute”), transmitted a certified copy of the notification made by Bangladesh to the Government of Myanmar.

6. By a letter dated 17 December 2009, the Registrar notified the Secretary-General of the United Nations of the institution of proceedings. By a note verbale dated 22 December 2009, the Registrar also notified the States Parties to the Convention, in accordance with article 24, paragraph 3, of the Statute.
7. By a letter dated 22 December 2009, the Minister of Foreign Affairs of Bangladesh, acting as Agent in the case, informed the President of the Tribunal of the designation of Mr Md. Khurshed Alam, Additional Secretary, Ministry of Foreign Affairs, as the Deputy Agent of Bangladesh. By a note verbale dated 23 December 2009, the Ministry of Foreign Affairs of Myanmar informed the Tribunal of the appointment of Mr Tun Shin, Attorney General, as Agent, and Ms Hla Myo Nwe, Deputy Director General, Ministry of Foreign Affairs, and Mr Nyan Naing Win, Deputy Director, Attorney General’s Office, as Deputy Agents. Subsequently, by a letter dated 24 May 2011, the Agent of Myanmar informed the Tribunal that Myanmar had appointed Mr Kyaw San, Deputy Director General, Attorney General’s Office, as Deputy Agent in place of Mr Nyan Naing Win.

8. By a letter dated 14 January 2010, the Ambassador of Myanmar to Germany transmitted a letter from the Minister of Foreign Affairs of Myanmar of the same date, in which Myanmar informed the Registrar that it had “transmitted the Declaration to withdraw its previous declaration accepting the jurisdiction of ITLOS made on 4 November 2009 by the Minister of Foreign Affairs of Myanmar, to the Secretary-General of the United Nations on 14th January 2010”. On the same date, the Registrar transmitted a copy of the aforementioned letters to Bangladesh.

9. In a letter dated 18 January 2010 addressed to the Registrar, the Deputy Agent of Bangladesh stated that Myanmar’s withdrawal of its declaration of acceptance of the Tribunal’s jurisdiction did “not in any way affect proceedings regarding the dispute that have already commenced before ITLOS, or the jurisdiction of ITLOS with regard to such proceedings”. In this regard, Bangladesh referred to article 287, paragraphs 6 and 7, of the Convention.

10. Consultations were held by the President with the representatives of the Parties on 25 and 26 January 2010 to ascertain their views regarding questions of procedure in respect of the case. In this context, it was noted that, for the reasons indicated in paragraph 5, the case had been entered in the List of cases as Case No. 16. The representatives of the Parties concurred that 14 December 2009 was to be considered the date of institution of proceedings before the Tribunal.

11. In accordance with articles 59 and 61 of the Rules of the Tribunal (hereinafter “the Rules”), the President, having ascertained the views of the Parties, by Order dated 28 January 2010, fixed the following time-limits for the filing of the pleadings in the case: 1 July 2010 for the Memorial of Bangladesh and 1 December 2010 for the Counter-Memorial of Myanmar. The Registrar forthwith transmitted a copy of the Order to the Parties. The Memorial and the Counter-Memorial were duly filed within the time-limits so fixed.

12. Pursuant to articles 59 and 61 of the Rules, the views of the Parties having been ascertained by the President, the Tribunal, by Order dated 17 March 2010, authorized the submission of a Reply by Bangladesh and a Rejoinder by Myanmar and fixed 15 March 2011 and 1 July 2011, respectively, as the time-limits for the filing of those pleadings. The Registrar forthwith transmitted a copy of the Order to the Parties. The Reply and the Rejoinder were duly filed within the time-limits so fixed.

13. Since the Tribunal does not include upon the bench a member of the nationality of the Parties, each of the Parties availed itself of its right under article 17 of the Statute to choose a judge ad hoc. Bangladesh, by its letter dated 13 December 2009 referred to in paragraph 1, chose Mr Vaughan Lowe and Myanmar, by a letter dated 12 August 2010, chose Mr Bernard H. Oxman to sit as judges ad hoc in the case. No objection to the choice of Mr Lowe as judge ad hoc was raised by Myanmar, and no objection to the choice of Mr Oxman as judge ad hoc was raised by Bangladesh, and no objection appeared to the Tribunal itself. Consequently, the Parties were informed by letters from the Registrar dated 12 May 2010 and 20 September 2010, respectively, that Mr Lowe and Mr Oxman would be admitted to participate in the proceedings as judges ad hoc, after having made the solemn declaration required under article 9 of the Rules.
14. By a letter dated 1 September 2010, Mr Lowe informed the President that he was not in a position to act as a judge ad hoc in the case.

15. By a letter dated 13 September 2010, pursuant to article 19, paragraph 4, of the Rules, the Deputy Agent of Bangladesh informed the Registrar of Bangladesh's choice of Mr Thomas Mensah as judge ad hoc in the case, to replace Mr Lowe. Since no objection to the choice of Mr Mensah as judge ad hoc was raised by Myanmar, and no objection appeared to the Tribunal itself, the Registrar informed the Parties by a letter dated 26 October 2010 that Mr Mensah would be admitted to participate in the proceedings as judge ad hoc, after having made the solemn declaration required under article 9 of the Rules.

16. On 16 February 2011, the President held consultations with the representatives of the Parties regarding the organization of the hearing, in accordance with article 45 of the Rules.

17. By a letter dated 22 July 2011 addressed to the Registrar, the Consul-General of Japan in Hamburg requested that copies of the written pleadings be made available to Japan. The views of the Parties having been ascertained by the President, the requested copies were made available, pursuant to article 67, paragraph 1, of the Rules, by a letter dated 22 August 2011 from the Registrar to the Consul-General of Japan.

18. By a note verbale dated 15 August 2011, the Embassy of Myanmar in Berlin informed the Registry that the name of the country had been changed from the “Union of Myanmar” to the “Republic of the Union of Myanmar” as of March 2011.

19. The President, having ascertained the views of the Parties, by an Order dated 19 August 2011, fixed 8 September 2011 as the date for the opening of the oral proceedings.

20. At a public sitting held on 5 September 2011, Mr Thomas Mensah, Judge ad hoc chosen by Bangladesh, and Mr Bernard H. Oxman, Judge ad hoc chosen by Myanmar, made the solemn declaration required under article 9 of the Rules.

21. In accordance with article 68 of the Rules, the Tribunal held initial deliberations on 5, 6 and 7 September 2011 to enable judges to exchange views concerning the written pleadings and the conduct of the case. On 7 September 2011, it decided, pursuant to article 76, paragraph 1, of the Rules, to communicate to the Parties two questions which it wished them specially to address. These questions read as follows:

   1. Without prejudice to the question whether the Tribunal has jurisdiction to delimit the continental shelf beyond 200 nautical miles, would the Parties expand on their views with respect to the delimitation of the continental shelf beyond 200 nautical miles?

   2. Given the history of discussions between them on the issue, would the Parties clarify their position regarding the right of passage of ships of Myanmar through the territorial sea of Bangladesh around St. Martin’s Island?

22. On 7 September 2011, the President held consultations with the representatives of the Parties to ascertain their views regarding the hearing and transmitted to them the questions referred to in paragraph 21.

23. Prior to the opening of the oral proceedings, on 7 September 2011, the Agent of Bangladesh communicated information required under paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

24. The Agent of Myanmar communicated information required under paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal on 9 September 2011 and additional information on 14 September 2011.

25. From 8 to 24 September 2011, the Tribunal held 15 public sittings. At these sittings, the Tribunal was addressed by the following:
For Bangladesh:

H.E. Ms Dipu Moni,
Mr Md. Khursheed Alam,
as Agent and Deputy Agent;

H.E. Mr Mohamed Mijraul Quayes,
Mr Payam Akhavan,
Mr Alan Boyle,
Mr James Crawford,
Mr Lawrence H. Martin,
Mr Lindsay Parson,
Mr Paul S. Reichler,
Mr Philippe Sands,
as Counsel and Advocates.

For Myanmar:

H.E. Mr Tun Shin,
as Agent;

Mr Mathias Forteau,
Mr Coalter Lathrop,
Mr Daniel Müller,
Mr Alain Pellet,
Mr Benjamin Samson,
Mr Eran Sthoeger,
Sir Michael Wood,
as Counsel and Advocates.

26. In the course of the oral proceedings, the Parties displayed a number of slides, including maps, charts and excerpts from documents, and animations on video monitors. Electronic copies of these documents were filed with the Registry by the Parties.

27. The hearing was broadcast over the internet as a webcast.

28. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and the documents annexed thereto were made accessible to the public on the opening of the oral proceedings.

29. In accordance with article 86 of the Rules, verbatim records of each hearing were prepared by the Registrar in the official languages of the Tribunal used during the hearing. Copies of the transcripts of such records were circulated to the judges sitting in the case and to the Parties. The transcripts were made available to the public in electronic form.

30. President Jesus, whose term of office as President expired on 30 September 2011, continued to preside over the Tribunal in the present case until completion, pursuant to article 16, paragraph 2, of the Rules. In accordance with article 17 of the Rules, Judges Yankov and Treves, whose term of office expired on 30 September 2011, having participated in the meeting mentioned in article 68 of the Rules, continued to sit in the case until its completion. Judge Caminos, whose term of office also expired on 30 September 2011, was prevented by illness from participating in the proceedings.

II. Submissions of the Parties

31. In their written pleadings, the Parties presented the following submissions:

In its Memorial and its Reply, Bangladesh requested the Tribunal to adjudge and declare that:

1. The maritime boundary between Bangladesh and Myanmar in the territorial sea shall be that line first agreed between them in 1974 and reaffirmed in 2008. The coordinates for each of the seven points comprising the delimitation are:

<table>
<thead>
<tr>
<th>No.</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>20°42'15.8&quot; N</td>
<td>92°22'07.2&quot; E</td>
</tr>
<tr>
<td>2.</td>
<td>20°40'00.5&quot; N</td>
<td>92°21'5.2&quot; E</td>
</tr>
<tr>
<td>3.</td>
<td>20°38'53.5&quot; N</td>
<td>92°23'19.2&quot; E</td>
</tr>
<tr>
<td>4.</td>
<td>20°37'23.5&quot; N</td>
<td>92°23'57.2&quot; E</td>
</tr>
<tr>
<td>5.</td>
<td>20°35'53.5&quot; N</td>
<td>92°25'04.2&quot; E</td>
</tr>
<tr>
<td>6.</td>
<td>20°33'40.5&quot; N</td>
<td>92°24'49.2&quot; E</td>
</tr>
<tr>
<td>7.</td>
<td>20°22'56.6&quot; N</td>
<td>92°24'24.2&quot; E</td>
</tr>
</tbody>
</table>

2. From Point 7, the maritime boundary between Bangladesh and Myanmar follows a line with a geodesic azimuth of 215° to the point located at 17°25'50.7" N - 90°15'49.0" E; and
3. From that point, the maritime boundary between Bangladesh and Myanmar follows the contours of the 200 M limit drawn from Myanmar’s normal baselines to the point located at 15° 42’ 54.1” N - 90° 13’ 50.1” E.

(All points referenced are referred to WGS 84.)

In its Counter-Memorial and its Rejoinder, Myanmar requested the Tribunal to adjudge and declare that:

1. The single maritime boundary between Myanmar and Bangladesh runs from Point A to Point G as follows:

<table>
<thead>
<tr>
<th>Point</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>20° 42’ 15.8” N</td>
<td>92° 22’ 07.2” E</td>
</tr>
<tr>
<td>B</td>
<td>20° 41’ 03.4” N</td>
<td>92° 20’ 12.9” E</td>
</tr>
<tr>
<td>B1</td>
<td>20° 39’ 53.6” N</td>
<td>92° 21’ 07.1” E</td>
</tr>
<tr>
<td>B2</td>
<td>20° 38’ 09.5” N</td>
<td>92° 22’ 40.6” E</td>
</tr>
<tr>
<td>B3</td>
<td>20° 36’ 43.0” N</td>
<td>92° 23’ 58.0” E</td>
</tr>
<tr>
<td>B4</td>
<td>20° 35’ 28.4” N</td>
<td>92° 24’ 54.5” E</td>
</tr>
<tr>
<td>B5</td>
<td>20° 33’ 07.7” N</td>
<td>92° 25’ 44.8” E</td>
</tr>
<tr>
<td>C</td>
<td>20° 30’ 42.8” N</td>
<td>92° 25’ 23.9” E</td>
</tr>
<tr>
<td>D</td>
<td>20° 28’ 20.0” N</td>
<td>92° 19’ 31.6” E</td>
</tr>
<tr>
<td>E</td>
<td>20° 26’ 42.4” N</td>
<td>92° 09’ 53.6” E</td>
</tr>
<tr>
<td>F</td>
<td>20° 13’ 06.3” N</td>
<td>92° 00’ 07.6” E</td>
</tr>
<tr>
<td>G</td>
<td>19° 45’ 36.7” N</td>
<td>91° 32’ 38.1” E</td>
</tr>
</tbody>
</table>

(The co-ordinates are referred to WGS 84 datum)

2. From Point G, the boundary line continues along the equidistance line in a south-west direction following a geodetic azimuth of 231° 37’ 50.9” until it reaches the area where the rights of a third State may be affected.

The Republic of the Union of Myanmar reserves its right to supplement or to amend these submissions in the course of the present proceedings.

32. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the Parties during the oral proceedings:

On behalf of Bangladesh, at the hearing on 22 September 2011:

[O]n the basis of the facts and arguments set out in our Reply and during these oral proceedings, Bangladesh requests the Tribunal to adjudge and declare that:

(1) The maritime boundary between Bangladesh and Myanmar in the territorial sea shall be that line first agreed between them in 1974 and reaffirmed in 2008. The coordinates for each of the seven points comprising the delimitation are those set forth in our written Submissions in the Memorial and Reply;

(2) From Point 7, the maritime boundary between Bangladesh and Myanmar follows a line with a geodesic azimuth of 215° to the point located at the coordinates set forth in paragraph 2 of the Submissions as set out in the Reply; and

(3) From that point, the maritime boundary between Bangladesh and Myanmar follows the contours of the 200-M limit drawn from Myanmar’s normal baselines to the point located at the coordinates set forth in paragraph 3 of the Submissions as set out in the Reply.

On behalf of Myanmar, at the hearing on 24 September 2011:

Having regard to the facts and law set out in the Counter-Memorial and the Rejoinder, and at the oral hearing, the Republic of the Union of Myanmar requests the Tribunal to adjudge and declare that:

1. The single maritime boundary between Myanmar and Bangladesh runs from point A to point G, as set out in the Rejoinder. […]

2. From point G, the boundary line continues along the equidistance line in a south-west direction following a geodetic azimuth of 231° 37’ 50.9” until it reaches the area where the rights of a third State may be affected.

III. Factual Background

Regional geography (see overview sketch-map on page 20)

33. The maritime area to be delimited in the present case lies in the northeastern part of the Bay of Bengal. This Bay is situated in the northeastern Indian Ocean, covering an area of approximately 2.2 million square kilometres, and is bordered by Sri Lanka, India, Bangladesh and Myanmar.
34. Bangladesh is situated to the north and northeast of the Bay of Bengal. Its land territory borders India and Myanmar and covers an area of approximately 147,000 square kilometres.

35. Myanmar is situated to the east of the Bay of Bengal. Its land territory borders Bangladesh, India, China, Laos and Thailand and covers an area of approximately 678,000 square kilometres.
Brief history of the negotiations between the Parties

36. Prior to the institution of these proceedings, negotiations on the delimitation of the maritime boundary were held between Bangladesh and Myanmar from 1974 to 2010. Eight rounds of talks took place between 1974 and 1986 and six rounds between 2008 and 2010.

37. During the second round of talks, held in Dhaka between 20 and 25 November 1974, the heads of the two delegations, on 23 November 1974, signed the "Agreed Minutes between the Bangladesh Delegation and the Burmese Delegation regarding the Delimitation of the Maritime Boundary between the Two Countries" (hereinafter "the 1974 Agreed Minutes"; see paragraph 57).

38. On the resumption of the talks in 2008, at the first round held in Dhaka from 31 March to 1 April 2008, the heads of delegations on 1 April 2008, signed the "Agreed Minutes of the meeting held between the Bangladesh Delegation and the Myanmar Delegation regarding the delimitation of the Maritime Boundaries between the two countries" (hereinafter "the 2008 Agreed Minutes"; see paragraph 58).

39. In the summary of discussions signed by the heads of the delegations at the fifth round, held in Chittagong on 8 and 9 January 2010, it was noted that Bangladesh had already initiated arbitration proceedings under Annex VII to the Convention.

IV. Subject-matter of the dispute

40. The dispute concerns the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal with respect to the territorial sea, the exclusive economic zone and the continental shelf.

V. Jurisdiction

41. Bangladesh observes that the Parties have expressly recognized the jurisdiction of the Tribunal over the dispute, as reflected in their declarations made under article 287. It states that "the subject-matter of the dispute is exclusively concerned with the provisions of UNCLOS and thus falls entirely within ITLOS jurisdiction as agreed by the parties".

42. Bangladesh asserts that its "claim is based on the provisions of UNCLOS as applied to the relevant facts, including but not limited to UNCLOS Articles 15, 74, 76 and 83" and that "[t]hese provisions relate to the delimitation of the territorial sea, exclusive economic zone and continental shelf, including the outer continental shelf beyond 200" nautical miles (hereinafter "nm").

43. Bangladesh states that the Tribunal’s jurisdiction to delimit the maritime boundary between Bangladesh and Myanmar in respect of all the maritime areas in dispute, including the part of the continental shelf beyond 200 nm from the baselines from which the breadth of the territorial sea is measured (hereinafter "the continental shelf beyond 200 nm") is recognized under the Convention and concludes that the Tribunal’s jurisdiction in regard to the dispute between Bangladesh and Myanmar is plainly established.

44. Myanmar notes that the two Parties in their declarations under article 287, paragraph 1, of the Convention accepted the jurisdiction of the Tribunal to settle the dispute relating to the delimitation of their maritime boundary in the Bay of Bengal. It states that the dispute before this Tribunal concerns the delimitation of the territorial sea, the exclusive economic zone and the continental shelf of Myanmar and Bangladesh in the Bay of Bengal.

45. Myanmar does not dispute that, "as a matter of principle, the delimitation of the continental shelf, including the shelf beyond 200 [nm], could fall within the jurisdiction of the Tribunal". However, it submits that "in the present case, the Tribunal does not have jurisdiction with regard to the continental shelf beyond 200 [nm]". In this regard Myanmar contends that,
even if the Tribunal were to decide that it has jurisdiction to delimit the continental shelf beyond 200 nm, it would not be appropriate for the Tribunal to exercise that jurisdiction in the present case.

* * *


47. The Tribunal observes that Myanmar and Bangladesh, by their declarations under article 287, paragraph 1, of the Convention, quoted in paragraphs 3 and 4, accepted the jurisdiction of the Tribunal for the settlement of the dispute between them relating to the delimitation of their maritime boundary in the Bay of Bengal and that these declarations were in force at the time proceedings before the Tribunal were instituted on 14 December 2009.

48. Pursuant to article 288, paragraph 1, of the Convention and article 21 of the Statute, the jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention. In the view of the Tribunal, the present dispute entails the interpretation and application of the relevant provisions of the Convention, in particular articles 15, 74, 76 and 83 thereof.

49. The Tribunal further observes that the Parties agree that the Tribunal has jurisdiction to adjudicate the dispute relating to the delimitation of the territorial sea, the exclusive economic zone and the continental shelf within 200 nm from the baselines from which the breadth of the territorial sea is measured (hereinafter “the continental shelf within 200 nm”).

50. Accordingly, the Tribunal concludes that it has jurisdiction to delimit the maritime boundary between the Parties in the territorial sea, the exclusive economic zone and the continental shelf within 200 nm. The Tribunal will deal with the issue of its jurisdiction with respect to the delimitation of the continental shelf beyond 200 nm in paragraphs 341-394.

VI. Applicable law

51. Article 23 of the Statute states: “The Tribunal shall decide all disputes and applications in accordance with article 293” of the Convention.

52. Article 293, paragraph 1, of the Convention states: “A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention”.

53. The Parties agree that the applicable law is the Convention and other rules of international law not incompatible with it.

54. Articles 15, 74 and 83 of the Convention establish the law applicable to the delimitation of the territorial sea, the exclusive economic zone and the continental shelf, respectively. As the present case relates, inter alia, to the delimitation of the continental shelf, article 76 of the Convention is also of particular importance.

55. The provisions of articles 15, 74, 76 and 83 of the Convention will be examined by the Tribunal in the relevant sections of this Judgment relating to the delimitation of the territorial sea, the exclusive economic zone and the continental shelf.
VII. Territorial sea

56. In dealing with the delimitation of the territorial sea, the Tribunal will first address the issue of whether the Parties have in fact delimited their territorial sea, either by signing the Agreed Minutes of 1974 and 2008 or by tacit agreement. The Tribunal will also examine whether the conduct of the Parties may be said to have created a situation of estoppel.

The 1974 and 2008 Agreed Minutes

57. As noted in paragraph 36, the Parties held discussions from 1974 to 2010 on the delimitation of maritime areas between them, including the territorial sea. During the second round of these discussions, the head of the delegation of Burma (now the Republic of the Union of Myanmar), Commodore Chit Hlaing, and the head of the Bangladesh delegation, Ambassador K.M. Kaiser, signed the 1974 Agreed Minutes which read as follows:

**Agreed Minutes between the Bangladesh Delegation and the Burmese Delegation regarding the Delimitation of the Maritime Boundary between the Two Countries**

1. The delegations of Bangladesh and Burma held discussions on the question of delimiting the maritime boundary between the two countries in Rangoon (4 to 6 September 1974) and in Dacca (20 to 25 November 1974). The discussions took place in an atmosphere of great cordiality, friendship and mutual understanding.

2. With respect to the delimitation of the first sector of the maritime boundary between Bangladesh and Burma, i.e., the territorial waters boundary, the two delegations agreed as follows:

I. The boundary will be formed by a line extending seaward from Boundary Point No. 1 in the Naaf River to the point of intersection of arcs of 12 [nm] from the southernmost tip of St. Martin’s Island and the nearest point on the coast of the Burmese mainland, connecting the intermediate points, which are the mid-points between the nearest points on the coast of St. Martin’s Island and the coast of the Burmese mainland.

The general alignment of the boundary mentioned above is illustrated on Special Chart No. 114 annexed to these minutes.

(Signed)
(Commodore Chit Hlaing)
Leader of the Burmese Delegation
Dated, November 23, 1974.

(Signed)
(Ambassador K.M. Kaiser)
Leader of the Bangladesh Delegation
Dated, November 23, 1974.

58. During the first round of the resumed discussions, the head of the Myanmar delegation, Commodore Maung Oo Lwin, and the head of the Bangladesh delegation, Mr M.A.K. Mahmood, Additional Foreign Secretary, signed the 2008 Agreed Minutes, which read as follows:

**Agreed Minutes of the meeting held between the Bangladesh Delegation and the Myanmar Delegation regarding the delimitation of the Maritime Boundaries between the two countries**

1. The Delegations of Bangladesh and Myanmar held discussions on the delimitation of the maritime boundary between

II. The final coordinates of the turning points for delimiting the boundary of the territorial waters as agreed above will be fixed on the basis of the data collected by a joint survey.

3. The Burmese delegation in the course of the discussions in Dacca stated that their Government’s agreement to delimit the territorial waters boundary in the manner set forth in para 2 above is subject to a guarantee that Burmese ships would have the right of free and unimpeded navigation through Bangladesh waters around St. Martin’s Island to and from the Burmese sector of the Naaf River.

4. The Bangladesh delegation expressed the approval of their Government regarding the territorial waters boundary referred to in para 2. The Bangladesh delegation had taken note of the position of the Burmese Government regarding the guarantee of free and unimpeded navigation by Burmese vessels mentioned in para 3 above.

5. Copies of a draft Treaty on the delimitation of the territorial waters boundary were given to the Burmese delegation by the Bangladesh delegation on 20 November 1974 for eliciting views from the Burmese Government.

6. With respect to the delimitation of the second sector of the Bangladesh-Burma maritime boundary, i.e., the Economic Zone and Continental Shelf boundary, the two delegations discussed and considered various principles and rules applicable in that regard. They agreed to continue discussions in the matter with a view to arriving at a mutually acceptable boundary.

(Signed)
(Commodore Chit Hlaing)
Leader of the Burmese Delegation
Dated, November 23, 1974.

(Signed)
(Ambassador K.M. Kaiser)
Leader of the Bangladesh Delegation
Dated, November 23, 1974.
the two countries in Dhaka from 31 March to 1st April, 2008. The discussions took place in an atmosphere of cordiality, friendship and understanding.

2. Both sides discussed the ad-hoc understanding on chart 114 of 1974 and both sides agreed ad-referendum that the word “unimpeded” in paragraph 3 of the November 23, 1974 Agreed Minutes, be replaced with “Innocent Passage through the territorial sea shall take place in conformity with the UNCLOS, 1982 and shall be based on reciprocity in each other’s waters”.

3. Instead of chart 114, as referred to in the ad-hoc understanding both sides agreed to plot the following coordinates as agreed in 1974 of the ad-hoc understanding on a more recent and internationally recognized chart, namely, Admiralty Chart No. 817, conducting joint inspection instead of previously agreed joint survey:

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>20° -42' -12.3&quot; N</td>
<td>092° -22' -18&quot; E</td>
</tr>
<tr>
<td>2.</td>
<td>20° -39' -57&quot; N</td>
<td>092° -21' -16&quot; E</td>
</tr>
<tr>
<td>3.</td>
<td>20° -38' -50&quot; N</td>
<td>092° -22' -50&quot; E</td>
</tr>
<tr>
<td>4.</td>
<td>20° -37' -20&quot; N</td>
<td>092° -24' -08&quot; E</td>
</tr>
<tr>
<td>5.</td>
<td>20° -35' -50&quot; N</td>
<td>092° -25' -15&quot; E</td>
</tr>
<tr>
<td>6.</td>
<td>20° -33' -37&quot; N</td>
<td>092° -26' -00&quot; E</td>
</tr>
<tr>
<td>7.</td>
<td>20° -22' -53&quot; N</td>
<td>092° -24' -35&quot; E</td>
</tr>
</tbody>
</table>

Other terms of the agreed minutes of the 1974 will remain the same.

4. As a starting point for the delimitation of the EEZ and Continental Shelf, Bangladesh side proposed the intersecting point of the two 12 [nm] arcs (Territorial Sea limits from respective coastlines) drawn from the southermost point of St. Martin’s Island and Myanmar mainland as agreed in 1974, or any point on the line connecting the St. Martin’s Island and Oyster Island after giving due effect i.e. 3:1 ratio in favour of St. Martin’s Island to Oyster Island. Bangladesh side referred to the Article 121 of the UNCLOS, 1982 and other jurisprudence regarding status of islands and rocks and Oyster Island is not entitled to EEZ and Continental Shelf. Bangladesh side also reiterated about the full effects of St. Martin’s Island as per regime of Islands as stipulated in Article 121 of the UNCLOS, 1982.

5. Myanmar side proposed that the starting point for the EEZ and Continental Shelf could be the mid point on the line connecting the St. Martin’s Island and Oyster Island. Myanmar side referred to Article 7(4), 15, 74, 83 and cited relevant cases and the fact that proportionality of the two coastlines should be considered. Myanmar also stated that Myanmar has given full effect to St. Martin’s Island which was opposite to Myanmar mainland and that Oyster Island should enjoy full effect, since it has inhabitants and has a lighthouse, otherwise, Myanmar side would need to review the full-effect that it had accorded to St. Martin’s Island.

6. The two sides also discussed and considered various equitable principles and rules applicable in maritime delimitation and State practices.

7. They agreed to continue discussions in the matter with a view to arriving at a mutually acceptable maritime boundary in Myanmar at mutually convenient dates.

(Signed)                 (Signed)
Commodore Maung Oo Lwin   M.A.K. Mahmood
Leader of the Myanmar     Additional Foreign Secretary
Delegation                Leader of the Bangladesh
                          Delegation
Dated: April 1, 2008     Dhaka

59. The Tribunal will now consider the position of the Parties on the Agreed Minutes.

60. In its final submissions Bangladesh requests the Tribunal to adjudge and declare, inter alia, that the maritime boundary between Bangladesh and Myanmar in the territorial sea shall be the line first agreed between them in 1974 and reaffirmed in 2008.

61. According to Bangladesh, the Parties reached agreement in November 1974, at their second round of negotiations. It maintains that the two delegations confirmed the terms of their agreement and gave it clear expression by jointly plotting the agreed line on Special Chart No. 114, which was signed by the heads of both delegations. It also observes that, subsequently, “the Parties’ agreement was reduced to writing” in the form of the 1974 Agreed Minutes.

62. Bangladesh recalls that, during the negotiations in 1974, it presented a draft treaty to Myanmar. Bangladesh states that Myanmar did not sign this document, not because it disagreed with the line, but because it preferred to
incorporate the Parties’ agreement into a comprehensive maritime delimitation treaty including the exclusive economic zone and the continental shelf.

63. According to Bangladesh, “[i]n the years that followed, the territorial sea was treated as a settled issue by both Parties”, and “[n]either Party raised any concerns or suggested a different approach”. It states that “[o]nly in September 2008, 34 years after the adoption of the 1974 agreement, did Myanmar for the first time suggest that the agreement was no longer in force”.

64. In the view of Bangladesh, the 1974 Agreed Minutes were “intended to be and [are] valid, binding, and effective”. Bangladesh states that these Minutes created rights and obligations on both States and therefore constitute an “agreement” within the meaning of article 15 of the Convention. Bangladesh adds that “[i]nstead, the Agreed Minutes of 1974 specifically use that very term in referring to Myanmar’s ‘agreement’ to the delimitation of the territorial sea”. For similar reasons, Bangladesh considers that the 2008 Agreed Minutes also embody an agreement of a binding nature.

65. For its part, Myanmar denies the existence of an agreement between the Parties within the meaning of article 15 of the Convention, arguing that it is clear from both “the form and the language” of the 1974 Agreed Minutes that “the so-called ‘1974 Agreement’ between the two delegations was merely an understanding reached at a certain stage of the technical-level talks as part of the ongoing negotiations. In its view it was without doubt intended that Points 1 to 7 would in due course be included in an overall agreement on the delimitation of the entire line between the maritime areas appertaining to Myanmar and those appertaining to Bangladesh. Myanmar maintains that no such agreement had been reached.

66. According to Myanmar, the 1974 Agreed Minutes were nothing more than a conditional agreement reached at the level of the negotiators. Myanmar emphasizes that its delegation made clear on several occasions that its Government would not sign and ratify a treaty that did not resolve the delimitation dispute in all the different contested areas altogether and that its position was that no agreement would be concluded on the territorial sea before there was agreement regarding the exclusive economic zone/continental shelf. It adds that Bangladesh was fully aware of Myanmar’s position on this point.

67. Myanmar contends that the conditionality of the understanding contained in the 1974 Agreed Minutes is inconsistent with Bangladesh’s assertion that this instrument has binding force. According to Myanmar, the ad hoc understanding was subject to two conditions:

First, paragraph 2 made the understanding between the delegations subject to “a guarantee that Burmese ships would have the right of free and unimpeded navigation through Bangladesh waters around St. Martin’s Island to and from the Burmese sector of the Naaf River”. Paragraph 4 then merely stated that “[t]he Bangladesh delegation had taken note of the position of the Burmese Government regarding the guarantee of free and unimpeded navigation by Burmese vessels mentioned in para 3 above”. […] The issue was left for future negotiation and settlement. […]

The second and crucial condition in the text is found in paragraphs 4 and 5 of the minutes. According to paragraph 4, “[t]he Bangladesh delegation expressed the approval of their Government regarding the territorial waters boundary referred to in para 2”. The paragraph, however, was silent with respect to approval of the Government of Myanmar to any such boundary. Paragraph 5 then stated that “Copies of a draft Treaty on the delimitation of territorial waters boundary were given to the Burmese delegation by the Bangladesh delegation on 20 November 1974 for eliciting views from the Burmese Government”.

68. In addition, Myanmar observes that the 1974 Agreed Minutes were not approved in conformity with the constitutional provisions in force in either of the two countries.

69. In Myanmar’s view, case law shows that a delimitation agreement is not lightly to be inferred. In support of this, Myanmar refers to the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) (Judgment, I.C.J. Reports 2007, p. 659, at p. 735, para. 253).
Use of the term “agreement” in article 15 of the Convention

70. Bangladesh maintains that an “agreement” in accordance with article 15 of the Convention must not necessarily be “in every sense a formally negotiated and binding treaty”.

71. Myanmar emphasizes that “what is contemplated is an agreement that is binding in international law”. It argues that the question therefore is whether the 1974 Agreed Minutes constitute an agreement binding under international law, in other words a treaty, and whether by their terms they established a maritime delimitation.

Terms of the “Agreed Minutes” and circumstances of their adoption

72. In support of its position that the 1974 Agreed Minutes reflect a binding agreement, Bangladesh claims that their terms are “clear and unambiguous” and “[t]hey clearly identify a boundary located midway between St. Martin’s Island and the coast of Myanmar, from points 1-7 as shown on Special Chart 114”. Bangladesh maintains that the terms of the 1974 Agreed Minutes were confirmed by the delegations of the Parties when they jointly plotted the agreed line on that chart. Moreover, it observes that the object and purpose of the agreement and the context in which it was negotiated are also clear, namely, “to negotiate a maritime boundary”. It adds that the existence of an agreement is also evidenced by the terminology used, namely “Agreed Minutes”.

73. Bangladesh contends that the terms of the 1974 Agreed Minutes were confirmed by the 2008 Agreed Minutes and remained the same, subject only to two minor alterations. The first modification in the 2008 Agreed Minutes consisted in plotting the “coordinates as agreed in 1974 of the ad hoc understanding on a more recent and internationally recognized chart, namely Admiralty Chart No. 817”. The second modification was to replace the phrase “unimpeded access” in paragraph 3 of the 1974 Agreed Minutes with the phrase: “Innocent passage through the territorial sea shall take place in conformity with the UNCLOS 1982, and shall be based on reciprocity in each other’s waters”.

74. Bangladesh adds that the 1974 Agreed Minutes are “very similar or identical to the procès-verbal in the Black Sea case”, since they “both record an agreement negotiated by officials with power to conclude agreements in simplified form in accordance with article 7(1)(b) of the Vienna Convention [on the Law of Treaties]”.

75. Myanmar responds that the expression “Agreed Minutes” is often employed in international relations “for the record of a meeting” and “it is not a common designation for a document that the participants intend to constitute a treaty”. Myanmar notes that the full title of the 1974 Agreed Minutes is “Agreed Minutes between the Bangladesh Delegation and the Burmese Delegation regarding the Delimitation of the Maritime Boundary between the Two Countries”, emphasizing that the 1974 Agreed Minutes were concluded “between the Bangladesh Delegation and the Burmese Delegation”. According to Myanmar, “[a] legally binding treaty between two sovereign States would hardly be expressed, in its title, to be between delegations”. Myanmar makes similar remarks with regard to the 2008 Agreed Minutes.

76. Myanmar argues that the “ordinary language” indicates that the 1974 Agreed Minutes “were never intended to constitute a legally binding agreement”. In particular, Myanmar observes that the opening words in paragraph 1 of these Minutes “are clearly the language of a record of a meeting, not of a legally binding agreement”. It states that paragraph 2 of the 1974 Agreed Minutes only relates to “the first sector of the maritime boundary”, implying that more sectors must be negotiated before a final agreement is reached and records that the two delegations agreed that the boundary would be formed by a line. Paragraph 4 states that the “Bangladesh delegation” has “taken note” of the position of the Government of Myanmar regarding the guarantee of free and unimpeded navigation”. Paragraph 6
indicates that the discussions concerning the maritime boundary in the exclusive economic zone and the continental shelf remained ongoing.

77. Referring to the terms of the 2008 Agreed Minutes, Myanmar observes that “once again the language is that of a record of discussion, not of treaty commitments”. It further observes that the text of the 2008 Agreed Minutes also counters Bangladesh’s assertion as they refer to the 1974 Agreed Minutes as “an ad-hoc understanding”. Moreover, the wording in paragraph 2 of the 2008 Agreed Minutes that “both sides agreed ad referendum” indicates that “the two delegations intended to refer the matter back to their respective governments”.

78. Myanmar argues that the circumstances in which the 1974 Agreed Minutes and 2008 Agreed Minutes were concluded “confirm that the Minutes were no more than an ad hoc conditional understanding, reached at an initial stage of the negotiations, which never ripened into a binding agreement between the two negotiating sides”.

79. Myanmar adds that the 1974 Agreed Minutes are by no means comparable to the 1949 General Procès-Verbal that was at issue in the case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine) (Judgment, I.C.J. Reports 2009, p. 61). Pointing to what it says are essential differences between the two instruments, Myanmar contends that the actual terms and context of the 1949 General Procès-Verbal are entirely different from those of the 1974 Agreed Minutes and points out that the parties to the 1949 General Procès-Verbal were in agreement that it was a legally binding international agreement.

80. Regarding the question of the authority of Myanmar’s delegation, Bangladesh considers that the head of the Burmese delegation who signed the 1974 Agreed Minutes was the appropriate official to negotiate with Bangladesh in 1974 and “did not require full powers to conclude an agreement in simplified form”. Bangladesh argues that, even if the head of the Burmese delegation lacked the authority to do so, the agreement remains valid “if it [was] afterwards confirmed by the State concerned” in accordance with article 8 of the Vienna Convention on the Law of Treaties (hereinafter “the Vienna Convention”). In this respect Bangladesh holds the view that the 1974 Agreed Minutes “were confirmed and re-adopted in 2008”.

81. According to Bangladesh:

[w]hat matters is whether the Parties have agreed on a boundary, even in simplified form, not whether their agreement is a formally negotiated treaty or has been signed by representatives empowered to negotiate or ratify the treaty.

82. Bangladesh points out that, in the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening) (Judgment, I.C.J. Reports 2002, p. 303, at p. 429, para. 263), the International Court of Justice (hereinafter “the ICJ”) “held that the Maroua Declaration constituted an international agreement in written form tracing a boundary and that it was thus governed by international law and constituted a treaty in the sense of the 1969 Vienna Convention on the Law of Treaties”.

83. Myanmar argues that members of its delegation to the negotiations in November 1974 lacked authority “to commit their Government to a legally-binding treaty”. It states, in this regard, that the head of the Burmese delegation, Commodore Hlaing, a naval officer, could not be considered as representing Myanmar for the purpose of expressing its consent to be bound by a treaty as he was not one of those holders of high-ranking office in the State referred to in article 7, paragraph 2, of the Vienna Convention. Furthermore, the circumstances described in article 7, paragraph 1, of the Vienna Convention do not apply in the present case since Commodore Hlaing did not have full powers issued by the Government of Myanmar and there were no circumstances to suggest that it was the intention of Myanmar and Bangladesh to dispense with full powers.
84. In the view of Myanmar, under article 8 of the Vienna Convention an act by a person who cannot be considered as representing a State for the purposes of concluding a treaty is without legal effect unless afterwards confirmed by that State. Myanmar adds that what has to be confirmed is the act of the unauthorised person and submits that this act by itself has no legal effect and states that “[i]t does not establish an agreement that is voidable”. It states further that this is “clear from the very fact that article 8 is placed in Part II of the Vienna Convention on the conclusion and entry into force of treaties, and not in Part V” on invalidity, termination and suspension of the operation of treaties.

85. According to Myanmar, the present case is not comparable to the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening). Referring to that case, Myanmar states: “the ICJ found that the Maroua Declaration constituted an international agreement because the recognised elements of what constitutes a treaty were met, in particular, the consent of both Nigeria and Cameroon to be bound by the Maroua Declaration. The signatures of the Heads of State of both countries were clearly sufficient to express their consent to be bound. That is not our case”.

86. Myanmar argues that the fact that the 1974 and the 2008 Agreed Minutes were not registered with the Secretary-General of the United Nations, as required by article 102, paragraph 1, of the United Nations Charter, is another indication that the Parties “did not consider either the 1974 or the 2008 minutes to be a binding agreement”. It adds that neither Party publicized nor submitted charts or lists of co-ordinates of the points plotted in the Agreed Minutes with the Secretary-General of the United Nations, as required by article 16, paragraph 2, of the Convention. Myanmar states that while such submission, or the absence thereof, is not conclusive, it provides a further indication of the intention of Bangladesh and Myanmar with respect to the status of the minutes.

87. Bangladesh, in response, cites the judgment in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain, in which the ICJ stated: “Non-registration or late registration, on the other hand, does not have any consequence for the actual validity of the agreement, which remains no less binding upon the parties” (Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994, p. 112, at p. 122, para. 29).

88. The Tribunal will now address the question whether the 1974 Agreed Minutes constitute an agreement within the meaning of article 15 of the Convention.

89. The Tribunal notes that, in light of the object and purpose of article 15 of the Convention, the term “agreement” refers to a legally binding agreement. In the view of the Tribunal, what is important is not the form or designation of an instrument but its legal nature and content.

90. The Tribunal recalls that in the “Hoshinmaru” case it recognized the possibility that agreed minutes may constitute an agreement when it stated that “[t]he Protocol or minutes of a joint commission such as the Russian-Japanese Commission on Fisheries may well be the source of rights and obligations between Parties” (“Hoshinmaru” (Japan v. Russian Federation), Prompt Release, Judgment, ITLOS Reports 2007, p. 18, at p. 46, para. 86). The Tribunal also recalls that in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain, the ICJ observed that “international agreements may take a number of forms and be given a diversity of names” and that agreed minutes may constitute a binding agreement. (Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994, p. 112, at p. 120, para. 23).
91. The Tribunal must decide whether, in the circumstances of the present case, the 1974 Agreed Minutes constitute such an agreement.

92. The Tribunal considers that the terms of the 1974 Agreed Minutes confirm that these Minutes are a record of a conditional understanding reached during the course of negotiations, and not an agreement within the meaning of article 15 of the Convention. This is supported by the language of these Minutes, in particular, in light of the condition expressly contained therein that the delimitation of the territorial sea boundary was to be part of a comprehensive maritime boundary treaty.

93. The Tribunal notes that the circumstances in which the 1974 Agreed Minutes were adopted do not suggest that they were intended to create legal obligations or embodied commitments of a binding nature. From the beginning of the discussions Myanmar made it clear that it did not intend to enter into a separate agreement on the delimitation of territorial sea and that it wanted a comprehensive agreement covering the territorial sea, the exclusive economic zone and the continental shelf.

94. In this context, the Tribunal further points out that in the report prepared by Bangladesh on the second round of negotiations held on 25 November 1974 in Dhaka, it is stated that:

7. Copies of a Draft Treaty on the delimitation of territorial waters boundary were given to the Burmese delegation by the Bangladesh delegation on November 20, 1974 for eliciting views from the Burmese Government. The initial reaction of the Burmese side was that they were not inclined to conclude a separate treaty/agreement on the delimitation of territorial waters; they would like to conclude a single comprehensive treaty where the boundaries of territorial waters and continental shelf were incorporated.

95. In the view of the Tribunal, the delimitation of maritime areas is a sensitive issue. The Tribunal concurs with the statement of the ICJ that "[t]he establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed" (Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007, p. 659, at p. 735, para. 253).

96. On the question of the authority to conclude a legally binding agreement, the Tribunal observes that, when the 1974 Agreed Minutes were signed, the head of the Burmese delegation was not an official who, in accordance with article 7, paragraph 2, of the Vienna Convention, could engage his country without having to produce full powers. Moreover, no evidence was provided to the Tribunal that the Burmese representatives were considered as having the necessary authority to engage their country pursuant to article 7, paragraph 1, of the Vienna Convention. The Tribunal notes that this situation differs from that of the Maroua Declaration which was signed by the two Heads of State concerned.

97. The fact that the Parties did not submit the 1974 Agreed Minutes to the procedure required by their respective constitutions for binding international agreements is an additional indication that the Agreed Minutes were not intended to be legally binding.

98. For these reasons, the Tribunal concludes that there are no grounds to consider that the Parties entered into a legally binding agreement by signing the 1974 Agreed Minutes. The Tribunal reaches the same conclusion regarding the 2008 Agreed Minutes since these Minutes do not constitute an independent commitment but simply reaffirm what was recorded in the 1974 Agreed Minutes.

99. In light of the foregoing, the Tribunal does not find it necessary to address the relevance, if any, of the lack of registration of the 1974 Agreed Minutes as required by article 102, paragraph 1, of the United Nations Charter or of the failure to deposit charts or lists of geographical coordinates with the Secretary-General of the United Nations as provided in article 16, paragraph 2, of the Convention.
Tacit or de facto agreement

100. The Tribunal will now consider whether the conduct of the Parties evidences a tacit or de facto agreement relating to the boundary in the territorial sea.

101. Bangladesh contends that the fact that the Parties have conducted themselves in accordance with the agreed delimitation for over three decades demonstrates the existence of a tacit or de facto agreement as to the boundary line in the territorial sea. In support of its position, Bangladesh argues that each Party “exercised peaceful and unchallenged administration and control over its agreed territorial sea” and that, in reliance on the existing agreement, Bangladesh permitted Myanmar’s vessels to “navigate freely” through its waters in the vicinity of St. Martin’s Island to reach the Naaf River.

102. In order to illustrate both Parties’ commitment to the 1974 line, Bangladesh states that its coastal fishermen have relied on that line in conducting their fishing activities in the areas between St. Martin’s Island and the Myanmar coast. It has submitted affidavits from fishermen attesting to the fact that they believe there is an agreed boundary between the Parties in the territorial sea, and that this is located approximately midway between St. Martin’s and Myanmar’s mainland coast. It states that, as a result, they have confined their fishing activities to the Bangladesh side of the boundary and carried the national flag of Bangladesh onboard, adding that some of them have also testified to the fact that they have had their vessels intercepted by the Myanmar Navy when their boats accidentally strayed across the agreed line.

103. Moreover, Bangladesh points out that it has submitted affidavits recounting the activities of its naval vessels and aerial patrols and other activities carried out by its Navy and Coast Guard to the west of the agreed line.

104. In the same vein, Bangladesh refers to the Parties’ actions in reploting the 1974 line onto a more up-to-date chart, namely, British Admiralty Chart No. 817(INT 7430) (hereinafter “Admiralty Chart 817”).

105. Regarding the statement made by Myanmar’s Minister of Foreign Affairs and head of its delegation during the negotiations between the Parties in November 1985, Bangladesh observes that in the Minister’s statement, “far from repudiating a supposedly unauthorized deal negotiated in 1974, he referred to the Minutes signed in Dhaka with approval”.

106. With reference to the note verbale of Myanmar dated 16 January 2008, by which Myanmar notified Bangladesh of its intention to carry out survey work on both sides of the boundary, Bangladesh states: “Why would Myanmar seek Bangladesh’s consent if it regarded the whole area as falling within Myanmar’s territorial sea? Its conduct in 2008 amounts to an acknowledgment of Bangladesh’s sovereignty over the territorial sea up to the median line, and its own note verbale even made express reference to the 1974 Agreed Minutes in that context”.

107. Myanmar contends that the conduct of the Parties, including the signing of the 1974 Agreed Minutes by the heads of their delegations, has not established a tacit or de facto agreement between them with respect to the delimitation of the territorial sea. Myanmar further contends that it never acquiesced in any delimitation in the territorial sea. In its view, “Bangladesh puts forward no evidence to demonstrate its assertion that the parties have administered their waters in accordance with the agreed minutes, or that Myanmar’s vessels have enjoyed the right of free and unimpeded navigation in the waters around St. Martin’s Island, in accordance with the agreed minutes”. If any such practice existed, Myanmar argues, “it existed regardless of the understandings reached in 1974”.

108. In this connection, Myanmar notes that, during the negotiations between the Parties, Commodore Hlaing, who was the head of the Burmese delegation, reminded his counterpart that the passage of Myanmar vessels in
the waters surrounding St. Martin’s Island “was a routine followed for many years by Burmese naval vessels to use the channel [...]. He added that in asking for unimpeded navigation the Burmese side was only asking for existing rights which it had been exercising since 1948”.

109. Myanmar states that the affidavits of naval officers and fishermen produced by Bangladesh cannot be considered as containing relevant evidence in the present case. It further states that the naval officers, officials of Bangladesh, have a clear interest in supporting the position of Bangladesh on the location of the maritime boundary. In this regard, Myanmar relies on case law, namely the decisions in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits, Judgment, I.C.J. Reports 1986, p. 14, at p. 42, para. 68) and the case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment, I.C.J. Reports 2005, p. 168, at pp. 218-219, para. 129), and makes reference, in particular, to the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) (Judgment, I.C.J. Reports 2007, p. 659, at p. 731, para. 243).

110. Myanmar further points out that its Minister of Foreign Affairs, in his statement made in Rangoon on 19 November 1985, reiterated Myanmar’s position that what was clearly implied in the text of the Agreed Minutes was that the delimitation of the territorial sea on the one hand and the exclusive economic zone and the continental shelf on the other hand, should be settled together in a single instrument.

111. With regard to its note verbale of 16 January 2008, referred to by Bangladesh, Myanmar contends that Bangladesh ignores the terms of that note. It points out that the note verbale stated that, as States Parties to the Convention, Bangladesh and Myanmar are both entitled to a 12 nm territorial sea “in principle” and also that St. Martin’s Island enjoys such territorial sea “in principle in accordance with UNCLOS, 1982”. Myanmar argues that the note verbale was “explicitly a request for cooperation, not for consent” and that it refrained from relying upon the agreed boundary. Myanmar therefore is of the view that, contrary to Bangladesh’s assertion, the note verbale is entirely consistent with Myanmar’s position on these matters.

* * *

112. The Tribunal will first address the issue of affidavits submitted by Bangladesh. In this context, the Tribunal recalls the decision in the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), where it is stated that:

> witness statements produced in the form of affidavits should be treated with caution. In assessing such affidavits the Court must take into account a number of factors. These would include whether they were made by State officials or by private persons not interested in the outcome of the proceedings and whether a particular affidavit attests to the existence of facts or represents only an opinion as regards certain events (Judgment, I.C.J. Reports 2007, p. 659, at p. 731, para. 244).

113. The Tribunal considers that the affidavits from fishermen submitted by Bangladesh do not constitute evidence as to the existence of an agreed boundary in the territorial sea. The affidavits merely represent the opinions of private individuals regarding certain events.

114. With regard to the affidavits from the naval officers, the Tribunal observes that they are from officials who may have an interest in the outcome of the proceedings.

115. The Tribunal concludes that the affidavits submitted by Bangladesh do not provide convincing evidence to support the claim that there is an agreement between the Parties on the delimitation of their territorial seas.

116. In the context of its examination of the conduct of the Parties, the Tribunal has reviewed the statement of the Minister of Foreign Affairs of Myanmar of 19 November 1985 during the sixth round of negotiations between the Parties and the note verbale of 16 January of 2008 addressed by
the Ministry of Foreign Affairs of Myanmar to the Ministry of Foreign Affairs of Bangladesh. The Tribunal is of the view that the statement and the note verbale do not indicate a tacit or de facto agreement by Myanmar on the line described in the 1974 Agreed Minutes. In the first case the Minister of Foreign Affairs of Myanmar stated that a condition set forth by his country in accepting the line proposed by Bangladesh was that all issues relating to the delimitation should be settled together in a single instrument. In the second case Myanmar stressed in the note verbale that the two countries “have yet to delimit a maritime boundary” and “it is in this neighborly spirit” that Myanmar has requested the cooperation of Bangladesh.

117. In this regard, the Tribunal shares the view of the ICJ that “[e]vidence of a tacit legal agreement must be compelling” (Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007, p. 659, at p. 735, para. 253).

118. The Tribunal concludes that the evidence presented by Bangladesh falls short of proving the existence of a tacit or de facto boundary agreement concerning the territorial sea.

Estoppel

119. The Tribunal will now turn to the question as to whether the doctrine of estoppel is applicable in the present case.

120. Bangladesh asserts that fundamental considerations of justice require that Myanmar is estopped from claiming that the 1974 agreement is anything other than valid and binding. In this regard, it recalls the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), in which it is stated that:

Thailand is now precluded by her conduct from asserting that she did not accept the [French map]. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand’s acceptance of the map. ... It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party to it (Merits, Judgment, I.C.J. Reports 1962, p. 6, at p. 32).

121. Bangladesh argues that “[t]he ICJ’s reasoning and conclusion apply equally in the present case. For over thirty years, Myanmar enjoyed the benefits of the 1974 Agreement, including not only the benefit of a stable maritime boundary but also the right of free passage through Bangladesh’s territorial waters”.

122. Myanmar asserts that Bangladesh has not established that it relied on any conduct of Myanmar to its detriment. According to Myanmar, “[f]irst, Bangladesh has not supported its contention – that it allowed for the unimpeded passage of Myanmar’s vessels – with any evidence. Second, it produced no evidence to show that it adhered to the 1974 minutes with respect to fisheries. Third, it had not shown how any of these alleged facts were to its detriment. It is unclear how any conduct or statements on behalf of Myanmar were relied upon by Bangladesh to its detriment”.

123. Myanmar therefore concludes that its actions “fall far short from the clear, consistent and definite conduct required to establish the existence of an estoppel”.

***

124. The Tribunal observes that, in international law, a situation of estoppel exists when a State, by its conduct, has created the appearance of a particular situation and another State, relying on such conduct in good faith, has acted or abstained from an action to its detriment. The effect of the notion of estoppel is that a State is precluded, by its conduct, from asserting that it did not agree to, or recognize, a certain situation. The Tribunal notes in this respect the observations in the North Sea Continental Shelf cases (Judgment, I.C.J. Reports 1969, p. 3, at p. 26, para. 30) and in the case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Judgment, I.C.J. Reports 1984, p. 246, at p. 309, para. 145).
125. In the view of the Tribunal, the evidence submitted by Bangladesh to demonstrate that the Parties have administered their waters in accordance with the limits set forth in the 1974 Agreed Minutes is not conclusive. There is no indication that Myanmar’s conduct caused Bangladesh to change its position to its detriment or suffer some prejudice in reliance on such conduct. For these reasons, the Tribunal finds that Bangladesh’s claim of estoppel cannot be upheld.

Delimitation of the territorial sea

126. Having found that the 1974 and 2008 Agreed Minutes do not constitute an agreement within the meaning of article 15 of the Convention, that Bangladesh failed to prove the existence of a tacit or de facto maritime boundary agreement and that the requirements of estoppel were not met, the Tribunal will now delimit the territorial sea between Bangladesh and Myanmar.

127. Article 15 of the Convention, which is the applicable law, reads as follows:

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.

128. The Tribunal observes that Myanmar and Bangladesh agree that the law applicable to the delimitation of the territorial sea in the present case is provided by article 15 of the Convention.

129. It follows from article 15 of the Convention that before the equidistance principle is applied, consideration should be given to the possible existence of historic title or other special circumstances relevant to the area to be delimited.

Historic title and other special circumstances

130. The Tribunal finds no evidence of an historic title in the area to be delimited and notes that neither Party has invoked the existence of such title.

131. Myanmar has raised the issue of St. Martin’s Island as a special circumstance in the context of the delimitation of the territorial sea between the Parties and argues that St. Martin’s Island is an important special circumstance which necessitates a departure from the median line. It points out that St. Martin’s Island lies immediately off the coast of Myanmar, to the south of the point in the Naaf River which marks the endpoint of the land boundary between Myanmar and Bangladesh and is the starting-point of their maritime boundary.

132. Myanmar contends that St. Martin’s Island is a feature standing alone in the geography of Bangladesh and is situated opposite the mainland of Myanmar, not Bangladesh. In Myanmar’s view, granting St. Martin’s Island full effect throughout the territorial sea delimitation would lead to a considerable distortion with respect to the general configuration of the coastline, created by a relatively small feature.

133. Myanmar argues that, in general, islands generate more exaggerated distortions when the dominant coastal relationship is one of adjacency, whereas distortions are much less extreme where coasts are opposite to each other. It maintains that account has to be taken of this difference in the present case as the coastal relationship between Myanmar’s mainland and St. Martin’s Island transitions from one of pure oppositeness to one of pure adjacency.

134. In this context, Myanmar states that, because of the spatial relationship among Bangladesh’s mainland coast, Myanmar’s mainland coast and
St. Martin’s Island, the island lies on Myanmar’s side of any delimitation line constructed between mainland coasts. In Myanmar’s view, St. Martin’s Island is therefore “on the wrong side” of such delimitation line.

135. Myanmar argues that St. Martin’s Island cannot be defined as a “coastal island” if only because it lies in front of Myanmar’s coast, not that of Bangladesh, to which it belongs. While recognizing that it is an island within the meaning of article 121, paragraphs 1 and 2, of the Convention, and that, consequently, it can generate maritime areas, Myanmar states that the delimitation of such areas must however be done “in accordance with the provisions of [the] Convention applicable to other land territory”. It contends in this respect that St. Martin’s Island must be considered as constituting in itself a special circumstance which calls for shifting or adjusting the median line which otherwise would have been drawn between the coasts of the Parties.

136. Myanmar states that this approach is in accordance with case law, relating both to delimitation of the territorial sea and other maritime zones. In this regard, it refers to a number of cases including Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (Decision of 30 June 1977, RIAA, Vol. XVIII, p. 3), Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Judgment, I.C.J. Reports 1982, p. 18), Delimitation of the Maritime Boundary in the Gulf of Maine Area (Judgment, I.C.J. Reports 1984, p. 246) and Dubai/Sharjah Border Arbitration (Dubai/Sharjah, Award of 19 October 1981, ILR, Vol. 91, p. 543).

137. Myanmar, also relying on State practice, observes that “small or middle-size islands are usually totally ignored” and that the “predominant tendency” is to give no or little effect to such maritime formations.

138. In response to Myanmar’s claim that St. Martin’s Island represents a “special circumstance”, Bangladesh argues that this claim is incorrect because of the coastal geography in the relevant area of the territorial sea. Bangladesh contends that Myanmar has “attempted to manufacture a ‘special circumstance’ where none exists”. It maintains that, “[i]n order to do this, Myanmar has resorted to the entirely artificial construction of a mainland-to-mainland equidistance line […] which assumes that St. Martin’s Island does not exist at all”. Bangladesh maintains that Myanmar has ignored reality in order to provide itself with the desired result; namely, an equidistance line that it can claim runs to the north of St. Martin’s Island. It adds that, “[f]rom this pseudo-geographic artifice, Myanmar draws the conclusion that St. Martin’s Island is located in Myanmar’s maritime area”.

139. Responding to Myanmar’s contention that St. Martin’s Island is on the “wrong” side of the equidistance line between the coasts of Myanmar and Bangladesh and that this is an important special circumstance which necessitates a departure from the median line, Bangladesh states that this contention marks a sharp departure from Myanmar’s long-standing acceptance that St. Martin’s Island is entitled to a 12 nm territorial sea.

140. Bangladesh takes issue with the conclusions drawn by Myanmar from the case law and the State practice on which it relies to give less than full effect to St. Martin’s Island. In this regard Bangladesh states that a number of cases identified by Myanmar to support giving less than full effect to St. Martin’s Island are not pertinent for the following reasons: first, they do not deal with the delimitation of the territorial seas, but concern the delimitation of the exclusive economic zone and the continental shelf; second, most of the delimitation treaties Myanmar cites established maritime boundaries in areas that are geographically distinguishable from the present case; and third, many treaties Myanmar invokes reflect political solutions reached in the context of resolving sovereignty and other issues.

141. Bangladesh, in support of its argument that St. Martin’s Island should be accorded full effect, refers to the treatment of certain islands in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain, the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) and the Black Sea case.
142. Bangladesh argues that State practice relevant to maritime delimitation clearly indicates that an island adjacent to the coast may have an important bearing on the delimitation of a maritime boundary. It states that islands, once determined as such under article 121, paragraph 1, of the Convention, are entitled to a 12 nm territorial sea and, in principle, their own exclusive economic zone and continental shelf. Bangladesh further points out that the right of States to claim a territorial sea around islands is also a well-established principle of customary international law and is recognized by Myanmar. In Bangladesh’s view, the burden is on Myanmar to persuade the Tribunal why St. Martin’s Island should be treated as a special circumstance and it has failed to meet that burden.

143. Bangladesh states that St. Martin’s Island “is located 6.5 [nm] southwest of the land boundary terminus and an equivalent distance from the Bangladesh coast”. It further points out that the island has “a surface area of some 8 square kilometres and sustains a permanent population of about 7,000 people” and that it serves as “an important base of operations for the Bangladesh Navy and Coast Guard”. Bangladesh maintains that fishing “is a significant economic activity on the island”, which also “receives more than 360,000 tourists every year”. Bangladesh notes that “[t]he island is extensively cultivated and produces enough food to meet a significant proportion of the needs of its residents”.

144. Bangladesh challenges Myanmar’s assertion that St. Martin’s Island is situated “in front of the Myanmar mainland coast” and “south of any delimitation line properly drawn from the coasts of the Parties”. Bangladesh argues that this assertion is wrong and that it is premised on “Myanmar’s curious conception of frontage and its peculiar use of the words ‘properly drawn’”. Bangladesh submits that two points are immediately apparent from Admiralty Chart 817: first, St. Martin’s Island is just as close to Bangladesh as it is to Myanmar – 4.547 nm from Bangladesh and 4.492 nm from Myanmar; and second, St. Martin’s Island lies well within the 12 nm limit drawn from Bangladesh’s coast.

145. Bangladesh concludes that “[t]he proximity of St. Martin’s Island to Bangladesh, its large permanent population and its important economic role are consistent with the conclusion that it is an integral part of the coastline of Bangladesh”, and affirms that St. Martin’s Island “is entitled to a full 12 nm territorial sea”.

146. The Tribunal will now consider whether St. Martin’s Island constitutes a special circumstance for the purposes of the delimitation of the territorial sea between Bangladesh and Myanmar.

147. The Tribunal notes that neither case law nor State practice indicates that there is a general rule concerning the effect to be given to islands in maritime delimitation. It depends on the particular circumstances of each case.

148. The Tribunal also observes that the effect to be given to islands in delimitation may differ, depending on whether the delimitation concerns the territorial sea or other maritime areas beyond it. Both the nature of the rights of the coastal State and their seaward extent may be relevant in this regard.

149. The Tribunal notes that, while St. Martin’s Island lies in front of Myanmar’s mainland coast, it is located almost as close to Bangladesh’s mainland coast as to the coast of Myanmar and it is situated within the 12 nm territorial sea limit from Bangladesh’s mainland coast.

150. The Tribunal observes that most of the cases and the State practice referred to by Myanmar concern the delimitation of the exclusive economic zone or the continental shelf, not of the territorial sea, and that they are thus not directly relevant to the delimitation of the territorial sea.
151. While it is not unprecedented in case law for islands to be given less than full effect in the delimitation of the territorial sea, the islands subject to such treatment are usually “insignificant maritime features”, such as the island of Qit’at Jaradah, a very small island, uninhabited and without any vegetation, in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Merits, Judgment, I.C.J. Reports 2001, p. 40, at p. 104, para. 219). In the view of the Tribunal, St. Martin’s Island is a significant maritime feature by virtue of its size and population and the extent of economic and other activities.

152. The Tribunal concludes that, in the circumstances of this case, there are no compelling reasons that justify treating St. Martin’s Island as a special circumstance for the purposes of article 15 of the Convention or that prevent the Tribunal from giving the island full effect in drawing the delimitation line of the territorial sea between the Parties.

153. The Tribunal observes that, pursuant to article 15 of the Convention, the territorial sea of the Parties is to be delimited by an equidistance line.

154. The first step to be considered in the construction of the delimitation line is the selection of base points from which the delimitation line will be drawn.

155. The Tribunal notes that, in drawing their delimitation lines, the Parties used base points on the low-water line of their coasts and that the geographical co-ordinates they used for this purpose are given by reference to WGS 84 as geodetic datum.

156. The Tribunal sees no reason to depart from the common approach of the Parties on the issue of base points. Accordingly, it will draw an equidistance line from the low-water line indicated on the Admiralty Chart 817 used by the Parties.

157. The Tribunal notes that the Parties are in agreement as to the starting point of the delimitation line. This point, which corresponds to the land boundary terminus as agreed between Burma and Pakistan in 1966, is marked on the sketch-maps produced by the Parties as point A and its co-ordinates are 20° 42’ 15.8” N, 92°22’ 07.2” E.

158. The Parties disagree on the location of the first turning point of the equidistance line where St. Martin’s Island begins to have effect. This point is plotted as point B in Myanmar’s sketch-map with the co-ordinates 20° 41’ 03.4” N, 92° 20’ 12.9” E and as point 2A on Bangladesh’s equidistance line, as depicted in paragraph 2.102 of its Reply, with the co-ordinates 20° 40’ 45.0” N, 92°20’ 29.0” E.

159. According to Bangladesh, Myanmar incorrectly plotted its point B and “[i]t has done so because it has ignored the closest points on the Bangladesh coast at the mouth of the Naaf River […]. Instead, it has taken a more distant base point on the Bangladesh coast – point ß1 […]. If Myanmar had used the correct base points, […] its point B would have been located in a more southerly place, […] at point 2A”.

160. During the hearing, Myanmar did not object to the argument presented by Bangladesh with respect to the correct location of point B. Myanmar acknowledged that, “[f]rom a technical perspective, there [was] nothing objectionable about Bangladesh’s proposed territorial sea line”, adding that “[i]t is a straightforward exercise, once the relevant coastal features have been determined, to calculate an equidistance line from the nearest points on the baselines of the two States”.

161. Having examined the coasts of both Parties as shown on Admiralty Chart 817, the Tribunal accepts point 2A as plotted by Bangladesh.
162. The Tribunal observes that, beyond point 2A, the following segments of the line, defined by the turning points indicated by Myanmar and Bangladesh as listed below, are similar.

Myanmar’s turning points are:
- B1: 20° 39' 53.6" N, 92° 21' 07.1" E;
- B2: 20° 38' 09.5" N, 92° 22' 40.6" E;
- B3: 20° 36' 43.0" N, 92° 23' 58.0" E;
- B4: 20° 35' 28.4" N, 92° 24' 54.5" E;
- B5: 20° 33' 07.7" N, 92° 25' 44.8" E;
- C: 20° 30' 42.8" N, 92° 25' 23.9" E.

Bangladesh’s turning points are:
- 3A: 20° 39' 51.0" N, 92° 21' 11.5" E;
- 4A: 20° 37' 13.5" N, 92° 23' 42.3" E;
- 5A: 20° 35' 26.7" N, 92° 24' 58.5" E;
- 6A: 20° 33' 17.8" N, 92° 25' 46.0" E.

163. The Tribunal observes that, beyond point C, the further segments of the delimitation lines proposed by the Parties differ substantially as a result of their positions on the effect to be given to St. Martin’s Island.

164. Having concluded that full effect should be given to St. Martin’s Island, the Tribunal decides that the delimitation line should follow an equidistance line up to the point beyond which the territorial seas of the Parties no longer overlap.
165. Having examined the Parties' coasts that are relevant to the construction of the equidistance line for the delimitation of the territorial sea, the Tribunal is of the view that the coordinates identified by Bangladesh in its proposed equidistance line until point 8A, as depicted in paragraph 2.102 of its Reply, adequately define an equidistance line measured from the low-water line of the respective coasts of the Parties, including St. Martin's Island, as reproduced on Admiralty Chart 817.

166. For the above mentioned reasons, the Tribunal decides that the equidistance line delimiting the territorial sea between the two Parties is defined by points 1, 2, 3, 4, 5, 6, 7 and 8 with the following coordinates and connected by geodetic lines:

   1: 20° 42' 15.8" N, 92°22' 07.2" E;
   2: 20° 40' 45.0" N, 92°20' 29.0" E;
   3: 20° 39' 51.0" N, 92° 21' 11.5" E;
   4: 20° 37' 13.5" N, 92° 23' 42.3" E;
   5: 20° 35' 26.7" N, 92° 24' 58.5" E;
   6: 20° 33' 17.8" N, 92° 25' 46.0" E;
   7: 20° 26' 11.3" N, 92° 24' 52.4" E;
   8: 20° 22' 46.1" N, 92° 24' 09.1" E.

167. The delimitation line is shown on the attached sketch-map number 2.

168. The Tribunal observes that, in giving St. Martin's Island full effect in the delimitation of the territorial sea, the delimitation line will reach a point where the island's territorial sea no longer overlaps with the territorial sea of Myanmar. At this point, the territorial sea around St. Martin's Island begins to meet the exclusive economic zone and the continental shelf of Myanmar. This will occur in the area defined by the 12 nm envelope of arcs of the territorial sea of St. Martin's Island beyond point 8.

169. As a consequence, the Tribunal is no longer faced with the task of having to delimit the territorial sea beyond point 8. The Tribunal recognizes that Bangladesh has the right to a 12 nm territorial sea around St. Martin's Island in the area where such territorial sea no longer overlaps with Myanmar's territorial sea. A conclusion to the contrary would result in giving more weight to the sovereign rights and jurisdiction of Myanmar in its exclusive economic zone and continental shelf than to the sovereignty of Bangladesh over its territorial sea.
170. The question of free and unimpeded navigation by Myanmar in the territorial sea of Bangladesh around St. Martin’s Island to and from the Naaf River is not an issue to be considered in respect of delimitation. It is, however, a related matter of particular concern to Myanmar.

171. In this context, the Tribunal requested the Parties to address the following question: “Given the history of discussions between them on the issue, would the Parties clarify their position regarding the right of passage of ships of Myanmar through the territorial sea of Bangladesh around St. Martin’s Island?”

172. Myanmar explained that it considered a guarantee of this right as “crucially important” but that, in Myanmar’s view, Bangladesh had “never given the guarantee that Myanmar sought”. Myanmar points out that there had been no problems with access to Bangladesh’s territorial sea but mainly because, “in the absence of any guarantee”, Myanmar had never sought to put to test its right. Overall, Myanmar states that the “position on the right of passage of ships of Myanmar through the territorial sea of Bangladesh around St Martin’s Island continues to be less than satisfactory”.

173. On this issue, Bangladesh stated in its Memorial that “[a]s part of, and in consideration for, their November 1974 agreement, Bangladesh also agreed to accord Myanmar’s vessels the right of free and unimpeded navigation through Bangladesh’s waters around St. Martin’s Island to and from the Naaf River”.

174. In response to the request from the Tribunal, the Foreign Minister of Bangladesh, its Agent in the present case, during the hearing stated the following:
Since at least 1974 Bangladesh and Myanmar have engaged in extensive negotiations concerning their maritime boundary in the Bay of Bengal. Over the course of 34 years, our countries have conducted some 13 rounds of talks. We achieved some notable early successes. In particular, in 1974, at just our second round of meetings, we reached the agreement concerning the maritime boundary in the territorial sea, about which you will hear more tomorrow. That agreement was fully applied and respected by both States over more than three decades. As a result of that agreement, there have never been any problems concerning the right of passage of ships of Myanmar through our territorial sea around St Martin's Island. In its two rounds of pleadings Myanmar had every opportunity to introduce evidence of any difficulties, if indeed there were any. It has not done so. That is because there are no difficulties. I am happy to restate that Bangladesh will continue to respect such access in full respect of its legal obligations.

175. Counsel for Bangladesh thereafter stated: “What the Foreign Minister and Agent says in response to a direct question from an international tribunal commits the State”.

176. The Tribunal takes note of this commitment by Bangladesh.

VIII. Exclusive economic zone and continental shelf within 200 nautical miles

177. The Tribunal will now turn to the delimitation of the exclusive economic zone and the continental shelf within 200 nm.

Single delimitation line

178. Before proceeding with the delimitation of the exclusive economic zone and the continental shelf, the Tribunal must clarify the nature of the delimitation line.

179. Bangladesh states that the Tribunal should identify a single line to delimit the seabed and subsoil and the superjacent waters. Bangladesh notes that its position is “in accordance with the international judicial practice”. According to Bangladesh, although the Convention contains separate provisions for the delimitation of the exclusive economic zone and the continental shelf, “international practice has largely converged around the drawing of a ‘single maritime boundary’ to delimit both zones”.

180. Myanmar, in turn, states that the Parties agree in asking the Tribunal to draw a single maritime boundary for the superjacent waters, the seabed and subsoil, that is, for the exclusive economic zone and the continental shelf.

181. The Tribunal accordingly will draw a single delimitation line for both the exclusive economic zone and the continental shelf.

Applicable law

182. The Tribunal points out that the provisions of the Convention applicable to the delimitation of the exclusive economic zone and the continental shelf are in articles 74 and 83. The Tribunal observes that these two articles are identical in their content, differing only in respect of the designation of the maritime area to which they apply. These articles state as follows:

1. The delimitation of the [exclusive economic zone/continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the [exclusive economic zone/continental shelf] shall be determined in accordance with the provisions of that agreement.
183. Although article 74, paragraph 1, and article 83, paragraph 1, of the Convention explicitly address delimitation agreements, they also apply to judicial and arbitral delimitation decisions. These paragraphs state that delimitation must be effected “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”. Customary international law is one of the sources identified in article 38. Accordingly, the law applicable under the Convention with regard to delimitation of the exclusive economic zone and the continental shelf includes rules of customary international law. It follows that the application of such rules in the context of articles 74 and 83 of the Convention requires the achievement of an equitable solution, as this is the goal of delimitation prescribed by these articles.

184. Decisions of international courts and tribunals, referred to in article 38 of the Statute of the ICJ, are also of particular importance in determining the content of the law applicable to maritime delimitation under articles 74 and 83 of the Convention. In this regard, the Tribunal concurs with the statement in the Arbitral Award of 11 April 2006 that: “In a matter that has so significantly evolved over the last 60 years, customary law also has a particular role that, together with judicial and arbitral decisions, helps to shape the considerations that apply to any process of delimitation” (Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, Decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at pp. 210-211, para. 223).

Relevant coasts

185. The Tribunal will now turn to the delimitation process. In examining this issue, the Tribunal notes “the principle that the land dominates the sea through the projection of the coasts or the coastal fronts” (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 61, at p. 89, para. 77). As stated by the ICJ in the North Sea cases, “the land is the legal source of the power which a State may exercise over territorial extensions to seaward” (North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3, at p. 51, paragraph 96).

186. Bangladesh is of the view that its entire coast is relevant “from the land boundary terminus with Myanmar in the Naaf River to the land boundary terminus with India in the Raimangal Estuary”.

187. Bangladesh measures this coast by means of two straight lines in order to avoid the significant difficulties caused by the sinuosities of the coast. According to Bangladesh, the combined length of these lines is 421 kilometres.

188. Myanmar describes the coast of Bangladesh as being made up of four segments. The first segment proceeds in an easterly direction from the land border with India to the mouth of the Meghna River. The fourth segment proceeds in a south-southeasterly direction from the Lighthouse on Kutubdia Island to the land border with Myanmar. Between these two segments lie the second and third segments in the mouth of the Meghna River.

189. According to Myanmar, Bangladesh’s relevant coast is limited to the first and fourth segments. Myanmar rejects the second and third segments as parts of the relevant coast because those segments “face each other and therefore cannot possibly overlap with Myanmar’s maritime projections”. Myanmar compares these segments of Bangladesh’s coast to Ukraine’s coasts in the Gulf of Karkinits’ka in the Black Sea case, in which the ICJ excluded those coasts of Ukraine because they “face each other and their submarine extension cannot overlap with the extensions of Romania’s coasts” (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports, 2009, p. 61, at p. 97, para. 100).

190. Measuring the coastal length by taking into account the coastline and its sinuosity, Myanmar finds that the first and fourth segments of Bangladesh’s coast are 203 kilometres and 161 kilometres long respectively. In Myanmar’s view, the total length of Bangladesh’s relevant coast is 364 kilometres.
191. Bangladesh submits that the analogy between the mouth of the Meghna River and the Gulf of Karkinits'ka is not accurate. In its view, while, in the enclosed setting of the Black Sea, "the opening at the mouth of the Gulf of Karkinits'ka faces back onto other portions of Ukraine's coast, and not onto the delimitation [area] [...]", here, in contrast, the opening at the mouth of the Meghna faces directly onto the open sea and the delimitation [area]. According to Bangladesh, the opening at the mouth of the Meghna River is much more like the opening at the mouth of the Bay of Fundy in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine*, in which the Chamber of the ICJ deemed relevant "segments of Canada's parallel coasts within the Bay as well as the line drawn across the Bay inside its mouth".

192. According to Bangladesh, Myanmar's relevant coast extends from the land boundary terminus in the Naaf River to the area of Bhiff Cape. Bangladesh regards Myanmar's coast south of Bhiff Cape as irrelevant, because, in its view, the projection of that coast, which is more than 200 nm from Bangladesh, could not overlap with that of Bangladesh's coast.

193. Bangladesh therefore maintains that Myanmar's relevant coastal length, measured by means of a straight line, is 370 kilometres.

194. Myanmar asserts that its own relevant coast extends from the land boundary terminus between Myanmar and Bangladesh up to Cape Negrais. In particular, Myanmar emphasizes that its "relevant coast does not stop near Bhiff Cape", but comprises the entire Rakhine (Arakan) coast, "from the Naaf River to Cape Negrais, the last point on Myanmar's coast generating maritime projections overlapping with Bangladesh's coastal projections".

195. According to Myanmar, the arguments of Bangladesh to exclude the coast below Bhiff Cape "are quite simply wrong. It is not the relevant area that determines the relevant coast, it is the relevant coast that circumscribes the area to be delimited". Myanmar asserts further that:

the relevant coasts cannot depend, or be determined by reference to the delimitation line. They logically precede it, and it is the delimitation line that must be determined by reference to the relevant coasts and the projections that these generate. Bangladesh has put the cart before the horse.

196. Myanmar also points out that Bangladesh, according to its own minutes, acknowledged during the negotiations between the Parties in November 2008 that "the relevant coastline for Myanmar in the Bay of Bengal is up to Cape Negrais".

197. In Myanmar's view, taking into account the coastline and its sinuosity, the total length of its own relevant coast from the estuary of the Naaf River to Cape Negrais is 740 kilometres.

* * *

198. The Tribunal notes at the outset that for a coast to be considered as relevant in maritime delimitation it must generate projections which overlap with those of the coast of another party.

199. The Parties are not in agreement in respect of the segments of Bangladesh's coastline formed by the eastern and western shores of the Meghna River Estuary. They also disagree in respect of the segment of Myanmar's coast that runs from Bhiff Cape to Cape Negrais.

**Bangladesh's relevant coast**

200. The Tribunal does not agree with Myanmar's position that the eastern and western shores of the Meghna River Estuary should not be treated as part of the relevant coast. In the present case, the situation is different from that of the Gulf of Karkinits'ka, where the coastal segments face each other. The Meghna River Estuary is open to the sea and generates projections that overlap with those of the coast of Myanmar. Accordingly, the shores of the
estuary must be taken into account in calculating the length of the relevant coast of Bangladesh.

201. The Tribunal concludes that the whole of the coast of Bangladesh is relevant for delimitation purposes, generating projections seaward that overlap with projections from the coast of Myanmar. To avoid difficulties caused by the complexity and sinuosity of that coast, it should be measured in two straight lines.

202. The Tribunal draws the first line from a point on Bangladesh’s coast on Mandabaria Island near the land boundary terminus with India, which was used by Myanmar as a base point (§2) for the construction of its proposed equidistance line (see paragraph 243), to a point on Kutubdia Island (see paragraph 188). The second line extends from the said point on Kutubdia Island to the land boundary terminus with Myanmar in the Naaf River. As a result, the length of Bangladesh’s relevant coast is approximately 413 kilometres.

\[\text{Myanmar’s relevant coast}\]

203. The Tribunal does not agree with Bangladesh’s position that Myanmar’s coastline south of Bhiff Cape should not be included in the calculation of Myanmar’s relevant coast. The Tribunal finds that the coast of Myanmar from the terminus of its land boundary with Bangladesh to Cape Negrais does, contrary to Bangladesh’s contention, indeed generate projections that overlap projections from Bangladesh’s coast. The Tribunal, therefore, determines that the coast of Myanmar from its land boundary terminus with Bangladesh to Cape Negrais is to be regarded as Myanmar’s relevant coast.

204. The Tribunal finds that Myanmar’s relevant coast should also be measured by two lines so as to avoid difficulties caused by the sinuosity of the coast and to ensure consistency in measuring the respective coasts of the Parties. The first line is measured from the land boundary terminus in the Naaf River to Bhiff Cape and the second line from this point to Cape Negrais. Accordingly, the Tribunal concludes that the length of the relevant coast of Myanmar, measured in two lines, is approximately 587 kilometres.

205. Having determined the relevant coasts of the Parties and their approximate length, the Tribunal finds that the ratio between these coastal lengths is approximately 1:1.42 in favour of Myanmar.
206. The Tribunal will now consider the method to be applied to the delimitation of the exclusive economic zone and the continental shelf in the case before it.

207. While the Parties agree that the provisions of the Convention concerning the delimitation of the exclusive economic zone and the continental shelf constitute the law applicable to the dispute between them, they disagree as to the appropriate method of delimitation.

208. Bangladesh recognizes that the equidistance method is used in appropriate circumstances as a means to achieve an equitable solution but claims that equidistance does not produce an equitable result in the present case.

209. Bangladesh challenges the validity of the equidistance method advocated by Myanmar for the delimitation of the exclusive economic zone and the continental shelf within 200 nm. It argues that the equidistance line is inequitable in the present case, adding that Myanmar so completely embraces the equidistance method as to go so far as to claim that “rights to maritime areas are governed by equidistance” and to elevate equidistance, merely one method of delimitation, into a rule of law of universal application.

210. Bangladesh observes that the use of the equidistance method “can under certain circumstances produce results that appear on the face of them to be extraordinary, unnatural or unreasonable” as stated in the North Sea Continental Shelf cases (Judgment, I.C.J. Reports 1969, p. 3, at p. 23, para. 24).

211. Bangladesh points out that concave coasts like those in the northern Bay of Bengal are among the earliest recognized situations where equidistance produces “irrational results” and refers in this regard to the case concerning Continental Shelf (Libyan Arab Jamahiriya/Malta), in which the ICJ
stated that an equidistance line “may yield a disproportionate result where a coast is markedly irregular or markedly concave or convex” (Judgment, I.C.J. Reports 1985, p. 13, at p. 44, para. 56). In the same case the ICJ pointed out that equidistance is “not the only method applicable […]” and it does “not even have the benefit of a presumption in its favour” (ibid, p. 13, at p. 47, para. 63).

212. Bangladesh also points to the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), in which the ICJ stated that the equidistance method “does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate” (Judgment, I.C.J. Reports 2007, p. 659, at p. 741, para. 272).

213. Bangladesh argues that, on account of the specific configuration of its coast in the northern part of the Bay of Bengal and of the double concavity characterizing it, the Tribunal should apply the angle-bisector method in delimiting the maritime boundary between Bangladesh and Myanmar in the exclusive economic zone and on the continental shelf. In its view, this method would eliminate the inequity associated with equidistance and lead to an equitable result.

214. Bangladesh further states that the ICJ first made use of the angle-bisector method in the case concerning Continental Shelf (Tunisia/Libyan Arab Jamahiriya) in 1982 and that the 1984 decision of the Chamber of the ICJ in the case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area is another instance of resort to that method. Likewise, the Arbitral Tribunal in the case concerning the Delimitation of the maritime boundary between Guinea and Guinea-Bissau (Decision of 14 February 1985, ILR, Vol. 77, p. 635) applied the angle-bisector method in delimiting the maritime boundaries at issue.

215. Bangladesh also quotes the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) in support of its argument that the use of a bisector “has proved to be a viable substitute method in certain circumstances where equidistance is not possible or appropriate” (Judgment, I.C.J. Reports 2007, p. 659, at p. 746, para. 287).

216. Bangladesh states that Myanmar’s claimed equidistance line is inequitable because of the cut-off effect it produces. Bangladesh maintains that, “[n]otwithstanding Bangladesh’s substantial 421 km coastline, the equidistance lines claimed by its neighbours would prevent it from reaching even its 200 [nm] limit, much less its natural prolongation in the outer continental shelf beyond 200 [nm].”

217. Bangladesh argues that the angle-bisector method, specifically the 215° azimuth line which it advocates for the delimitation of the maritime boundary between Myanmar and itself on the continental shelf within 200 nm and in the exclusive economic zone, “avoids the problems inherent in equidistance without itself generating any inequities”.

218. In Myanmar’s view, the law of delimitation “has been considerably completed, developed and made more specific” since the adoption of the Convention in 1982. Myanmar contends that Bangladesh attempts to cast doubt on the now well-established principles of delimitation of the exclusive economic zone and the continental shelf. Myanmar further contends that Bangladesh makes strenuous efforts to establish that the applicable law was frozen in 1982 or, even better, in 1969, thus deliberately ignoring the developments which have occurred over the past 40 years.

219. Myanmar states that “‘equidistance/relevant circumstances’ is not as such a rule of delimitation properly said, but a method, usually producing an equitable result”. Myanmar draws attention in this regard to the ICJ’s judgment in the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) (Judgment, I.C.J. Reports 2007, p. 659, at p. 741, para. 271).
220. Myanmar points out that, while Bangladesh relied on the judgment in the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), where the ICJ held that “the equidistance method does not automatically have priority over other methods of delimitation”, it failed to mention that the ICJ said in the same case: “[t]he jurisprudence of the Court sets out the reasons why the equidistance method is widely used in the practice of maritime delimitation: it has a certain intrinsic value because of its scientific character and the relative ease with which it can be applied”. (Judgment, I.C.J. Reports 2007, p. 659, at p. 741, para. 272). Myanmar adds that the ICJ in that same case applied the bisector method only after finding it “impossible for the Court to identify base points and construct a provisional equidistance line [...] delimiting maritime areas off the Parties’ mainland coasts” (Ibid, p. 659, at p. 743, para. 280).

221. Myanmar further observes that in the case concerning Continental Shelf (Libyan Arab Jamahiriya/Malta) the ICJ applied the equidistance/relevant circumstances method even after noting that equidistance “may yield a disproportionate result where a coast is markedly irregular or markedly concave or convex” (Judgment, I.C.J Reports 1985, p. 13, at p. 44, para. 56).

222. Myanmar requests the Tribunal to “apply the now well-established method for drawing an all-purpose line for the delimitation of the maritime boundary between the Parties”. Myanmar asserts that “[n]o circumstance renders unfeasible the use of the equidistance method”. In support of this request, it refers to the Black Sea case (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 61, at p. 101, para. 116).

223. Myanmar rejects the arguments advanced by Bangladesh that the equidistance line fails to take account of the relevant circumstances in the case, notably the cut-off effect it produces and the concavity of Bangladesh’s coast, and states that “[n]one of the reasons invoked by Bangladesh to set aside the usual method of drawing the maritime boundary between States has any basis in modern international law of the sea, the first step of which is to identify the provisional equidistance line”.

224. In Myanmar’s view, the angle-bisector method advanced by Bangladesh produces an inequitable result and Myanmar “firmly ... reiterate[s] that no reason whatsoever justifies recourse to the ‘angle-bisector method’ in the present case”.

* * *

225. The Tribunal observes that article 74, paragraph 1, and article 83, paragraph 1, of the Convention stipulate that the delimitation of the exclusive economic zone and the continental shelf respectively must be effected on the basis of international law in order to achieve an equitable solution, without specifying the method to be applied.

226. International courts and tribunals have developed a body of case law on maritime delimitation which has reduced the elements of subjectivity and uncertainty in the determination of maritime boundaries and in the choice of methods employed to that end.

227. Beginning with the North Sea Continental Shelf cases, it was emphasized in the early cases that no method of delimitation is mandatory, and that the configuration of the coasts of the parties in relation to each other may render an equidistance line inequitable in certain situations. This position was first articulated with respect to the continental shelf, and was thereafter maintained with respect to the exclusive economic zone as well.

228. Over time, the absence of a settled method of delimitation prompted increased interest in enhancing the objectivity and predictability of the process. The varied geographic situations addressed in the early cases nevertheless confirmed that, even if the pendulum had swung too far away from the objective precision of equidistance, the use of equidistance alone
could not ensure an equitable solution in each and every case. A method of delimitation suitable for general use would need to combine its constraints on subjectivity with the flexibility necessary to accommodate circumstances in a particular case that are relevant to maritime delimitation.

229. In the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen, the ICJ expressly articulated the approach of dividing the delimitation process into two stages, namely "to begin with the median line as a provisional line and then to ask whether 'special circumstances' require any adjustment or shifting of that line." (Judgment, I.C.J. Reports 1993, p. 40, at p. 61, para. 51). This general approach has proven to be suitable for use in most of the subsequent judicial and arbitral delimitations. As developed in those cases, it has come to be known as the equidistance/relevant circumstances method.


231. The Arbitral Tribunal in the Arbitration between Barbados and the Republic of Trinidad and Tobago, affirmed that "the determination of the line of delimitation [...] normally follows a two-step approach," involving the positing of a provisional line of equidistance and then examining it in the light of the relevant circumstances. The Arbitral Tribunal further pointed out that while no method of delimitation can be considered of and by itself compulsory, and no court or tribunal has so held, the need to avoid substantive complications requires that the method used start with a measure of certainty that equidistance positively ensures, subject to its subsequent correction if justified (Decision of 11 April 2006, RMA, Vol. XXVII, p. 147, at p. 214, para. 242, and at p. 230, para. 306).

232. Similarly, the Arbitral Tribunal in the case between Guyana and Suriname noted:

The case law of the International Court of Justice and arbitral jurisprudence as well as State practice are at one in holding that the delimitation process should, in appropriate cases, begin by positing a provisional equidistance line which may be adjusted in the light of factors which make this unfeasible in the particular case (Maritime Delimitation in the Black Sea, Judgment, I.C.J. Reports 2009, p. 61, at p. 101, para. 116). At the second stage, the ICJ ascertained whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result (ibid., at pp. 101, para. 120). At the third stage, it verified that the delimitation line did not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line (ibid., at p. 103, para. 122).

233. In the Black Sea case, the ICJ built on the evolution of the jurisprudence on maritime delimitation. In that case, the ICJ gave a description of the three-stage methodology which it applied. At the first stage, it established a provisional equidistance line, using methods that are geometrically objective and also appropriate for the geography of the area to be delimited. "So far as delimitation between adjacent coasts is concerned, an equidistance line will be drawn unless there are compelling reasons that make its delimitation unfeasible in the particular case (Maritime Delimitation in the Black Sea, Judgment, I.C.J. Reports 2009, p. 61, at p. 101, para. 116)." At the second stage, the ICJ ascertained whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result (ibid., at pp. 101, para. 120). At the third stage, it verified that the delimitation line did not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line (ibid., at p. 103, para. 122).

234. The Tribunal notes that, as an alternative to the equidistance/relevant circumstances method, which in effect an approximation of the equidistance method. The angle-bisector method, which was applied in cases preceding the Libyan Arab Jamahiriya/Malta judgment, namely, Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Judgment, I.C.J. Reports 1982, p. 18, at p. 94, para. 133 (C))(3).

235. The Tribunal observes that the issue of which method should be followed in drawing the maritime delimitation line should be considered in light of the circumstances of each case. The goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal in this connection. Therefore the method to be followed should be one that, under the prevailing geographic realities and the particular circumstances of each case, can lead to an equitable result.

236. When the angle bisector method is applied, the terminus of the land boundary and the generalization of the direction of the respective coasts of the Parties from that terminus determine the angle and therefore the direction of the bisector. Different hypotheses as to the general direction of the respective coasts of the Parties from the terminus of the land boundary will often produce different angles and bisectors.

237. Bangladesh’s approach of constructing the angle at the terminus of the land boundary between the Parties with reference to the ends of their respective relevant coasts produces a markedly different bisector once it is recognized that Myanmar’s relevant coast extends to Cape Negrais, as decided by the Tribunal in paragraph 203. The resultant bisector fails to give adequate effect to the southward projection of the coast of Bangladesh.

238. The Tribunal notes that jurisprudence has developed in favour of the equidistance/relevant circumstances method. This is the method adopted by international courts and tribunals in the majority of the delimitation cases that have come before them.

239. The Tribunal finds that in the present case the appropriate method to be applied for delimiting the exclusive economic zone and the continental shelf between Bangladesh and Myanmar is the equidistance/relevant circumstances method.

240. In applying this method to the drawing of the delimitation line in the present case, the Tribunal, taking into account the jurisprudence of international courts and tribunals on this matter, will follow the three stage-approach, as developed in the most recent case law on the subject. Accordingly, the Tribunal will proceed in the following stages: at the first stage it will construct a provisional equidistance line, based on the geography of the Parties’ coasts and mathematical calculations. Once the provisional equidistance line has been drawn, it will proceed to the second stage of the process, which consists of determining whether there are any relevant circumstances requiring adjustment of the provisional equidistance line; if so, it will make an adjustment that produces an equitable result. At the third and final stage in this process the Tribunal will check whether the line, as adjusted, results in any significant disproportion between the ratio of the respective coastal lengths and the ratio of the relevant maritime areas allocated to each Party.

Establishment of the provisional equidistance line

Selection of base points

241. The Tribunal will now proceed with the construction of its own provisional equidistance line. The first step to be taken in this regard is to select the base points for the construction of that line.
242. Bangladesh did not identify any base points, because it did not construct a provisional equidistance line and therefore saw no need to select base points on the Bangladesh or Myanmar coasts.

243. Myanmar identified two relevant base points on the coast of Bangladesh “representing the most advanced part of the land (low water line) into the sea”. These two base points are:

- (β1) the closest point to the starting-point of the maritime boundary (Point A) located on the low water line of Bangladesh’s coast, base point β1 (co-ordinates 20°43'28.1"N, 92°19'40.1"E) […] and
- (β2) the more stable point located on Bangladesh coast nearest to the land boundary with India, base point β2 (co-ordinates 21° 38' 57.4" N, 89° 14' 47.6" E).

244. Myanmar points out that base point β2 is, according to Bangladesh, located on a coast characterized by a very active morpho-dynamism. Myanmar notes that Bangladesh “expresses concern that ‘the location of base point β2 this year might be very different from its location next year’”. Myanmar adds that “it is difficult to detect any change in the location of β2 in the sixteen years from 1973 to 1989”. Myanmar observes that satellite images show that the β2 area is quite stable.

245. Myanmar identifies three base points on its own coast and describes them as follows:

- (μ1) at the mouth of the Naaf River, the closest point of the starting-point of the maritime boundary (Point A) located on the low water line of Myanmar’s coast, base point μ1 (co-ordinates 20° 41' 28.2" N, 92° 22' 47.8" E) […]
- (μ2) Kyaukphatung (Sitaparokia) Point, located on the landward/low water line most seaward near Kyaukphatung Village, base point μ2 (co-ordinates 20° 33' 02.5" N, 92° 31' 17.6" E) […]
- (μ3) at the mouth of the May Yu River (close to May Yu Point), base point μ3 (co-ordinates 20° 14' 31.0" N, 92° 43' 27.8" E) […]

246. Myanmar asserts that any base points on Bangladesh’s main land coast and coastal islands could be considered legally appropriate base points, but because β1 is nearer to the provisional equidistance line, the other potential base points are not relevant. Myanmar notes that on its own side the same is true of base points on the coastal features south of base point μ3. These potential base points on the coasts were eliminated on the basis of the objective criterion of distance.

247. Myanmar states that several other base points were eliminated for legal reasons. With reference to South Talpatty, Myanmar explains that it could have been:

a potential source of relevant base points because of its relatively seaward location. Yet, as a legal matter, South Talpatty cannot be a source of base points for two reasons. First, the sovereignty of this feature is disputed between Bangladesh and India. Second, […] it is not clear whether the coastal feature - which may have existed in 1973 still exists.

248. According to Myanmar, there is a second example of a set of coastal features that are potential sources of relevant base points but were nonetheless excluded from the calculation of the equidistance line. These are “the low-tide elevations around the mouth of the Naaf River, the Cypress Sands, and Sitaparokia Patches, off Myanmar’s coast”.

249. Myanmar points out that “[n]either Party used base points on those low-tide elevations”, despite the fact that they are legitimate sources of base points for measuring the breadth of the territorial sea and are nearer to the territorial sea equidistance line than the base points on the mainland coasts.

Myanmar explains that these low-tide elevations are also nearer the provisional equidistance line than either base point β1 or μ1. Myanmar states that “they cannot be used, as a legal matter,” for the purpose of constructing the provisional equidistance line.

250. Myanmar submits that Myanmar’s May Yu Island and Bangladesh’s St. Martin’s Island “must be eliminated as sources of base points”. Myanmar acknowledges that both features are legitimate sources of normal baselines for measuring the breadth of the territorial sea, and both would otherwise have provided the nearest base points, that is, the relevant base points, for
the construction of the provisional equidistance line. Myanmar, however, concludes that “the technical qualities of these features cannot overcome their legal deficiencies”.

251. In the view of Myanmar, “the use of these anomalous features in the construction of the provisional equidistance line would create a line that would be [...] ‘wholly inconsistent with the dominant geographic realities in the area’”. Myanmar states that Bangladesh is correct in arguing that, if these islands were used in the construction of the provisional equidistance line, the entire course of that line would be determined by these two features alone.

252. Bangladesh maintains that:

Myanmar’s proposed equidistance line is also problematic because it is drawn on the basis of just four coastal base points, three on Myanmar’s coast and only one – base point β1 – on the Bangladesh coast, which Myanmar places very near the land boundary terminus between Bangladesh and Myanmar in the Naaf River.

253. According to Bangladesh, Myanmar “takes pains to make it appear as though it actually uses two Bangladesh base points in the plotting of the equidistance line”. Bangladesh contends that Myanmar does not “show the effect of alleged base point β2 on its proposed delimitation line, because it has none”. Bangladesh observes that “[b]ase point β2 never actually comes into play in Myanmar’s proposed delimitation”.

254. Bangladesh asserts that it would be remarkable to base a delimitation on a single coastal base point and that, after a review of the jurisprudence and State practice, Bangladesh was unable to find even one example where a delimitation extending so far from the coast was based on just one base point. Bangladesh concludes by noting that, “in the Nicaragua v. Honduras case, the ICJ drew a bisector precisely to avoid such a situation”.

255. In the view of Bangladesh, the lack of potential base points on the Bangladesh coast is a function of the concavity of that coast and that after base point β1, the coast recedes into the mouth of the Meghna estuary. It adds that there is thus nothing to counteract the effect of Myanmar’s coast south of the land boundary terminus and that the concavity of Bangladesh’s coast results in there being no protuberant coastal base points.

256. Bangladesh points out that the consequence can be seen in the effect of Myanmar’s equidistance line as it moves further and further from shore, becoming, as a result, increasingly prejudicial to Bangladesh, and increasingly inequitable.

257. Bangladesh contends that “[t]here is no legal basis for an a priori assumption that St. Martin’s Island should be ignored in the drawing of Myanmar’s equidistance line”. Bangladesh notes that St. Martin’s island “is a significant coastal feature that indisputably generates entitlement in the continental shelf and EEZ”. Bangladesh therefore concludes that “[t]here are thus no grounds, other than Myanmar’s self-interest, for excluding it in the plotting of a provisional equidistance line, where, in the first instance, all coastal features are included”.

258. Myanmar responds that five base points were sufficient in the Black Sea case to delimit a boundary stretching well over 100 nm from start to finish. It states that in other delimitations, especially those between adjacent coasts, even fewer base points have been used: three base points were used for the 170 nm western section of the boundary in the Delimitation of the Continental Shelf between United Kingdom of Great Britain and Northern Ireland, and the French Republic (Decision of 30 June 1977, RIAA, Vol. XVIII, p. 3, Annex, Technical Report to the Court, p. 126, at pp. 128-129), and just two base points were used to construct the provisional equidistance line in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening) (Merits, Judgment, I.C.J. Reports 2002, p. 303, at p. 443, para. 292).

* * *
259. The Tribunal will first select the base points to be used for constructing the provisional equidistance line.

260. As noted in paragraph 242, Bangladesh did not identify any base points for the construction of a provisional equidistance line.

261. The Tribunal notes Bangladesh’s contentions that Myanmar does not show the effect on its proposed delimitation line of base point β2, located on the southern tip of Mandabaria Island, near the land boundary between Bangladesh and India, because that point has none, and that base point β2 never actually comes into play in Myanmar’s proposed delimitation.

262. The Tribunal further notes that the observation made by Bangladesh concerning Myanmar’s β2 base point does not amount to a disagreement with the selection of that point; rather, it is a criticism by Bangladesh that Myanmar does not use that base point in its construction of the equidistance line.

263. The Tribunal notes that, while Bangladesh argues that the number of base points selected by Myanmar is insufficient for the construction of an equidistance line, Bangladesh does not question the five base points selected by Myanmar.

264. The Tribunal observes that, while coastal States are entitled to determine their base points for the purpose of delimitation, the Tribunal is not obliged, when called upon to delimit the maritime boundary between the parties to a dispute, to accept base points indicated by either or both of them. The Tribunal may establish its own base points, on the basis of the geographical facts of the case. As the ICJ stated in the Black Sea case: ([i]n […] the delimitation of the maritime areas involving two or more States, the Court should not base itself solely on the choice of base points made by one of those Parties. The Court must, when delimiting the continental shelf and the exclusive economic zones, select base points by reference to the physical geography of the relevant coasts (Maritime Delimitation in the Black Sea

265. Concerning the question whether St. Martin’s Island could serve as the source of a base point, the Tribunal is of the view that, because it is located immediately in front of the mainland on Myanmar’s side of the Parties’ land boundary terminus in the Naaf River, the selection of a base point on St. Martin’s Island would result in a line that blocks the seaward projection from Myanmar’s coast. In the view of the Tribunal, this would result in an unwarranted distortion of the delimitation line, and amount to “a judicial refashioning of geography” (ibid., at p. 110, para. 149). For this reason, the Tribunal excludes St. Martin’s Island as the source of any base point.

266. The Tribunal is satisfied that the five base points selected by Myanmar are the appropriate base points on the coasts of the Parties for constructing the provisional equidistance line. In addition, the Tribunal selects a new base point µ4, which is appropriate for the last segment of the provisional equidistance line. This base point is identified on the basis of the Admiralty Chart 817 and is situated on the southern tip of the island of Myay Ngu Kyun, at Boronga Point. Its coordinates are: 19° 48’ 49.8” N, 93° 01’ 33.6” E. The Tribunal will start the construction of a provisional equidistance line by using the following base points:

On the coast of Myanmar:

- µ1: 20° 41’ 28.2” N, 92° 22’ 47.8” E;
- µ2: 20° 33’ 02.5” N, 92° 31’ 17.6” E;
- µ3: 20° 14’ 31.0” N, 92° 43’ 27.8” E; and
- µ4: 19° 48’ 49.8” N, 93° 01’ 33.6” E.

On the coast of Bangladesh:

- β1: 20° 43’ 28.1” N, 92° 19’ 40.1” E; and
- β2: 21° 38’ 57.4” N, 89° 14’ 47.6” E.
267. In its written pleadings, Myanmar draws the provisional equidistance line as follows:

- from Point E (the point at which the equidistance line meets the 12-nm arc from the coastline of St. Martin’s Island) with co-ordinates 20° 26' 42.4" N, 92° 09' 53.6" E, it continues (following a geodetic azimuth of 214° 08' 17.5") until it reaches Point F with co-ordinates 20° 13' 06.3" N, 92° 00' 07.6" E, where it becomes affected by the base points β1, μ1 and μ2;

- from Point F the equidistance line continues in a south-westerly direction (geodetic azimuth 223° 28' 03.5") to Point G, with co-ordinates 19° 45' 36.7" N, 91° 32' 38.1" E, where the line becomes affected by the base point μ3;

- from Point G, the equidistance line continues in direction of Point Z, with co-ordinates 18° 31' 12.5" N, 89° 53' 44.9" E, which is controlled by base points μ3, β2, and β1.

268. Myanmar’s final submissions describe the last segment of its proposed delimitation as follows:

From Point G, the boundary line continues along the equidistance line in a south-west direction following a geodetic azimuth of 231° 37' 50.9" until it reaches the area where the rights of a third State may be affected.

269. Bangladesh argues that this suggests that Myanmar’s “proposed delimitation continues along a 232° line throughout its course, no matter where the rights of a third State may be determined to come into play, but that is not an accurate description of the line Myanmar purports to be drawing”.

270. Bangladesh asserts that Myanmar’s proposed Point Z coincides almost exactly with the location at which Myanmar’s proposed equidistance line intersects with India’s most recent claim line.
271. The Tribunal will now construct its provisional equidistance line from base points situated on the coasts of the Parties. For this purpose, it will employ the base points it identified in paragraph 266.

272. The provisional equidistance line starts at a point in the Naaf River lying midway between the closest base points on the coasts of the Parties, namely point β1 on the Bangladesh coast and point µ1 on the Myanmar coast. The coordinates of the starting point are 20° 42’ 28.2” N, 92° 21’ 14.0” E.

273. The provisional equidistance line within 200 nm from the baselines from which the territorial seas of the Parties are measured is defined by the following turning points at which the direction of the line changes and which are connected by geodetic lines:

- point T₁ which is controlled by base points β₁, µ₁ and µ₂ and which has the coordinates 20° 13’ 06.3” N, 92° 00’ 07.6” E;

- point T₂ which is controlled by base points β₁, µ₂ and µ₃ and which has the coordinates 19° 45’ 36.7” N, 91° 32’ 38.1” E; and

- point T₃ which is controlled by base points β₁, β₂ and µ₃ and which has the coordinates 18° 31’ 12.5” N, 89° 53’ 44.9” E.

274. From turning point T₃, the course of the provisional equidistance line within 200 nm from the baselines of the Parties from which their territorial seas are measured comes under the influence of the additional new base point µ₄, as identified by the Tribunal. From turning point T₃, the provisional equidistance line follows a geodetic line starting at an azimuth of 202° 56’ 22” until it reaches the limit of 200 nm.
275. Having drawn the provisional equidistance line, the Tribunal will now consider whether there are factors in the present case that may be considered relevant circumstances, calling for an adjustment of that line with a view to achieving an equitable solution. The Tribunal notes in this regard that the Parties differ on the issue of relevant circumstances.

276. Bangladesh points out three main geographical and geological features that characterize the present case and are relevant to the delimitation in question. The first of these is the "concave shape of Bangladesh’s coastline", extending from the land boundary terminus with India in the west to the land boundary terminus with Myanmar in the east. The Bangladesh coast is further marked by "a second concavity, that is a concavity within the overall concavity of its coastline". The second major geographical feature is St. Martin’s Island, a significant coastal island lying within 5 nm of the Bangladesh mainland. The third major distinguishing feature is the Bengal depositional system, which comprises "both the landmass of Bangladesh and its uninterrupted geological prolongation into and throughout the Bay of Bengal".

277. Bangladesh maintains that "it is not possible to delimit the boundary in a manner that achieves an equitable solution without taking each of these three features duly into account". In Bangladesh’s view, these features should be taken into account "as a relevant circumstance in fashioning an equitable delimitation within 200 miles, and should inform the delimitation of the outer continental shelf as between Bangladesh and Myanmar beyond 200 miles".

278. For its part, Myanmar contends that "there does not exist any relevant circumstance that may lead to an adjustment of the provisional equidistance line".

279. Bangladesh argues that "[t]he effect of the double concavity is to push the two equidistance lines between Bangladesh and its neighbours together", and that it "is not only left with a wedge of maritime space that narrows dramatically to seaward but it is also stopped short of its 200-[nm] limit".

280. Bangladesh observes that "Myanmar deploys two, not entirely consistent, arguments to deny [the] relevance [of the concavity]", namely, first that "there is no appreciable concavity and, second, that the concavity is legally irrelevant in any event". Bangladesh is of the view that "[b]oth assertions are incorrect".

281. With respect to the first argument, Bangladesh points out that it contradicts what Myanmar said in its own Counter-Memorial, which expressly acknowledged the doubly concave nature of Bangladesh’s coast.

282. As to the second argument, Bangladesh observes that the only ostensible jurisprudential basis for this claim of Myanmar is the ICJ’s decision in Cameroon v. Nigeria. Bangladesh points out that while, in that case, the ICJ found expressly that the portion of the coast relevant to the delimitation was not concave, it also stated that "[t]he Court does not deny that the concavity of the coastline may be a circumstance relevant to the delimitation" (Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, p. 303, at p. 445, para. 297).

283. Bangladesh submits that the cut-off effect is as prejudicial to it as was the cut-off effect to Germany in the North Sea cases and that "[t]he reality is then that equidistance threatens Bangladesh with a more severe cut-off than Germany".

284. Bangladesh also relies on the award in the case concerning Delimitation of the maritime boundary between Guinea and Guinea-Bissau,
noting that, although in that case “the equidistance lines between Guinea and its two neighbours did not fully cut Guinea off within 200 miles”, [...] “the relief the tribunal gave Guinea is considerable, certainly far greater than anything that Bangladesh is seeking in this case”.

285. Bangladesh draws attention to State practice in instances where a State is “pinched” in the middle of a concavity and would have been cut off, had the equidistance method been used, and “[t]he maritime boundaries that were ultimately agreed discarded equidistance in order to give the middle State access to its 200-[nm] limit”. It refers in this regard to the 1975 agreed delimitation between Senegal and The Gambia on the coast of West Africa, the 1987 agreed boundaries in the Atlantic Ocean between Dominica and the French islands of Guadeloupe and Martinique, the 1984 agreement between France and Monaco, the 2009 memorandum of understanding between Malaysia and Brunei, and the 1990 agreement between Venezuela and Trinidad and Tobago.

286. In response to Myanmar’s assertion that, as political compromises, “these agreements have no direct applicability to the questions of law now before the Tribunal”, Bangladesh argues that “[i]t is impossible not to draw the conclusion that these agreements, collectively or individually, evidence a broad recognition by States in Africa, in Europe, in the Americas, and in the Caribbean that the equidistance method does not work in the case of States trapped in the middle of a concavity”.

287. In relation to Myanmar’s reference to “the practice in the region” – the 1978 agreements among India, Indonesia and Thailand in the Andaman Sea; the 1971 agreement among Indonesia, Malaysia and Thailand in the Northern Part of the Strait of Malacca; and the 1993 agreement among Myanmar, India and Thailand in the Andaman Sea – as support for the contention that cut-offs within 200 miles are common, Bangladesh maintains that these agreements do not support Myanmar’s proposition.

288. While recognizing that it is a fact that the “coastlines of Bangladesh taken as a whole are concave”, Myanmar states that “the resulting enclaving effect is not as dramatic as Bangladesh claims” and that “there does not exist any relevant circumstance that may lead to an adjustment of the provisional equidistance line”. It observes in this regard that “[u]nless we completely refashion nature [...] this concavity cannot be seen as a circumstance calling for a shift of the equidistance line”.

289. Myanmar submits that the test of proportionality – or, more precisely, the absence of excessive disproportionality – confirms the equitable character of the solution resulting from the provisional equidistance line. It further argues that this line drawn in the first stage of the equidistance/relevant circumstances method meets the requirement of an equitable solution imposed by articles 74 and 83 of the Convention. Therefore, it is not necessary to modify or adjust it in the two other stages.

290. The Tribunal will now consider whether the concavity of the coast of Bangladesh constitutes a relevant circumstance warranting an adjustment of the provisional equidistance line.

291. The Tribunal observes that the coast of Bangladesh, seen as a whole, is manifestly concave. In fact, Bangladesh’s coast has been portrayed as a classic example of a concave coast. In the North Sea cases, the Federal Republic of Germany specifically invoked the geographical situation of Bangladesh (then East Pakistan) to illustrate the effect of a concave coast on the equidistance line (I.C.J. Pleadings, North Sea Continental Shelf, Vol. I, p. 42).

292. The Tribunal notes that in the delimitation of the exclusive economic zone and the continental shelf, concavity per se is not necessarily a relevant circumstance. However, when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States,
as a result of the concavity of the coast, then an adjustment of that line may
be necessary in order to reach an equitable result.

293. The Tribunal further notes that, on account of the concavity of the coast
in question, the provisional equidistance line it constructed in the present case
does produce a cut-off effect on the maritime projection of Bangladesh and
that the line if not adjusted would not result in achieving an equitable solution,
as required by articles 74 and 83 of the Convention.

294. This problem has been recognized since the decision in the North Sea
cases, in which the ICJ explained that “it has been seen in the case of
concave or convex coastlines that if the equidistance method is employed,
then the greater the irregularity and the further from the coastline the area to
be delimited, the more unreasonable are the results produced. So great an
exaggeration of the consequences of a natural geographical feature must be
remedied or compensated for as far as possible, being of itself creative of
inequity” (North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3, at
p. 49, para. 89).

295. In this regard, the ICJ observed that “in the case of a concave or
recessing coast [...], the effect of the use of the equidistance method is to pull
the line of the boundary inwards, in the direction of the concavity”, causing the
area enclosed by the equidistance lines “to take the form approximately of a
triangle with its apex to seaward and, as it was put on behalf of the Federal
Republic, ‘cutting off’ the coastal State from the further areas of the
continental shelf outside of and beyond this triangle” (ibid., at p. 17, para. 8).

296. Likewise, in the case concerning the Delimitation of the Maritime
Boundary Between Guinea and Guinea-Bissau, the Arbitral Tribunal stated
that “[w]hen in fact [...] there are three adjacent States along a concave
coastline, the equidistance method has the other drawback of resulting in the
middle country being enclaved by the other two and thus prevented from
extending its maritime territory as far seaward as international law permits”.
(Decision of 14 February 1985, ILR, Vol. 77, p. 635, at p. 682, para. 104)

297. The Tribunal finds that the concavity of the coast of Bangladesh is a
relevant circumstance in the present case, because the provisional
equidistance line as drawn produces a cut-off effect on that coast requiring an
adjustment of that line.

St. Martin’s Island

298. Bangladesh argues that St. Martin’s Island is one of the important
geographical features in the present case and that “[a]ny line of delimitation
that would ignore [this island] is inherently and necessarily inequitable”.

299. Bangladesh maintains that “if, contrary to [its] view, equidistance is not
rejected,” then St Martin’s Island must be given full weight in any solution
based on an equidistance line and “that even this is not enough to achieve the
equitable solution that is required by the 1982 Convention”.

300. Bangladesh submits that, “whether or not an island can be
characterized as being ‘in front of’ one coast or another does not in itself
determine whether it is a special or a relevant circumstance”. It refers in this
regard to the Case concerning the Delimitation of the Continental Shelf
between United Kingdom of Great Britain and Northern Ireland, and the
French Republic, in which the Court of Arbitration observed that the pertinent
question is whether an island would produce “an inequitable distortion of the
equidistance line producing disproportionate effects on the areas of shelf
accruing to the two States” (Decision of 30 June 1977, RIAA, Vol. XVIII, p. 3,
at p. 113, para. 243).

301. Bangladesh submits that “St. Martin’s Island is as much in front of the
Bangladesh coast as it is in front of Myanmar’s coast” and states that the case
law supports this view. In this regard Bangladesh notes that Myanmar
describes the French island of Ushant as being located in front of the French
coast, when in fact Ushant lies 10 miles off France’s Brittany coast, further
than St. Martin’s Island is from Bangladesh, and observes moreover that the Scilly Isles are 21 miles off the United Kingdom coast.

302. Bangladesh states that “Myanmar’s proposition that a finding of special or relevant circumstance is more likely when an island lies closer to the mainland is wrong” and that, “[i]n fact, it is when islands lie outside a State’s 12-[nm] territorial sea that they have been treated as relevant circumstances and given less than full effect in the [exclusive economic zone] and continental shelf delimitations”.

303. Bangladesh contends that what really matters is a “contextualized assessment” of an island’s effect in the particular circumstances of a given case and that, to the contrary of what Myanmar claims, it is the elimination of St. Martin’s Island that disproportionately affects Myanmar’s delimitation exercise, and renders it even more inequitable than it already is.

304. Responding to Myanmar’s contention that no island in a position analogous to that of St. Martin’s Island has ever been considered as a relevant circumstance, Bangladesh, citing jurisprudence in support, states that:

- the Channel Islands in the case of Delimitation of the continental shelf between France and the United Kingdom in 1977;
- the island of Djerba in the case of Tunisia v. Libya settled in 1982;
- the island of Filfla in the case of Libya v. Malta settled in 1985;
- the island of Abu Musa in the award between Dubai and Sharjah in 1981;
- the Yemeni Islands in the arbitration between Eritrea v. Yemen in 1999;
- the island of Qit at Jaradah in the case of Qatar v. Bahrain in 2001;
- Sable Island in the arbitration of 2002 between the province of Newfoundland and Labrador;
- Serpent’s Island in the case of Romania v. Ukraine in 2009;

305. Bangladesh notes that the ICJ and arbitral tribunals have developed a clear and common approach to the determination of whether an island exerts such a distorting effect on the provisional equidistance line and must be disregarded or given less than full weight in the delimitation.

306. Bangladesh explains further that “[t]wo elements are required” for the island to be disregarded or given less than full weight:

1. the deflection of the equidistance line directly across another State’s coastal front; and (2) the cut-off of that State’s seaward access.

307. Bangladesh is of the view that a provisional equidistance line that includes St. Martin’s “does cut across somebody’s coastal front, and does cause a significant cut-off effect – but the effect is not on Myanmar”. It is for Bangladesh, not Myanmar, that the provisional equidistance line needs to be adjusted so as to achieve the equitable solution required by the Convention.

308. Bangladesh explains that the pertinent question is not whether a particular feature affects the provisional equidistance line but whether it distorts the line and concludes by stating that “St Martin’s does not distort the line”.

309. Myanmar, in turn, emphasizes “the unique position of St Martin’s Island, which has three characteristic elements: it is close to the land boundary and therefore to the starting point of the equidistance line; it has the very exceptional feature of being on the wrong side of the equidistance line and also on the wrong side of the bisector claimed by Bangladesh; and, finally, the mainland coasts to be delimited are adjacent, not opposite”.
Myanmar contends that “[t]hose three elements together create a serious, very excessive distorting effect on delimitation”.

310. Myanmar notes that “Bangladesh has never included St. Martin’s Island in its coastal façade or in the description of its relevant coast”, Myanmar points out that Bangladesh had stated in its Reply that “its relevant coast extends, from west to east, from the land boundary terminus with India to the land boundary terminus on the other side on the Naaf River” and had not mentioned St. Martin’s Island. Myanmar points out in this regard that “[t]his makes even more curious the claim made […] that the island is ‘an integral part of the Bangladesh coast’.

311. Myanmar observes that the location of St. Martin’s Island and the effect that it produces “make it a special circumstance in the case of the delimitation of the territorial sea”, which explains the care taken by Myanmar to give it the effect that is most appropriate to its unique location; and “the same considerations lead to it not being accorded more effect in the framework of the delimitation of the exclusive economic zones”.

312. On the issue of the effect that islands have on delimitation of the exclusive economic zone and the continental shelf, Myanmar points out that if one looks “closely at how case law has applied the methodology, […] no island in the position of St Martin’s Island has ever been considered, in the first stage of the process, as an island that should have effect in drawing an equidistance line beyond the territorial sea, or in the second stage of the process as a relevant circumstance”.

313. Myanmar asserts that “[i]n almost all the cases that have been adjudged, the islands in question […] have not been considered to be coastal islands” and “were not given any effect on the construction of the equidistance line beyond the territorial sea”.

314. Myanmar points out that St. Martin’s Island, which is 5 kilometres long, would by itself generate at least 13,000 square kilometres of maritime area for Bangladesh in the framework of the delimitation between continental masses, a result which, according to Myanmar, is manifestly disproportionate.

315. Myanmar argues that “if […] effect were to be given to St. Martin’s Island” in the delimitation of the exclusive economic zone and the continental shelf between Myanmar and Bangladesh, “this would produce a disproportionate result”, citing the Dubai/Sharjah Border Arbitration (Award of 19 October 1981, ILR, Vol. 91, p. 543, at p. 677), the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) (Judgment, I.C.J. Reports 1985, p. 13, at p. 48, para. 64), the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Merits, Judgment, I.C.J. Reports 2001, p. 40, at pp. 104-109, para. 219) and the Black Sea case (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 61, at p. 122-128, para. 185).

316. The Tribunal will now consider whether St. Martin’s Island, in the circumstances of this case, should be considered a relevant circumstance warranting an adjustment of the provisional equidistance line.

317. The Tribunal observes that the effect to be given to an island in the delimitation of the maritime boundary in the exclusive economic zone and the continental shelf depends on the geographic realities and the circumstances of the specific case. There is no general rule in this respect. Each case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable.

318. St. Martin’s Island is an important feature which could be considered a relevant circumstance in the present case. However, because of its location, giving effect to St. Martin’s Island in the delimitation of the exclusive economic zone and the continental shelf would result in a line blocking the seaward projection from Myanmar’s coast in a manner that would cause an unwarranted distortion of the delimitation line. The distorting effect of an island...
on an equidistance line may increase substantially as the line moves beyond 12 nm from the coast.

319. For the foregoing reasons, the Tribunal concludes that St. Martin’s Island is not a relevant circumstance and, accordingly, decides not to give any effect to it in drawing the delimitation line of the exclusive economic zone and the continental shelf.

_Bengal depositional system_

320. As regards the Bengal depositional system, Bangladesh states that the physical, geological and geomorphological connection between Bangladesh’s land mass and the Bay of Bengal sea floor is so clear, so direct and so pertinent, that adopting a boundary in the area within 200 nm that would cut off Bangladesh, and deny it access to, and rights in the area beyond, would constitute a grievous inequity.

321. Myanmar rejects Bangladesh’s contention that the Bengal depositional system is a relevant circumstance, stating that this is a “very curious” special circumstance. It points out that Bangladesh itself admits that within 200 nm entitlement is, by operation of article 76, paragraph 1, of the Convention, determined purely by reference to distance from the coast.

322. The Tribunal does not consider that the Bengal depositional system is relevant to the delimitation of the exclusive economic zone and the continental shelf within 200 nm. The location and direction of the single maritime boundary applicable both to the seabed and subsoil and to the superjacent waters within the 200 nm limit are to be determined on the basis of geography of the coasts of the Parties in relation to each other and not on the geology or geomorphology of the seabed of the delimitation area.

323. As noted by the Tribunal in paragraph 291, the coast of Bangladesh between its land boundary terminus with Myanmar at the mouth of the Naaf River and its land boundary terminus with India is decidedly concave. This concavity causes the provisional equidistance line to cut across Bangladesh’s coastal front. This produces a pronounced cut-off effect on the southward maritime projection of Bangladesh’s coast that continues throughout much of the delimitation area.

324. The Tribunal recalls that it has decided earlier in this Judgment (see paragraph 297) that the concavity which results in a cut-off effect on the maritime projection of Bangladesh is a relevant circumstance, requiring an adjustment of the provisional equidistance line.

325. The Tribunal, therefore, takes the position that, while an adjustment must be made to its provisional equidistance line to abate the cut-off effect of the line on Bangladesh’s concave coast, an equitable solution requires, in light of the coastal geography of the Parties, that this be done in a balanced way so as to avoid drawing a line having a converse distorting effect on the seaward projection of Myanmar’s coastal façade.

326. The Tribunal agrees that the objective is a line that allows the relevant coasts of the Parties “to produce their effects, in terms of maritime entitlements, in a reasonable and mutually balanced way” (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 61, at p. 127, para. 201).

327. The Tribunal notes that there are various adjustments that could be made within the relevant legal constraints to produce an equitable result. As the Arbitral Tribunal observed in the Arbitration between Barbados and Trinidad and Tobago, “[t]here are no magic formulas” in this respect (Decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at p. 243, para. 373).
328. In the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) the position of the line but not its direction was adjusted, in the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen the position and direction of the line were adjusted, and in the Arbitration between Barbados and the Republic of Trinidad and Tobago, the line was deflected at the point suggested by the relevant circumstances, and its direction was determined in light of those circumstances. The approach taken in this arbitration would appear to be suited to the geographic circumstances of the present case, which entails a lateral delimitation line extending seaward from the coasts of the Parties.

329. The Tribunal decides that, in view of the geographic circumstances in the present case, the provisional equidistance line is to be deflected at the point where it begins to cut off the seaward projection of the Bangladesh coast. The direction of the adjustment is to be determined in the light of those circumstances.

330. The fact that this adjustment may affect most of the line in the present case is not an impediment, so long as the adjustment is tailored to the relevant circumstance justifying it and the line produces an equitable solution. The Tribunal notes that in the Arbitration between Barbados and the Republic of Trinidad and Tobago it was concluded that only part of the line required adjustment, while the ICJ adjusted the lines in their entirety in the cases concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) and Maritime Delimitation in the Area between Greenland and Jan Mayen.

331. The Tribunal, therefore, determines that the adjustment of the provisional equidistance line should commence at point X with coordinates 20° 03' 32.0" N, 91°50' 31.8" E, where the equidistance line begins to cut off the southward projection of the coast of Bangladesh. The Tribunal has selected the point on the provisional equidistance line that is due south of the point on Kutubdia Island at which the direction of the coast of Bangladesh shifts markedly from north-west to west, as indicated by the lines drawn by the Tribunal to identify the relevant coasts of Bangladesh.

332. Having concluded that the overlapping projections from the coasts of the Parties extend to the limits of their respective exclusive economic zones and continental shelves outside the area in which a third party may have rights, the Tribunal considered how to make the adjustment to the provisional equidistance line in that light.

333. The projection southward from the coast of Bangladesh continues throughout the delimitation area. There is thus a continuing need to avoid cut-off effects on this projection. In the geographic circumstances of this case it is not necessary to change the direction of the adjusted line as it moves away from the coasts of the Parties.

334. The Tribunal accordingly believes that there is reason to consider an adjustment of the provisional equidistance line by drawing a geodetic line starting at a particular azimuth. In the view of the Tribunal the direction of any plausible adjustment of the provisional equidistance line would not differ substantially from a geodetic line starting at an azimuth of 215°. A significant shift in the angle of that azimuth would result in cut-off effects on the projections from the coast of one Party or the other. A shift toward the north-west would produce a line that does not adequately remedy the cut-off effect of the provisional equidistance line on the southward projection of the coast of Bangladesh, while a shift in the opposite direction would produce a cut-off effect on the seaward projection of Myanmar’s coast.

335. The Tribunal is satisfied that such an adjustment, commencing at the starting point X identified in paragraph 331, remedies the cut-off effect on the southward projection of the coast of Bangladesh with respect to both the exclusive economic zone and the continental shelf, and that it does so in a consistent manner that allows the coasts of both Parties to produce their effects in a reasonable and balanced way.

336. The Tribunal notes that as the adjusted line moves seaward of the broad curvature formed by the relevant coasts of the Parties, the balanced
effects it produces in relation to those coasts are confirmed by the fact that it intersects the 200 nm limit of the exclusive economic zone of Myanmar at a point that is nearly equidistant from Cape Negrais on Myanmar’s coast and the terminus of Bangladesh’s land boundary with India.

Delimitation line

337. The delimitation line for the exclusive economic zone and the continental shelf of the Parties within 200 nm begins at point 9 with coordinates 20° 26’ 39.2” N, 92° 9’ 50.7” E, the point at which the envelope of arcs of the 12 nm limit of Bangladesh’s territorial sea around St. Martin’s Island intersects with the equidistance line referred to in paragraphs 271-274.

338. From point 9, the delimitation line follows a geodetic line until point 10(T1) with coordinates 20° 13’ 06.3” N, 92° 00’ 07.6” E.

339. From point 10(T1), the delimitation line follows a geodetic line until point 11(X) with coordinates 20° 03’ 32.0” N, 91° 50’ 31.8” E, at which the adjustment of the line begins to take effect as determined by the Tribunal in paragraph 331.

340. From point 11(X), the delimitation line continues as a geodetic line starting at an azimuth of 215° until it reaches a point which is located 200 nm from the baselines from which the breadth of the territorial sea of Bangladesh is measured.
IX. Continental shelf beyond 200 nautical miles

Jurisdiction to delimit the continental shelf in its entirety

341. While the Parties are in agreement that the Tribunal is requested to delimit the continental shelf between them in the Bay of Bengal within 200 nm, they disagree as to whether the Tribunal has jurisdiction to delimit the continental shelf beyond 200 nm and whether the Tribunal, if it determines that it has jurisdiction to do so, should exercise such jurisdiction.

342. As pointed out in paragraph 45, Myanmar does not dispute that “as a matter of principle, the delimitation of the continental shelf, including the shelf beyond 200 [nm], could fall within the jurisdiction of the Tribunal”. However, it raises the issue of the advisability in the present case of the exercise by the Tribunal of its jurisdiction with respect to the delimitation of the continental shelf beyond 200 nm.

343. Myanmar states in its Counter Memorial that the question of the jurisdiction of the Tribunal regarding the delimitation of the continental shelf beyond 200 nm in general should not arise in the present case because the delimitation line, in its view, terminates well before reaching the 200 nm limit from the baselines from which the territorial sea is measured.

344. At the same time Myanmar submits that “[e]ven if the Tribunal were to decide that there could be a single maritime boundary beyond 200 [nm] (quod non), the Tribunal would still not have jurisdiction to determine this line because any judicial pronouncement on these issues might prejudice the rights of third parties and also those relating to the international seabed area”.

345. Myanmar further submits that “[a]s long as the outer limit of the continental shelf has not been established on the basis of the recommendations” of the Commission on the Limits of the Continental Shelf (hereinafter “the Commission”), “the Tribunal, as a court of law, cannot determine the line of delimitation on a hypothetical basis without knowing what the outer limits are”. It argues in this regard that:

A review of a State’s submission and the making of recommendations by the Commission on this submission is a necessary prerequisite for any determination of the outer limits of the continental shelf of a coastal State ‘on the basis of these recommendations’ under article 76 (8) of UNCLOS and the area of continental shelf beyond 200 [nm] to which a State is potentially entitled; this, in tum, is a necessary precondition to any judicial determination of the division of areas of overlapping sovereign rights to the natural resources of the continental shelf beyond 200 [nm]. […] To reverse the process […] to adjudicate with respect to rights the extent of which is unknown, would not only put this Tribunal at odds with other treaty bodies, but with the entire structure of the Convention and the system of international ocean governance.

346. In support of its position, Myanmar refers to the Arbitral Award in the Case concerning the Delimitation of Maritime Areas between Canada and France of 10 June 1992, which states: “[i]t is not possible for a tribunal to reach a decision by assuming hypothetically the eventuality that such rights will in fact exist” (Decision of 10 June 1992, ILM, Vol. 31 (1992), p. 1145, at p. 1172, para. 81).

347. Myanmar asserts that in the case concerning Territory and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), the ICJ declined to delimit the continental shelf beyond 200 nm between Nicaragua and Honduras because the Commission had not yet made recommendations to the two countries regarding the continental shelf beyond 200 nm.

348. During the oral proceedings Myanmar clarified its position, stating, inter alia, that in principle it did not question the jurisdiction of the Tribunal. The Parties accepted the Tribunal’s jurisdiction on the same terms, in accordance with the provisions of article 287, paragraph 1, of the Convention, “for the settlement of dispute […] relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal”. According to Myanmar, the only problem that arose concerned the possibility that the Tribunal might in
this matter exercise this jurisdiction and decide on the delimitation of the continental shelf beyond 200 nm.

349. Myanmar further observed that if the Tribunal “nevertheless were to consider the Application admissible on this point – *quod non* – you could not but defer judgment on this aspect of the matter until the Parties, in accordance with Article 76 of the Convention, have taken a position on the recommendations of the Commission concerning the existence of entitlements of the two Parties to the continental shelf beyond 200 [nm] and, if such entitlements exist, on their seaward extension – i.e., on the outer (not lateral, *outer*) limits of the continental shelf of the two countries”.

350. Bangladesh is of the view that the Tribunal is expressly empowered by the Convention to adjudicate disputes between States arising under articles 76 and 83, in regard to the delimitation of the continental shelf. As the Convention draws no distinction in this regard between jurisdiction over the inner part of the continental shelf, i.e., that part within 200 nm, and the part beyond that distance, according to Bangladesh, delimitation of the entire continental shelf is covered by article 83, and the Tribunal plainly has jurisdiction to carry out delimitation beyond 200 nm.

351. Responding to Myanmar’s argument that “in any event, the question of delimiting the shelf beyond 200 [nm] does not arise because the delimitation line terminates well before reaching the 200 [nm] limit”, Bangladesh states that “Myanmar’s argument that Bangladesh has no continental shelf beyond 200 [nm] is based instead on the proposition that once the area *within* 200 [nm] is delimited, the terminus of Bangladesh’s shelf falls short of the 200 [nm] limit”. Bangladesh contends that “[t]his can only be a valid argument if the Tribunal first accepts Myanmar’s arguments in favour of an equidistance line within 200 [nm]. Such an outcome would require the Tribunal to disregard entirely the relevant circumstances relied upon by Bangladesh”.

352. With reference to Myanmar’s argument regarding the rights of third parties, Bangladesh states that a potential overlapping claim of a third State cannot deprive the Tribunal of jurisdiction to delimit the maritime boundary between two States that are subject to the jurisdiction of the Tribunal, because third States are not bound by the Tribunal’s judgment and their rights are unaffected by it. Bangladesh points out that so far as third States are concerned, a delimitation judgment by the Tribunal is merely *res inter alios acta* and that this assurance is provided in article 33, paragraph 2, of the Statute.

353. Bangladesh also observes that Myanmar’s contention “with regard to the international seabed area disregards its own submission to the CLCS, which makes clear that the outer limits of the continental shelf *vis-à-vis* the international seabed are far removed from the maritime boundary with Bangladesh”.

354. Bangladesh observes that with respect to the potential areas of overlap with India, Myanmar accepts that even if the Tribunal cannot fix a tripoint between three States, it can indicate the “general direction for the final part of the maritime boundary between Myanmar and Bangladesh”, and that doing so would be “in accordance with the well-established practise” of international courts and tribunals.

355. In summarizing its position on the issue of the rights of third parties and the jurisdiction of the Tribunal, Bangladesh states that:

1. […]
2. The delimitation by the Tribunal of a maritime boundary in the continental shelf beyond 200 [nm] does not prejudice the rights of third parties. In the same way that international courts and tribunals have consistently exercised jurisdiction where the rights of third States are involved, ITLOS may exercise jurisdiction, even if the rights of the international community to the international seabed were involved, which in this case they are not.
3. With respect to the area of shelf where the claims of Bangladesh and Myanmar overlap with those of India, the Tribunal need only determine which of the two Parties in the present proceeding has the better claim, and effect a delimitation that is only binding on Bangladesh and Myanmar. Such a delimitation as
between the two Parties to this proceeding would not be binding on India.

356. Bangladesh observes that there is no conflict between the roles of the Tribunal and the Commission in regard to the continental shelf and that, to the contrary, the roles are complementary. Bangladesh also states that the Tribunal has jurisdiction to delimit boundaries within the outer continental shelf and that the Commission makes recommendations as to the delineation of the outer limits of the continental shelf with the Area, as defined in article 1, paragraph 1, of the Convention, provided there are no disputed claims between States with opposite or adjacent coasts.

357. Bangladesh adds that the Commission may not make any recommendations on the outer limits until any such dispute is resolved by the Tribunal or another judicial or arbitral body or by agreement between the parties, unless the parties give their consent that the Commission review their submissions. According to Bangladesh, in the present case, “the Commission is precluded from acting due to the Parties’ disputed claims in the outer continental shelf and the refusal by at least one of them (Bangladesh) to consent to the Commission’s actions”.

358. Bangladesh points out that if Myanmar’s argument were accepted, the Tribunal would have to wait for the Commission to act and the Commission would have to wait for the Tribunal to act. According to Bangladesh, the result would be that, whenever parties are in dispute in regard to the continental shelf beyond 200 nm, the compulsory procedures entailing binding decisions under Part XV, Section 2, of the Convention would have no practical application. Bangladesh adds that “[i]n effect, the very object and purpose of the UNCLOS dispute settlement procedures would be negated. Myanmar’s position opens a jurisdictional black hole into which all disputes concerning maritime boundaries in the outer continental shelf would forever disappear”.

359. Summarizing its position, Bangladesh states that in portraying recommendations by the Commission as a prerequisite to the exercise of jurisdiction by the Tribunal, Myanmar sets forth a “circular argument” that would make the exercise by the Tribunal of its jurisdiction with respect to the continental shelf beyond 200 nm impossible, which is inconsistent with Part XV and with article 76, paragraph 10, of the Convention.

360. The Tribunal will now consider whether it has jurisdiction to delimit the continental shelf beyond 200 nm.

361. Article 76 of the Convention embodies the concept of a single continental shelf. In accordance with article 77, paragraphs 1 and 2, of the Convention, the coastal State exercises exclusive sovereign rights over the continental shelf in its entirety without any distinction being made between the shelf within 200 nm and the shelf beyond that limit. Article 83 of the Convention, concerning the delimitation of the continental shelf between States with opposite or adjacent coasts, likewise does not make any such distinction.

362. In this regard, the Tribunal notes that in the Arbitration between Barbados and Trinidad and Tobago, the Arbitral Tribunal decided that “the dispute to be dealt with by the Tribunal includes the outer continental shelf, since […] it either forms part of, or is sufficiently closely related to, the dispute […] and […] in any event there is in law only a single ‘continental shelf’ rather than an inner continental shelf and a separate extended or outer continental shelf” (Decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at pp. 208-209, para. 213).

363. For the foregoing reasons, the Tribunal finds that it has jurisdiction to delimit the continental shelf in its entirety. The Tribunal will now consider whether, in the circumstances of this case, it is appropriate to exercise that jurisdiction.
Exercise of jurisdiction

364. The Tribunal will first address Myanmar’s argument that Bangladesh’s continental shelf cannot extend beyond 200 nm because the maritime area in which Bangladesh enjoys sovereign rights with respect to natural resources of the continental shelf does not extend up to 200 nm.

365. The Tribunal notes that this argument cannot be sustained, given its decision, as set out in paragraph 339, that the delimitation line of the exclusive economic zone and the continental shelf reaches the 200 nm limit.

366. The Tribunal will now turn to the question of whether the exercise of its jurisdiction could prejudice the rights of third parties.

367. The Tribunal observes that, as provided for in article 33, paragraph 2, of the Statute, its decision “shall have no binding force except between the parties in respect of that particular dispute”. Accordingly, the delimitation of the continental shelf by the Tribunal cannot prejudice the rights of third parties. Moreover, it is established practice that the direction of the seaward segment of a maritime boundary may be determined without indicating its precise terminus, for example by specifying that it continues until it reaches the area where the rights of third parties may be affected.

368. In addition, as far as the Area is concerned, the Tribunal wishes to observe that, as is evident from the Parties’ submissions to the Commission, the continental shelf beyond 200 nm that is the subject of delimitation in the present case is situated far from the Area. Accordingly, the Tribunal, by drawing a line of delimitation, will not prejudice the rights of the international community.

369. The Tribunal will now examine the issue of whether it should refrain in the present case from exercising its jurisdiction to delimit the continental shelf beyond 200 nm until such time as the outer limits of the continental shelf have been established by each Party pursuant to article 76, paragraph 8, of the Convention or at least until such time as the Commission has made recommendations to each Party on its submission and each Party has had the opportunity to consider its reaction to the recommendations.

370. The Tribunal wishes to point out that the absence of established outer limits of a maritime zone does not preclude delimitation of that zone. Lack of agreement on baselines has not been considered an impediment to the delimitation of the territorial sea or the exclusive economic zone notwithstanding the fact that disputes regarding baselines affect the precise seaward limits of these maritime areas. However, in such cases the question of the entitlement to maritime areas of the parties concerned did not arise.

371. The Tribunal must therefore consider whether it is appropriate to proceed with the delimitation of the continental shelf beyond 200 nm given the role of the Commission as provided for in article 76, paragraph 8, of the Convention and article 3, paragraph 1, of Annex II to the Convention.

372. Pursuant to article 31 of the Vienna Convention, the Convention is to be interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in the light of its object and purpose. As stated in the Advisory Opinion of the Seabed Disputes Chamber, article 31 of the Vienna Convention is to be considered “as reflecting customary international law” (Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), 1 February 2011, para. 57).

373. The Convention sets up an institutional framework with a number of bodies to implement its provisions, including the Commission, the International Seabed Authority and this Tribunal. Activities of these bodies are complementary to each other so as to ensure coherent and efficient implementation of the Convention. The same is true of other bodies referred to in the Convention.
374. The right of the coastal State under article 76, paragraph 8, of the Convention to establish final and binding limits of its continental shelf is a key element in the structure set out in that article. In order to realize this right, the coastal State, pursuant to article 76, paragraph 8, is required to submit information on the limits of its continental shelf beyond 200 nm to the Commission, whose mandate is to make recommendations to the coastal State on matters related to the establishment of the outer limits of its continental shelf. The Convention stipulates in article 76, paragraph 8, that the “limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding”.

375. Thus, the Commission plays an important role under the Convention and has a special expertise which is reflected in its composition. Article 2 of Annex II to the Convention provides that the Commission shall be composed of experts in the field of geology, geophysics or hydrography. Article 3 of Annex II to the Convention stipulates that the functions of the Commission are, inter alia, 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 nm and to make recommendations in accordance with article 76 of the Convention.

376. There is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76. Under the latter article, the Commission is assigned the function of making recommendations to coastal States on matters relating to the establishment of the outer limits of the continental shelf, but it does so without prejudice to delimitation of maritime boundaries. The function of settling disputes with respect to delimitation of maritime boundaries is entrusted to dispute settlement procedures under article 83 and Part XV of the Convention, which include international courts and tribunals.

377. There is nothing in the Convention or in the Rules of Procedure of the Commission or in its practice to indicate that delimitation of the continental shelf constitutes an impediment to the performance by the Commission of its functions.

378. Article 76, paragraph 10, of the Convention states that “[t]he provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts”. This is further confirmed by article 9 of Annex II, to the Convention, which states that the “actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts”.

379. Just as the functions of the Commission are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts, so the exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf.

380. Several submissions made to the Commission, beginning with the first submission, have included areas in respect of which there was agreement between the States concerned effecting the delimitation of their continental shelf beyond 200 nm. However, unlike in the present case, in all those situations delimitation has been effected by agreement between States, not through international courts and tribunals.

381. In this respect, the Tribunal notes the positions taken in decisions by international courts and tribunals.

382. The Arbitral Tribunal in the Arbitration between Barbados and the Republic of Trinidad and Tobago found that its jurisdiction included the delimitation of the maritime boundary of the continental shelf beyond 200 nm (Decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at p. 209, para. 217). The Arbitral Tribunal, in that case, did not exercise its jurisdiction stating that:
As will become apparent, however, the single maritime boundary which the Tribunal has determined is such that, as between Barbados and Trinidad and Tobago, there is no single maritime boundary beyond 200 nm. (ibid., at p. 242, para. 368)

383. In the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), the ICJ declared that:

The Court may accordingly, without specifying a precise endpoint, delimit the maritime boundary and state that it extends beyond the 82nd meridian without affecting third-States rights. It should also be noted in this regard that in no case may the line be interpreted as extending more than 200 [nm] from the baselines from which the breadth of the territorial sea is measured; any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder. (Judgment, I.C.J. Reports 2007, p. 659, at p. 759, para. 319).

384. The Tribunal observes that the determination of whether an international court or tribunal should exercise its jurisdiction depends on the procedural and substantive circumstances of each case.

385. Pursuant to rule 46 of the Rules of Procedure of the Commission, in the event that there is a dispute in the delimitation of the continental shelf between States with opposite or adjacent coasts, submissions to the Commission shall be considered in accordance with Annex I to those Rules. Annex I, paragraph 2, provides:

In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States, or in other cases of unresolved land or maritime disputes, related to the submission, the Commission shall be:

(a) Informed of such disputes by the coastal States making the submission; and

(b) Assured by the coastal States making the submission to the extent possible that the submission will not prejudice matters relating to the delimitation of boundaries between States.

386. Paragraph 5 (a) of Annex I to the same Rules further provides:

5. (a) In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.

387. In the present case, Bangladesh informed the Commission by a note verbale dated 23 July 2009, addressed to the Secretary-General of the United Nations, that, for the purposes of rule 46 of the Rules of Procedure of the Commission, and of Annex I thereto, there was a dispute between the Parties and, recalling paragraph 5 (a) of Annex I to the Rules, observed that:

given the presence of a dispute between Bangladesh and Myanmar concerning entitlement to the parts of the continental shelf in the Bay of Bengal claimed by Myanmar in its submission, the Commission may not “consider and qualify” the submission made by Myanmar without the “prior consent given by all States that are parties to such a dispute”.

388. Taking into account Bangladesh’s position, the Commission has deferred consideration of the submission made by Myanmar (Statement by the Chairman of the Commission on the progress of work in the Commission, CLCS/64 of 1 October 2009, p. 10, paragraph 40)

389. The Commission also decided to defer the consideration of the submission of Bangladesh,

in order to take into account any further developments that might occur in the intervening period, during which the States concerned might wish to take advantage of the avenues available to them, including provisional arrangements of a practical nature as outlined in annex I to the rules of procedure. (Statement by the Chairman of the Commission on the progress of work in the Commission, CLCS/72 of 16 September 2011, p. 7, paragraph 22)

390. The consequence of these decisions of the Commission is that, if the Tribunal declines to delimit the continental shelf beyond 200 nm under article 83 of the Convention, the issue concerning the establishment of the outer limits of the continental shelf of each of the Parties under article 76 of the Convention may remain unresolved. The Tribunal notes that the record in
this case affords little basis for assuming that the Parties could readily agree on other avenues available to them so long as their delimitation dispute is not settled.

391. A decision by the Tribunal not to exercise its jurisdiction over the dispute relating to the continental shelf beyond 200 nm would not only fail to resolve a long-standing dispute, but also would not be conducive to the efficient operation of the Convention.

392. In the view of the Tribunal, it would be contrary to the object and purpose of the Convention not to resolve the existing impasse. Inaction in the present case, by the Commission and the Tribunal, two organs created by the Convention to ensure the effective implementation of its provisions, would leave the Parties in a position where they may be unable to benefit fully from their rights over the continental shelf.

393. The Tribunal observes that the exercise of its jurisdiction in the present case cannot be seen as an encroachment on the functions of the Commission, inasmuch as the settlement, through negotiations, of disputes between States regarding delimitation of the continental shelf beyond 200 nm is not seen as precluding examination by the Commission of the submissions made to it or hindering it from issuing appropriate recommendations.

394. For the foregoing reasons, the Tribunal concludes that, in order to fulfil its responsibilities under Part XV, Section 2, of the Convention in the present case, it has an obligation to adjudicate the dispute and to delimit the continental shelf between the Parties beyond 200 nm. Such delimitation is without prejudice to the establishment of the outer limits of the continental shelf in accordance with article 76, paragraph 8, of the Convention.

Entitlement

395. The delimitation of the continental shelf beyond 200 nm in this case entails the interpretation and application of both article 76 and article 83 of the Convention.

396. Article 83 is set forth in paragraph 182 and article 76 reads as follows:

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 [nm] from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 [nm] 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 percent 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 [nm] from the foot of the continental slope.
(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.
5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 [nm] from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 [nm] 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 [nm] from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 [nm] from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 [nm] in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 [nm] 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.

Entitlement and delimitation

397. Delimitation presupposes an area of overlapping entitlements. Therefore, the first step in any delimitation is to determine whether there are entitlements and whether they overlap.

398. While entitlement and delimitation are two distinct concepts addressed respectively in articles 76 and 83 of the Convention, they are interrelated. The Parties also recognize the interrelationship between entitlement and delimitation. Bangladesh states that "[t]he Tribunal must answer this question before it can delimit the shelf: does either Party have an entitlement to a continental shelf beyond 200 [nm]?" Likewise, Myanmar observes that "the determination of the entitlements of both States to a continental shelf beyond 200 [nm] and their respective extent is a prerequisite for any delimitation".

399. Thus the question the Tribunal should first address in the present case is whether the Parties have overlapping entitlements to the continental shelf beyond 200 nm. If not, it would be dealing with a hypothetical question.

400. In the present case, the Parties have made claims to the continental shelf beyond 200 nm which overlap. Part of this area is also claimed by India. Each Party denies the other’s entitlement to the continental shelf beyond 200 nm. Furthermore, Myanmar argues that the Tribunal cannot address the issue of the entitlement of either Bangladesh or Myanmar to a continental shelf beyond 200 nm, as this is an issue that lies solely within the competence of the Commission, not of the Tribunal.

401. Considering the above positions of the Parties, the Tribunal will address the main point disputed by them, namely whether or not they have any entitlement to the continental shelf beyond 200 nm. In this regard, the Tribunal will first address the question of whether it can and should in this case determine the entitlements of the Parties to the continental shelf beyond 200 nm. The Tribunal will next consider the positions of the Parties regarding entitlements. It will then analyze the meaning of natural prolongation and its interrelation with that of continental margin. Finally, the Tribunal will determine whether the Parties have entitlements to the continental shelf beyond 200 nm and whether those entitlements overlap. On the basis of these determinations, the Tribunal will take a decision on the delimitation of the continental shelf of the Parties beyond 200 nm.

402. The Tribunal will now address the first question, namely, whether it can and should in the present case determine the entitlements of the Parties to the continental shelf beyond 200 nm.

403. Bangladesh argues that the Tribunal is required to decide on the question of entitlements of the Parties to the continental shelf beyond 200 nm. For Bangladesh, "the 1982 Convention requires that ITLOS delimit the areas of outer continental shelf claimed by both Bangladesh and Myanmar by
deciding that only Bangladesh, and not Myanmar, has an entitlement to these areas, and by fixing the maritime boundary separating the continental shelves of the two Parties along the line that is exactly 200 [nm] from Myanmar’s coastline”.

404. Bangladesh further contends that “[i]nsofar as its entitlement to this area of continental shelf overlaps with the claims of Myanmar, it is for ITLOS to determine the validity of the competing claims and delimit an equitable boundary taking into account the applicable law, and relevant scientific and factual circumstances. These include Bangladesh’s ‘natural prolongation’ throughout the Bay of Bengal and the absence of any natural prolongation on Myanmar’s side”.

405. Myanmar argues that “[t]he Tribunal has no need to and cannot deal with the issue of the entitlement of Bangladesh or of Myanmar to a continental shelf extending beyond 200 [nm]”. In the view of Myanmar, “the determination of the entitlements of both States to a continental shelf beyond 200 [nm] and their respective extent is a prerequisite for any delimitation, and the Commission on the Limits of the Continental Shelf (CLCS) plays a crucial role in this regard”.

406. Regarding the question whether it can and should decide on the entitlements of the Parties, the Tribunal first points out the need to make a distinction between the notion of entitlement to the continental shelf beyond 200 nm and that of the outer limits of the continental shelf.

407. It is clear from article 76, paragraph 8, of the Convention that the limits of the continental shelf beyond 200 nm can be established only by the coastal State. Although this is a unilateral act, the opposability with regard to other States of the limits thus established depends upon satisfaction of the requirements specified in article 76, in particular compliance by the coastal State with the obligation to submit to the Commission information on the limits of the continental shelf beyond 200 nm and issuance by the Commission of relevant recommendations in this regard. It is only after the limits are established by the coastal State on the basis of the recommendations of the Commission that these limits become “final and binding”.

408. The foregoing does not imply that entitlement to the continental shelf depends on any procedural requirements. As stated in article 77, paragraph 3, of the Convention, “[t]he rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation”.

409. A coastal State’s entitlement to the continental shelf exists by the sole fact that the basis of entitlement, namely, sovereignty over the land territory, is present. It does not require the establishment of outer limits. Article 77, paragraph 3, of the Convention, confirms that the existence of entitlement does not depend on the establishment of the outer limits of the continental shelf by the coastal State.

410. Therefore, the fact that the outer limits of the continental shelf beyond 200 nm have not been established does not imply that the Tribunal must refrain from determining the existence of entitlement to the continental shelf and delimiting the continental shelf between the parties concerned.

411. The Tribunal’s consideration of whether it is appropriate to interpret article 76 of the Convention requires careful examination of the nature of the questions posed in this case and the functions of the Commission established by that article. It takes note in this regard that, as this article contains elements of law and science, its proper interpretation and application requires both legal and scientific expertise. While the Commission is a scientific and technical body with recommendatory functions entrusted by the Convention to consider scientific and technical issues arising in the implementation of article 76 on the basis of submissions by coastal States, the Tribunal can interpret and apply the provisions of the Convention, including article 76. This
may include dealing with uncontested scientific materials or require recourse to experts.

412. In the present case, the Parties do not differ on the scientific aspects of the seabed and subsoil of the Bay of Bengal. Rather, they differ on the interpretation of article 76 of the Convention, in particular the meaning of “natural prolongation” in paragraph 1 of that article and the relationship between that paragraph and paragraph 4 concerning the establishment by the coastal State of the outer edge of the continental margin. While the Parties agree on the geological and geomorphologic data, they disagree about their legal significance in the present case.

413. As the question of the Parties’ entitlement to a continental shelf beyond 200 nm raises issues that are predominantly legal in nature, the Tribunal can and should determine entitlements of the Parties in this particular case.

414. While both Parties make claims to the continental shelf beyond 200 nm, each disputes the other’s claim. Thus, according to them, there are no overlapping claims over the continental shelf beyond 200 nm. Each Party argues that it alone is entitled to the entire area of the continental shelf beyond 200 nm.

415. Bangladesh submits that pursuant to article 76 of the Convention, it has an entitlement to the continental shelf beyond 200 nm. It further submits that Myanmar enjoys no such entitlement because its land territory has no natural prolongation into the Bay of Bengal beyond 200 nm. Therefore, according to Bangladesh, there is no overlapping continental shelf beyond 200 nm between the Parties, and it alone is entitled to the continental shelf claimed by both of them. Bangladesh thus submits that any boundary in this area must lie no further seaward from Myanmar’s coast than the 200 nm “juridical shelf” provided for in article 76.

416. In respect of its own entitlement to the continental shelf beyond 200 nm, Bangladesh asserts that “the outer continental shelf claimed by Bangladesh is the natural prolongation of Bangladesh’s land territory by virtue of the uninterrupted seabed geology and geomorphology, including specifically the extensive sedimentary rock deposited by the Ganges-Brahmaputra river system”. To prove this, Bangladesh provided the Tribunal with scientific evidence to show that there is a geological and geomorphological continuity between the Bangladesh land mass and the seabed and subsoil of the Bay of Bengal. In addition, Bangladesh submits that the extent of its entitlement to the continental shelf beyond 200 nm, established by the so-called Gardiner formula based on sediment thickness, extends well beyond 200 nm.

417. Bangladesh argues that Myanmar is not entitled to a continental shelf beyond 200 nm because it cannot meet the physical test of natural prolongation in article 76, paragraph 1, which requires evidence of a geological character connecting the seabed and subsoil directly to the land territory. According to Bangladesh, there is overwhelming and unchallenged evidence of a “fundamental discontinuity” between the landmass of Myanmar and the seabed beyond 200 nm. Bangladesh contends that the tectonic plate boundary between the Indian and Burma Plates is manifestly “a marked disruption or discontinuance of the seabed” that serves as “an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations”.

418. In its note verbale of 23 July 2009 to the Secretary-General of the United Nations, Bangladesh observed that “the areas claimed by Myanmar in its submission to the Commission as part of its putative continental shelf are the natural prolongation of Bangladesh and hence Myanmar’s claim is disputed by Bangladesh”. In its submission of 25 February 2011 to the Commission, Bangladesh reiterated this position by stating that it “disputes the claim by Myanmar to areas of outer continental shelf” because those claimed areas “form part of the natural prolongation of Bangladesh”.
In summing up, Bangladesh states:

That by reason of the significant geological discontinuity which divides the Burma plate from the Indian plate, Myanmar is not entitled to a continental shelf in any of the areas beyond 200 [nm].
That Bangladesh is entitled to claim sovereign rights over all of the bilateral shelf area beyond 200 [nm] claimed by Bangladesh and Myanmar [...].
That, vis-à-vis Myanmar only, Bangladesh is entitled to claim sovereign rights over the trilateral shelf area claimed by Bangladesh, Myanmar and India [...].

Myanmar rejects Bangladesh’s contention that Myanmar has no entitlement to a continental shelf beyond 200 nm. While Myanmar does not contradict Bangladesh’s evidence from a scientific point of view, it emphasizes that the existence of a geological discontinuity in front of the coast of Myanmar is simply irrelevant to the case. According to Myanmar, the entitlement of a coastal State to a continental shelf beyond 200 nm is not dependent on any “test of natural geological prolongation”. What determines such entitlement is the physical extent of the continental margin, that is to say its outer edge, to be identified in accordance with article 76, paragraph 4, of the Convention.

Myanmar points out that it identified the outer edge of its continental margin by reference to the Gardiner formula, which is embodied in article 76, paragraph 4(a)(i), of the Convention. The Gardiner line thus identified is well beyond 200 nm, and, consequently, so is the outer edge of Myanmar’s continental margin. Therefore Myanmar is entitled to a continental shelf beyond 200 nm in the present case. It has accordingly submitted the particulars of the outer limits of its continental shelf to the Commission pursuant to article 76, paragraph 8, of the Convention.

In a note verbale dated 31 March 2011 to the Secretary-General of the United Nations, Myanmar stated: “Bangladesh has no continental shelf extending beyond 200 [nm] measured from lawfully established base lines, or, a fortiori, beyond this limit”.

Myanmar argues that Bangladesh has no continental shelf beyond 200 nm because “[t]he delimitation of the continental shelf between Myanmar and Bangladesh stops well before reaching the 200-[nm] limit measured from the baselines of both States. In these circumstances, the question of the delimitation of the continental shelf beyond this limit is moot and does not need to be considered further by the Tribunal”.

**Meaning of natural prolongation**

With respect to the question of the Parties’ entitlements to the continental shelf beyond 200 nm, Bangladesh has made considerable efforts to describe the geological evolution of the Bay of Bengal and its geophysical characteristics known as the Bengal depositional system. Bangladesh points out in particular that the Indian plate, on which the entire Bengal depositional system is located, slides under the adjacent Burma plate close to and along the coast of Myanmar, thus resulting in the Sunda Subduction Zone. According to Bangladesh, this subduction zone, which marks the collision between the two separate tectonic plates, represents the most fundamental geological discontinuity in the Bay of Bengal.

Myanmar does not dispute Bangladesh’s description of the area in question and the scientific evidence presented to support it. What Myanmar does contest, however, is the relevance of these facts and evidence to the present case. The disagreement between the Parties in this regard essentially relates to the question of the interpretation of article 76 of the Convention, in particular the meaning of “natural prolongation” in paragraph 1 of that article.

Bangladesh argues that “natural prolongation of its land territory” in article 76, paragraph 1, refers to the need for geological as well as geomorphological continuity between the land mass of the coastal State and the seabed beyond 200 nm. Where, as in the case of Myanmar, such
continuity is absent, there cannot be entitlement beyond 200 nm. In Bangladesh’s view, “natural prolongation beyond 200 nm” is, at root, a physical concept and must be established by both geological and geomorphological evidence. It cannot be based on the geomorphology of the ocean floor alone but must have an appropriate geological foundation. Bangladesh argues that the ordinary meaning of the words “natural prolongation” in their context clearly supports such interpretation. It maintains that this interpretation is also supported by the jurisprudence, as well as the Scientific and Technical Guidelines and the practice of the Commission.

427. Myanmar disputes Bangladesh’s interpretation of natural prolongation. According to Myanmar, “natural prolongation, as referred to in article 76(1) of UNCLOS is not, and cannot be made to be, a new and independent criterion or test of entitlement to continental shelf” beyond 200 nm. In Myanmar’s view, natural prolongation is a legal term employed in the specific context of defining the continental shelf and carries no scientific connotation. Under article 76, paragraph 1, of the Convention, the controlling concept is not natural prolongation but the “outer edge of the continental margin”, which is precisely defined by the two formulae provided in article 76, paragraph 4. Myanmar is of the view that “article 76 (4) of UNCLOS controls to a large extent the application of article 76 as a whole and is the key to the provision”. Myanmar argues that this interpretation is confirmed by the practice of the Commission as well as the object and purpose of the provision and the legislative history. For this reason, according to Myanmar, such scientific facts as the origin of sediment on the seabed or in the subsoil, the nature of sediment and the basement structure or tectonics underlying the continents are not relevant for determining the extent of entitlement to the continental shelf under article 76.

428. In view of the above disagreement between the Parties over the meaning of “natural prolongation”, the Tribunal has to consider how the term, as used in article 76, paragraph 1, of the Convention, is to be interpreted.
431. By applying article 76, paragraph 4, of the Convention, which requires scientific and technical expertise, a coastal State will be able to identify the precise location of the outer edge of the continental margin.

432. By contrast, no elaboration of the notion of natural prolongation referred to in article 76, paragraph 1, is to be found in the subsequent paragraphs. In this respect, the Tribunal recalls that, while the reference to natural prolongation was first introduced as a fundamental notion underpinning the regime of the continental shelf in the North Sea cases, it has never been defined.

433. The Tribunal further observes that during the Third United Nations Conference on the Law of the Sea the notion of natural prolongation was employed as a concept to lend support to the trend towards expanding national jurisdiction over the continental margin.

434. Thus the notion of natural prolongation and that of continental margin under article 76, paragraphs 1 and 4, are closely interrelated. They refer to the same area.

435. Furthermore, one of the principal objects and purposes of article 76 of the Convention is to define the precise outer limits of the continental shelf, beyond which lies the Area. The Tribunal therefore finds it difficult to accept that natural prolongation referred to in article 76, paragraph 1, constitutes a separate and independent criterion a coastal State must satisfy in order to be entitled to a continental shelf beyond 200 nm.

436. Under Annex II to the Convention, the Commission has been established, inter alia, to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf and to make recommendations in accordance with article 76 of the Convention. The Commission has adopted its Scientific and Technical Guidelines on the Limits of the Continental Shelf to assist coastal States in establishing the outer limits of their continental shelf pursuant to that article. The Tribunal takes note of the “test of appurtenance” applied by the Commission on the basis of article 76, paragraph 4, to determine the existence of entitlement beyond 200 nm. These Guidelines provide:

2.2.6 The Commission shall use at all times: the provisions contained in paragraph 4 (a) (i) and (ii), defined as the formulae lines, and paragraph 4 (b), to determine whether a coastal State is entitled to delineate the outer limits of the continental shelf beyond 200 [nm]. The Commission shall accept that a State is entitled to use all the other provisions contained in paragraphs 4 to 10 provided that the application of either of the two formulae produces a line beyond 200 [nm].

2.2.8. The formulation of the test of appurtenance can be described as follows: If either the line delineated at a distance of 60 [nm] from the foot of the continental slope, or the line delineated at a distance where the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of slope, or both, extend beyond 200 [nm] from the baselines from which the breadth of the territorial sea is measured, then a coastal State is entitled to delineate the outer limits of the continental shelf as prescribed by the provisions contained in article 76, paragraphs 4 to 10.

437. For these reasons, the Tribunal is of the view that the reference to natural prolongation in article 76, paragraph 1, of the Convention, should be understood in light of the subsequent provisions of the article defining the continental shelf and the continental margin. Entitlement to a continental shelf beyond 200 nm should thus be determined by reference to the outer edge of the continental margin, to be ascertained in accordance with article 76, paragraph 4. To interpret otherwise is warranted neither by the text of article 76 nor by its object and purpose.

438. The Tribunal therefore cannot accept Bangladesh’s contention that, by reason of the significant geological discontinuity dividing the Burma plate from the Indian plate, Myanmar is not entitled to a continental shelf beyond 200 nm.
Determination of entitlements

439. Not every coast generates entitlements to a continental shelf extending beyond 200 nm. The Commission in some instances has based its recommendations on the fact that, in its view, an entire area or part of an area included in a coastal State’s submission comprises part of the deep ocean floor.

440. In the present case, Myanmar does not deny that the continental shelf of Bangladesh, if not affected by the delimitation within 200 nm, would extend beyond that distance.

441. Bangladesh does not deny that there is a continental margin off Myanmar’s coast but argues on the basis of its interpretation of article 76 of the Convention that this margin has no natural prolongation beyond 50 nm off that coast.

442. The Tribunal observes that the problem lies in the Parties’ disagreement as to what constitutes the continental margin.

443. Notwithstanding the overlapping areas indicated in the submissions of the Parties to the Commission, the Tribunal would have been hesitant to proceed with the delimitation of the area beyond 200 nm had it concluded that there was significant uncertainty as to the existence of a continental margin in the area in question.

444. In this regard, the Tribunal notes that the Bay of Bengal presents a unique situation, as acknowledged in the course of negotiations at the Third United Nations Conference on the Law of the Sea. As confirmed in the experts’ reports presented by Bangladesh during the proceedings, which were not challenged by Myanmar, the sea floor of the Bay of Bengal is covered by a thick layer of sediments some 14 to 22 kilometres deep originating in the Himalayas and the Tibetan Plateau, having accumulated in the Bay of Bengal over several thousands of years (see Joseph R. Curray, “The Bengal Depositional System: The Bengal Basin and the Bay of Bengal”, 23 June 2010; Joseph R. Curray, “Comments on the Myanmar Counter-Memorial, 1 December 2010”, of 8 March 2011; and Hermann Kudrass, “Elements of Geological Continuity and Discontinuity in the Bay of Bengal: From the Coast to the Deep Sea”, of 8 March 2011).

445. The Tribunal notes that as the thick layer of sedimentary rocks covers practically the entire floor of the Bay of Bengal, including areas appertaining to Bangladesh and Myanmar, in their submissions to the Commission, both Parties included data indicating that their entitlement to the continental margin extending beyond 200 nm is based to a great extent on the thickness of sedimentary rocks pursuant to the formula contained in article 76, paragraph 4(a)(i), of the Convention.

446. In view of uncontested scientific evidence regarding the unique nature of the Bay of Bengal and information submitted during the proceedings, the Tribunal is satisfied that there is a continuous and substantial layer of sedimentary rocks extending from Myanmar’s coast to the area beyond 200 nm.

447. The Tribunal will now turn its attention to the significance of the origin of sedimentary rocks in the interpretation and application of article 76 of the Convention. The Tribunal observes that the text of article 76 of the Convention does not support the view that the geographic origin of the sedimentary rocks of the continental margin is of relevance to the question of entitlement to the continental shelf or constitutes a controlling criterion for determining whether a State is entitled to a continental shelf.

448. The Tribunal is not convinced by the arguments of Bangladesh that Myanmar has no entitlement to a continental shelf beyond 200 nm. The scientific data and analyses presented in this case, which have not been contested, do not establish that Myanmar’s continental shelf is limited to 200 nm under article 76 of the Convention, and instead indicate the opposite.
The Tribunal accordingly concludes that both Bangladesh and Myanmar have entitlements to a continental shelf extending beyond 200 nm. The submissions of Bangladesh and Myanmar to the Commission clearly indicate that their entitlements overlap in the area in dispute in this case.

Delimitation of the continental shelf beyond 200 nautical miles

The Tribunal will now proceed to delimit the continental shelf beyond 200 nm. It will turn first to the question of the applicable law and delimitation method.

In this context, the Tribunal requested the Parties to address the following question: “Without prejudice to the question whether the Tribunal has jurisdiction to delimit the continental shelf beyond 200 [nm], would the Parties expand on their views with respect of the delimitation of the continental shelf beyond 200 [nm]?"

In response, Bangladesh points out that article 83 of the Convention does not distinguish between delimitation of the continental shelf beyond 200 nm and within 200 nm. According to Bangladesh, the objective of delimitation in both cases is to achieve an equitable solution. The merits of any method of delimitation in this context, in Bangladesh’s view, can only be judged on a case-by-case basis.

Myanmar also argues that the rules and methodologies for delimitation beyond 200 nm are the same as those within 200 nm. According to Myanmar, “nothing either in UNCLOS or in customary international law hints at the slightest difference between the rule of delimitation applicable in the […] areas” beyond and within 200 nm.

The Tribunal notes that article 83 of the Convention addresses the delimitation of the continental shelf between States with opposite or adjacent coasts without any limitation as to area. It contains no reference to the limits set forth in article 76, paragraph 1, of the Convention. Article 83 applies equally to the delimitation of the continental shelf both within and beyond 200 nm.

In the view of the Tribunal, the delimitation method to be employed in the present case for the continental shelf beyond 200 nautical miles should not differ from that within 200 nm. Accordingly, the equidistance/relevant circumstances method continues to apply for the delimitation of the continental shelf beyond 200 nm. This method is rooted in the recognition that sovereignty over the land territory is the basis for the sovereign rights and jurisdiction of the coastal State with respect to both the exclusive economic zone and the continental shelf. This should be distinguished from the question of the object and extent of those rights, be it the nature of the areas to which those rights apply or the maximum seaward limits specified in articles 57 and 76 of the Convention. The Tribunal notes in this respect that this method can, and does in this case, permit resolution also beyond 200 nm of the problem of the cut-off effect that can be created by an equidistance line where the coast of one party is markedly concave (see paragraphs 290-291).

The Tribunal will accordingly proceed to re-examine the question of relevant circumstances in this particular context.

Bangladesh contends that the relevant circumstances in the delimitation of the continental shelf beyond 200 nm include the geology and geomorphology of the seabed and subsoil, because entitlement beyond 200 nm depends entirely on natural prolongation while within 200 nm it is based on distance from the coast. According to Bangladesh, its entitlement to the continental shelf beyond 200 nm “rests firmly” on the geological and geomorphological continuity between its land territory and the entire seabed of the Bay of Bengal. Bangladesh states that Myanmar “at best enjoys only geomorphological continuity between its own landmass and the outer continental shelf”. In Bangladesh’s view, therefore, “an equitable delimitation consistent with article 83 must necessarily take full account of the fact that Bangladesh has the most natural prolongation into the Bay of Bengal, and that Myanmar has little or no natural prolongation beyond 200” nm.
458. Another relevant circumstance indicated by Bangladesh is “the continuing effect of Bangladesh’s concave coast and the cut-off effect generated by Myanmar’s equidistance line, or by any other version of an equidistance line”. According to Bangladesh, “[t]he farther an equidistance or even a modified equidistance line extends from a concave coast, the more it cuts across that coast, continually narrowing the wedge of sea in front of it”.

459. Given its position that Bangladesh’s continental shelf does not extend beyond 200 nm, Myanmar did not present arguments regarding the existence of relevant circumstances relating to the delimitation of the continental shelf beyond 200 nm. The Tribunal observes that Myanmar stated that there are no relevant circumstances requiring a shift of the provisional equidistance line in the context of the delimitation of the continental shelf within 200 nm.

460. The Tribunal is of the view that “the most natural prolongation” argument made by Bangladesh has no relevance to the present case. The Tribunal has already determined that natural prolongation is not an independent basis for entitlement and should be interpreted in the context of the subsequent provisions of article 76 of the Convention, in particular paragraph 4 thereof. The Tribunal has determined that both Parties have entitlements to a continental shelf beyond 200 nm in accordance with article 76 and has decided that those entitlements overlap. The Tribunal therefore cannot accept the argument of Bangladesh that, were the Tribunal to decide that Myanmar is entitled to a continental shelf beyond 200 nm, Bangladesh would be entitled to a greater portion of the disputed area because it has “the most natural prolongation”.

461. Having considered the concavity of the Bangladesh coast to be a relevant circumstance for the purpose of delimiting the exclusive economic zone and the continental shelf within 200 nm, the Tribunal finds that this relevant circumstance has a continuing effect beyond 200 nm.

462. The Tribunal therefore decides that the adjusted equidistance line delimiting both the exclusive economic zone and the continental shelf within 200 nm between the Parties as referred to in paragraphs 337-340 continues in the same direction beyond the 200 nm limit of Bangladesh until it reaches the area where the rights of third States may be affected.

“Grey area”

463. The delimitation of the continental shelf beyond 200 nm gives rise to an area of limited size located beyond 200 nm from the coast of Bangladesh but within 200 nm from the coast of Myanmar, yet on the Bangladesh side of the delimitation line.

464. Such an area results when a delimitation line which is not an equidistance line reaches the outer limit of one State’s exclusive economic zone and continues beyond it in the same direction, until it reaches the outer limit of the other State’s exclusive economic zone. In the present case, the area, referred to by the Parties as a “grey area”, occurs where the adjusted equidistance line used for delimitation of the continental shelf goes beyond 200 nm off Bangladesh and continues until it reaches 200 nm off Myanmar.

465. The Parties differ on the status and treatment of the above-mentioned “grey area”. For Bangladesh, this problem cannot be a reason for adhering to an equidistance line, nor can it be resolved by giving priority to the exclusive economic zone over the continental shelf or by allocating water column rights over that area to Myanmar and continental shelf rights to Bangladesh.

466. Bangladesh argues that there is no textual basis in the Convention to conclude that one State’s entitlement within 200 nm will inevitably trump another State’s entitlement in the continental shelf beyond 200 nm. Bangladesh finds it impossible to defend a proposition that even a “sliver” of exclusive economic zone of one State beyond the outer limit of another State’s exclusive economic zone puts an end by operation of law to the
entitlement that the latter State would otherwise have to its continental shelf beyond 200 nm under article 76 of the Convention. For Bangladesh, it cannot be the case that:

- a State with a clear and undisputable potential entitlement in the continental shelf beyond 200 miles should for ever be prohibited from reaching that entitlement solely by virtue of the geographical happenstance that it is located in a concavity and there is a slight wedge of potential EEZ separating it from the outer continental shelf.

467. As for differentiating water-column rights and continental-shelf rights, in Bangladesh’s view, there is no textual basis in the Convention and such solution could cause great practical inconvenience. According to Bangladesh, “[t]his is why international tribunals have sought at all cost to avoid the problem and why differential attribution of zone and shelf has hardly ever been adopted in State practice”.

468. Myanmar contends that “[a]ny allocation of area to Bangladesh extending beyond 200 [nm] off Bangladesh’s coast, would trump Myanmar’s rights to EEZ and continental shelf within 200 [nm]”. According to Myanmar, “[t]o advance a very hypothetical claim to the continental shelf beyond 200 [nm] against the sovereign rights enjoyed by Myanmar automatically under article 77 of the Convention with respect to its continental shelf within this distance, and against Myanmar’s right to extend its exclusive economic zone” up to this limit, would be contrary to both the Convention and international practice.

469. Myanmar also points out that the Arbitral Tribunal in the Arbitration between Barbados and Trinidad and Tobago ended a maritime boundary at the 200 nm limit of Trinidad and Tobago, thus making clear that Trinidad and Tobago had no access to the continental shelf beyond 200 nm. Therefore, in Myanmar’s view, “the extension of the delimitation beyond 200 [nm] would inevitably infringe on Myanmar’s indisputable rights”. This would then preclude any right of Bangladesh to the continental shelf beyond 200 nm.

470. Myanmar concludes that while the solution submitted by Bangladesh is untenable, the problem of a “grey area” does not arise in the present case, because equitable delimitation does not extend beyond 200 nm.

* * *

471. The Tribunal notes that the boundary delimiting the area beyond 200 nm from Bangladesh but within 200 nm of Myanmar is a boundary delimiting the continental shelves of the Parties, since in this area only their continental shelves overlap. There is no question of delimiting the exclusive economic zones of the Parties as there is no overlap of those zones.

472. The grey area arises as a consequence of delimitation. Any delimitation may give rise to complex legal and practical problems, such as those involving transboundary resources. It is not unusual in such cases for States to enter into agreements or cooperative arrangements to deal with problems resulting from the delimitation.

473. The Tribunal notes that article 56, paragraph 3, of the Convention, provides that the rights of the coastal State with respect to the seabed and subsoil of the exclusive economic zone shall be exercised in accordance with Part VI of the Convention, which includes article 83. The Tribunal further notes that article 68 provides that Part V on the exclusive economic zone does not apply to sedentary species of the continental shelf as defined in article 77 of the Convention.

474. Accordingly, in the area beyond Bangladesh’s exclusive economic zone that is within the limits of Myanmar’s exclusive economic zone, the maritime boundary delimits the Parties’ rights with respect to the seabed and subsoil of the continental shelf but does not otherwise limit Myanmar’s rights with respect to the exclusive economic zone, notably those with respect to the superficial waters.
475. The Tribunal recalls in this respect that the legal regime of the continental shelf has always coexisted with another legal regime in the same area. Initially that other regime was that of the high seas and the other States concerned were those exercising high seas freedoms. Under the Convention, as a result of maritime delimitation, there may also be concurrent exclusive economic zone rights of another coastal State. In such a situation, pursuant to the principle reflected in the provisions of articles 56, 58, 78 and 79 and in other provisions of the Convention, each coastal State must exercise its rights and perform its duties with due regard to the rights and duties of the other.

476. There are many ways in which the Parties may ensure the discharge of their obligations in this respect, including the conclusion of specific agreements or the establishment of appropriate cooperative arrangements. It is for the Parties to determine the measures that they consider appropriate for this purpose.
X. Disproportionality test

477. Having reached the third stage in the delimitation process as referred to in paragraph 240, the Tribunal will, for this purpose, first determine the relevant area, namely the area of overlapping entitlements of the Parties that is relevant to this delimitation. The Tribunal notes in this regard that mathematical precision is not required in the calculation of either the relevant coasts or the relevant area.

478. Bangladesh maintains that the relevant area includes the maritime space “situated in the coastal fronts [of the two Parties] and extending out to the 200 [nm]”.

479. Bangladesh recalls that its model of the relevant area does not include maritime spaces landward of the Parties’ coastal façades but notes that even if those areas were included they would not make a material difference to the proportionality calculation.

480. In determining the relevant area, Bangladesh excludes the areas claimed by third States. According to Bangladesh, “[i]t cannot be right to credit Bangladesh for maritime spaces that are subject to an active claim by a third State”. Bangladesh cautions that “[t]o include those areas in the proportionality calculations would have a dramatic effect on the numbers that distorts reality”. Bangladesh therefore submits that areas on the “Indian side” of India’s claim are not relevant in the present case.

481. Bangladesh submits that “it is not appropriate to treat as relevant the maritime areas lying off Myanmar’s coast between Bhiff Cape and Cape Negrais. […] It would be incongruous to consider as relevant the maritime spaces adjacent to an irrelevant coast”.

482. According to Bangladesh, the relevant area measures 175,326.8 square kilometres. On the basis of a different calculation of the length of the coasts, Bangladesh also indicated the figure of 252,500 square kilometres.

483. Myanmar asserts that the relevant maritime area is dependent on the relevant coasts and the projections of these coasts, insofar as they overlap. It describes the relevant area as follows:

(i) to the north and to the east, it includes all maritime projections from Bangladesh’s relevant coasts, except the area where Bangladesh coasts face each other (the triangle between the second and the third segments);

(ii) to the east and to the south, it includes all maritime projections from Myanmar’s Rakhine (Arakan) coast, as far as these projections overlap with Bangladesh’s;

(iii) to the west, it extends these maritime projections up to the point they overlap.

484. Myanmar submits that Bangladesh has incorrectly portrayed the relevant area. It asserts that in fact “the relevant area consists of the maritime area generated by the projections of Bangladesh’s relevant coasts and Myanmar’s relevant coast”.

485. Myanmar states that there are two issues in relation to which the Parties are not in agreement. One of these issues concerns the exact extent of the relevant area on the Indian side of India’s claim. The other issue concerns the relevance of the southern part of the coast of Rakhine.

486. Myanmar disagrees with Bangladesh’s contention that the areas on the Indian side of India’s claim are not relevant in the present case. According to Myanmar, Bangladesh, in not including these areas, not only excluded a maritime area of more than 11,000 square kilometres, but also made the delimitation between Bangladesh and Myanmar dependent on the claims of a third State, claims that are – according to Bangladesh – changing and in no way established in law or in fact. For this reason, Myanmar is of the view that these areas should be included in the relevant area up to the equidistance line between the coasts of Bangladesh and India.
487. Concerning the southern part of the coast of Rakhine, Myanmar argues that Bangladesh also fails to take into account the south coast of Myanmar which extending all the way to Cape Negrais. Myanmar submits that “this part of the coast is relevant. Its projection overlaps with the projection of the coast of Bangladesh”.

488. Myanmar submits that the relevant area has a “total surface of 236,539 square kilometres”. During the hearing, however, Myanmar referred to the figure of approximately 214,300 square kilometres.

489. The Tribunal notes that the relevant maritime area for the purpose of the delimitation of the exclusive economic zone and the continental shelf between Bangladesh and Myanmar is that resulting from the projections of the relevant coasts of the Parties.

490. The Tribunal recalls that the Parties disagree on two points insofar as the determination of the relevant maritime area is concerned. First, the Parties disagree as to the inclusion of the southerly maritime area related to the southern part of the coast of Rakhine which extends to Cape Negrais and, second, they also disagree on the exact extent of the relevant area in the north-west section.

491. Regarding the first issue, the Tribunal recalls that it has already found that the segment of Myanmar’s coast that runs from Bhiff Cape to Cape Negrais is to be included in the calculation of the relevant coast. Therefore, the southern maritime area extending to Cape Negrais must be included in the calculation of the relevant area for the purpose of the test of disproportionality. The southern limit of the relevant area will be marked by the parallel westward from Cape Negrais.

492. Turning to the north-west section of the maritime area which falls within the overlapping area, the Tribunal finds that it should be included in the relevant area for the purpose of the test of disproportionality.

493. In this regard, the Tribunal considers that, for the purpose of determining any disproportionality in respect of areas allocated to the Parties, the relevant area should include maritime areas subject to overlapping entitlements of the Parties to the present case.

494. The fact that a third party may claim the same maritime area does not prevent its inclusion in the relevant maritime area for purposes of the disproportionality test. This in no way affects the rights of third parties.

495. For the purposes of the determination of the relevant area, the Tribunal decides that the western limit of the relevant area is marked by a straight line drawn from point ß2 due south.

496. Accordingly, the size of the relevant area has been calculated to be approximately 283,471 square kilometres.

497. The Tribunal will now check whether the adjusted equidistance line has caused a significant disproportion by reference to the ratio of the length of the coastlines of the Parties and the ratio of the relevant maritime area allocated to each Party.

498. The length of the relevant coast of Bangladesh, as indicated in paragraph 202, is 413 kilometres, while that of Myanmar, as indicated in paragraph 204, is 587 kilometres. The ratio of the length of the relevant coastlines of the Parties is 1:1.42 in favour of Myanmar.

499. The Tribunal notes that its adjusted delimitation line (see paragraphs 337-340) allocates approximately 111,631 square kilometres of the relevant area to Bangladesh and approximately 171,832 square kilometres to Myanmar. The ratio of the allocated areas is approximately
1:1.54 in favour of Myanmar. The Tribunal finds that this ratio does not lead to any significant disproportion in the allocation of maritime areas to the Parties relative to the respective lengths of their coasts that would require the shifting of the adjusted equidistance line in order to ensure an equitable solution.
XI. Description of the delimitation line

500. All coordinates and azimuths used by the Tribunal in this Judgment are given by reference to WGS 84 as geodetic datum.

501. The delimitation line for the territorial sea between the two Parties is defined by points 1, 2, 3, 4, 5, 6, 7 and 8 with the following coordinates and connected by geodetic lines:

1: 20° 42’ 15.8” N, 92° 22’ 07.2” E;
2: 20° 40’ 45.0’’ N, 92° 20’ 29.0” E;
3: 20° 39’ 51.0” N, 92° 21’ 11.5” E;
4: 20° 37’ 13.5’’ N, 92° 23’ 42.3” E;
5: 20° 35’ 26.7’’ N, 92° 24’ 58.5” E;
6: 20° 33’ 17.8’’ N, 92° 25’ 46.0’’ E;
7: 20° 26’ 11.3’’ N, 92° 24’ 52.4” E;
8: 20° 22’ 46.1’’ N, 92° 24’ 09.1’’ E.

502. From point 8 the single maritime boundary follows in a northwesterly direction the 12 nm envelope of arcs of the territorial sea around St Martin’s Island until it intersects at point 9 (with coordinates 20° 26’ 39.2’’ N, 92° 9’ 50.7’’ E) with the delimitation line of the exclusive economic zone and the continental shelf between the Parties.

503. From point 9, the single maritime boundary follows a geodetic line until point 10 with coordinates 20° 13’ 06.3’’ N, 92° 00’ 07.6’’ E.

504. From point 10, the single maritime boundary follows a geodetic line until point 11 with coordinates 20° 03’ 32.0’’ N, 91° 50’ 31.8’’ E.

505. From point 11, the single maritime boundary continues as a geodetic line starting at an azimuth of 215° until it reaches the area where the rights of third States may be affected.
XII. Operative clauses

506. For these reasons,

THE TRIBUNAL,

(1) Unanimously,

Finds that it has jurisdiction to delimit the maritime boundary of the territorial sea, the exclusive economic zone and the continental shelf between the Parties.

(2) By 21 votes to 1,

Finds that its jurisdiction concerning the continental shelf includes the delimitation of the continental shelf beyond 200 nm;

FOR: President JESUS; Vice-President TÜRÜK; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, COT, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Judges ad hoc MENSAH, OXMAN;

AGAINST: Judge NDIAYE.

(3) By 20 votes to 2,

Finds that there is no agreement between the Parties within the meaning of article 15 of the Convention concerning the delimitation of the territorial sea;

FOR: President JESUS; Vice-President TÜRÜK; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Judges ad hoc MENSAH, OXMAN;

AGAINST: Judges LUCKY, BOUGUETAIA.

(4) By 21 votes to 1,

Decides that starting from point 1, with the coordinates 20° 42' 15.8" N, 92° 22' 07.2" E in WGS 84 as geodetic datum, as agreed by the Parties in 1966, the line of the single maritime boundary shall follow a geodetic line until it reaches point 2 with the coordinates 20° 40' 45.0" N, 92° 20' 29.0" E. From point 2 the single maritime boundary shall follow the median line formed by segments of geodetic lines connecting the points of equidistance between St. Martin’s Island and Myanmar through point 8 with the coordinates 20° 22' 46.1" N, 92° 24' 09.1" E. From point 8 the single maritime boundary follows in a northwesterly direction the 12 nm envelope of arcs of the territorial sea around St Martin’s Island until it intersects at point 9 (with the coordinates 20° 26' 39.2" N, 92° 9' 50.7" E) with the delimitation line of the exclusive economic zone and continental shelf between the Parties;

FOR: President JESUS; Vice-President TÜRÜK; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Judges ad hoc MENSAH, OXMAN;

AGAINST: Judge LUCKY.

(5) By 21 votes to 1,

Decides that, from point 9 the single maritime boundary follows a geodetic line until point 10 with the coordinates 20° 13' 06.3" N, 92° 00' 07.6" E and then along another geodetic line until point 11 with the coordinates 20° 03' 32.0" N, 91° 50' 31.8" E. From point 11 the single maritime boundary continues as a geodetic line starting at an azimuth of 215° until it reaches the 200 nm limit calculated from the baselines from which the breadth of the territorial sea of Bangladesh is measured;

FOR: President JESUS; Vice-President TÜRÜK; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Judges ad hoc MENSAH, OXMAN;
AGAINST:  Judge LUCKY.

(6) By 19 votes to 3,

Decides that, beyond that 200 nm limit, the maritime boundary shall continue, along the geodetic line starting from point 11 at an azimuth of 215° as identified in operative paragraph 5, until it reaches the area where the rights of third States may be affected.

FOR:  President JESUS; Vice-President TÜRK; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, BOUGUETAIJA, GOLITSYN, PAIK; Judges ad hoc MENSAH, OXMAN;

AGAINST:  Judges NDIAYE, LUCKY, GAO.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this fourteenth day of March, two thousand and twelve, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of the People’s Republic of Bangladesh and the Government of the Republic of the Union of Myanmar, respectively.

(signed)
JOSÉ LUIS JESÚS,
President

Judge WOLFRUM, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(initialled)  R.W.

Judge TREVES, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(initialled)  T.T.

Judges ad hoc MENSAH and OXMAN, availing themselves of the right conferred on them by article 125, paragraph 2, of the Rules of the Tribunal, append their joint declaration to the Judgment of the Tribunal.

(initialled)  T.A.M.
(initialled)  B.H.O.

Judge NDIAYE, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled)  T.M.N.

Judge COT, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled)  J.-P.C.
Judge GAO, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled) Z.G.

Judge LUCKY, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his dissenting opinion to the Judgment of the Tribunal.

(initialled) A.A.L.
Tullio Treves

Law of the Sea

*Max Planck Encyclopaedia of Public International Law,
www.mpepil.com, April 2011*

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Law of the Sea

Tullio Treves

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A. Notion of the Law of the Sea

1. The law of the sea is the branch of international law that concerns rights and obligations of States regarding maritime matters. It does not include ‘maritime law which is a branch of domestic law which focuses on the relationships between private individuals and corporate bodies as regards maritime activities such as maritime transport, maritime insurance, and the responsibilities of shipowners and other persons. It must be noted that some rules of maritime law have been made uniform by the implementation in domestic legal systems of international conventions, and that certain issues of the international law of the sea are also the subject matter of maritime law rules: rules concerning the granting of nationality to ships and rules concerning pollution of the sea are examples. Even in these cases the rules remain separate, as the international law ones provide for rights and obligations of States, while the domestic ones provide for rights and obligations of private parties, even though they may also be seen as facts from which international law draws consequences in terms of States’ rights and obligations or as implementation of international law rules.

2. International law sets out rules concerning the relationships between States in maritime matters in times of peace and in the framework of armed conflicts. The present article is limited to the law of peace, which, however, includes the activities of warships.

3. The purpose of this entry is not to summarize separate entries covering issues in the law of the sea. The reader is instead referred to them for detailed treatment of all aspects, including historical ones. The objective pursued here is to identify certain general problems in the current law of the sea and to identify trends and challenges for the future.

B. The Development of the Law of the Sea

4. The law of the sea has developed in parallel with general international law. It is not by chance that Hugo Grotius, considered as one of the founding fathers of international law, is also considered as one of the founding fathers of the law of the sea. Not only did he lay the foundations of the law of the sea in his famous pamphlet Mare Liberum of 1609 (originally written in 1606 as a chapter of De Jure Praedae, a book which remained unpublished until 1668). He also saw the law of the sea as an important part of general international law and examined it in Book Two, Chapters II and III, of his treatise De jure bell ac pacis of 1625.

5. Various interests have influenced the development of the international law of the sea through time, their importance changing with changes in world politics, economy, technology, and scientific knowledge. The most important are the following: communication (navigation mercantile and military, cables and pipelines, -- flight); resources (living resources: fish, sedimentary species, biodiversity genetic resources; mineral resources: oil and gas, polymetallic nodules and sulphides, ferromanganese crusts, etc; energy production from water, currents and winds); security (protection of the territory from sea-based threats, ability to project naval power); environment (protection of the coastline and of adjacent seas, protection of the sea as a whole); scientific progress (+ marine scientific research, hydrography).

6. The same States can partake of more than one, or all, of these interests, depending on the many characteristics they may present: coastal/land-locked; developed/developing; navigating (mercantile and or military) worldwide/regionally/locally; hydrocarbons exporting/importing. The balance of interests has to be reached domestically and internationally.

7. The basic engine for the development of the law of the sea has been and still is the interests of States. In earlier times interests of communication and security prevailed; later, since the middle of the 20th century, those regarding resources assumed great importance. Only towards the last quarter of the 20th century has the interest in scientific progress and the protection of the marine environment become important. In parallel, collective State interests have acquired
relevance especially through the concept of the → common heritage of mankind applied to mineral resources of the seabed beyond the limits of national jurisdiction, and as a consequence of the fact that the interconnection of seas and oceans makes the protection of the marine environment a global concern.

C. Unilateralism and Multilateralism

8 Unilateral claims are the legal form through which States have historically pursued their interests in the seas. It is sufficient to recall claims to different widths of → territorial sea, to the → continental shelf, to the → exclusive economic zone, to → archipelagic waters. Unilateral claims are put forward sometimes by single States, as in President Truman's Proclamations on US Policy concerning Natural Resources of Sea Bed and Fisheries on High Seas, which started the process of extending coastal States' rights to the continental shelf and to fisheries beyond the territorial sea. Other times they are put forward by a group of States, as in the case of the Santiago Declaration, in which Chile, Ecuador, and Peru claimed an extension of → sovereignty over the sea up to the limit of 200 miles. Unilateral claims may be seen by other States as breaches of international law, or met by → acquiescence. In case of generalized acquiescence, customary law is modified so as to make the new claim legal. In many cases unilateral claims, notwithstanding strong opposition, end up being generally accepted, although sometimes in a modified form. So, for instance, claims to the extension of the territorial sea up to 200 miles found strong opposition because they clashed with the freedom of navigation and of fishing; at the end they succeeded, although in the form of the exclusive economic zone in which, while the freedom of fishing was sacrificed, the freedom of navigation and some other → high seas freedoms were preserved.

9 Unilateral claims are the main process through which the jurisdiction of coastal States has expanded and expanded seawards. Concerns for the protection of the environment and for national security have been invoked most recently to fuel this process in addition to interests for resources. 'Creeping jurisdiction' and 'the territorial temptation' are expressions used to describe this phenomenon and to indicate concern that important values and interests such as freedom of navigation may be jeopardized by it.

10 Unilateralism is an approach that threatens the stability of the international law of the sea, as it casts doubt on the existing rules, while not necessarily giving rise to new rules. Yet it's the main dynamic force bringing change to the law of the sea. It can be harnessed and bring positive results through a multilateral approach in which different claims, and connected relevant interests, are compared and compromises sought in a collective framework.

D. The Law of the Sea as a Codified Branch of International Law

1. General Aspects of Codification

11 Up to the middle of the 20th century the law of the sea was mainly customary. The growing complexity of interests, reflected in unilateral claims and in the resistance or in the partial acceptance they met with, and the need to obtain a measure of stability through a multilateral approach, brought about the need to go beyond customary law through the process of codification.

12 In general terms, codification consists in the written expression of customary rules. The mere fact that customary rules are given written form changes the manner in which their content is determined as the interpretation of written expressions becomes necessary. As in international law codification is effected in most cases through the adoption of treaties, this new legal form entails a change in the legal nature of the rules. They become treaty rules, applicable only between the contracting parties. They may reproduce customary rules, but they lack their flexibility. Moreover, the rules produced through the process of codification are often more precise and detailed than the original customary ones and sometimes new rules are added in pursuit of ‘progressive development’ of international law.

2. Codifications of the Law of the Sea

(a) The League of Nations Attempt

13 States acknowledged the need to codify the international law of the sea at the time of the League of Nations. Various law of the seas questions were made the object of a questionnaire submitted to States by the League Committee of Experts. The Hague codification conference of 1930 did not succeed in adopting conventional rules on territorial waters, mainly because of disagreements as to the width of these waters. The answers to the questionnaire, and the other documents prepared for the conference, remain, however, an extremely important survey of practice and in many cases the basis for developments to come.

(b) The Geneva Conventions of 1958

14 More successful was the work for the codification of the law of the sea conducted by the United Nations through the labour of the → International Law Commission (ILC). This work culminated in the adoption of the Geneva Conventions on the Law of the Sea in 1958, namely: the Convention on the Territorial Sea and the Contiguous Zone (→ CTS); the Convention on the High Seas (→ CHS); the Convention on Fishing and Conservation of the Living Resources of the High Seas (→ CFCR); the Convention on the Continental Shelf (→ CCS); and the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes (→ OSPED).

15 While these conventions codified existing customary law as regards the high seas and many aspects of the territorial sea, and crystallized the new notion of the continental shelf, they could not overcome the lack of agreement that existed on a number of points. Agreement on the width of the territorial sea eluded States once again in 1958. The second UN Conference on the Law of the Sea, convened in 1960 to solve this problem, did not succeed either. Other subjects on which States converged at Geneva disagreed, were, in particular, the definition of the continental shelf, → innocent passage of warships, passage through straits, and fisheries beyond the limits of the territorial sea. Provisions on these subjects, adopted by vote, did not convince the States which opposed them. To avoid reservations concerning these provisions, or refusal to ratify a general convention on the law of the sea because of its presence in its text, the Conference decided to adopt, out of the unified draft convention submitted by the International Law Commission, four conventions and an optional protocol. Dividing the substantive provisions in four conventions permitted to avoid the inclusion of provisions on reservations and made it possible to obtain ratification or accession by a high number of States for at least some of the conventions. The fact that dispute-settlement provisions were relegated to a separate optional protocol which obtained a modest number of ratifications shows that compulsory settlement of disputes in law of the sea matters, if it is to be practically relevant, must be an integral part of the instrument dealing with substance.

(c) The Obsolescence of the Geneva Conventions and the Need for a New Codification

16 The Conventions entered into force between 1962 and 1966 (even though the CTS and the CHS were more successful than the CCS and the COFLR). Nevertheless, as soon as they were in force, the process of → self-determination bringing to independence many territories to exist, at the time of the Geneva Conference and of its preparation, were under foreign domination which made them obsolete. The new States considered pre-eminent among their interests the control of the resources, especially fishery resources, of vast areas of the sea adjacent to their coasts and their security from threats coming from the sea. On these two aspects the conventions were not considered satisfactory as they had neither adopted a rule concerning the coastal State with exclusive powers on fisheries beyond the limit of the territorial sea. The general mistrust of the new States for international law developed by the former colonial powers contributed to the premature obsolescence of the Conventions.

(d) The Third UN Conference on the Law of the Sea and the Adoption of the UN Convention on the Law of the States

17 The claims of the new States and the emerging of new interests that had an appeal for new as well as for old States, regarding in particular the exploitation of the resources of the seabed beyond national jurisdiction and the protection of the marine environment, was at the core of the decision to make a new effort for a general codification of the law of the sea. The traditional powers, although not enthusiastic, did not oppose. In fact, many of them had important interests that could be satisfied through an expansion of their sovereign rights and jurisdiction over the seas adjacent to their coasts. Moreover, they all felt that their traditional interest for free navigation, merchant and military, in all areas of the seas including straits, could be better satisfied within the framework of a multilateral conference than through the disorderly and uncontrolled customary process.

18 So it was that the UN General Assembly's Committee (the so-called ‘Sea-bed Committee’)—set up in 1968 to develop a regime and a mechanism for the exploration and exploitation of the mineral resources of the seabed beyond national jurisdiction according to the idea of the ‘common heritage of mankind’—was transformed into the preparatory committee for a Third UN Conference on the Law on the Sea and that the Conference was convened by the UN General Assembly. Different from the 1958 Geneva Conference, the Third UN Conference on the Law of the Sea was negotiated by States without the benefit of a basic draft prepared by the International Law Commission.

19 The Conference met briefly at the end of 1973, and continued through an unprecedented eleven sessions from 1974 to 1982. The approach adopted in the procedure was that of consensus on ever broadening ‘package deals’. The objective was to maintain the unity of the law of the sea by producing a uniform international consensus and to which reservations were not permitted, but it did not succeed entirely in securing its objective of → universality. Disagreement...
from the United States and other industrialized States regarding Part XI, concerning the regime of the seabed beyond national jurisdiction, made it necessary to adopt the text by a vote. The vote, held on 30 April 1982, saw 130 votes in favour, four against and 17 abstentions, some of which were changed into votes in favour when the Final Act was adopted, and the UN Convention on the Law of the Sea opened to signature on 10 December 1982 at Montego Bay, Jamaica.


21 The main obstacle to universality is the lack of participation of the United States. However, all US Governments since the adoption of the 1994 Implementing Agreement have been favourable to accession to the UN Convention on the Law of the Sea and have relied on it in many cases.

E. The UN Convention on the Law of the Sea: its Approach and Achievements

1. Introductory

22 Presently, the UN Convention on the Law of the Sea is the basic instrument regulating law of the sea questions. It is consequently the point of departure for the general assessment of the law of the sea and of its open problems and prospects.

2. ‘Zonal’ Approach and ‘Transversal’ Activities and Problems

23 The basic approach adopted by the UN Convention on the Law of the Sea is a ‘zonal’ one. The Convention defines maritime zones, namely areas of the sea. In some cases they include the water column and the seabed, in other cases only the water column and, in still other cases, only the seabed. The UN Convention on the Law of the Sea determines, for each zone, the limits and the regime applicable, namely the rights and obligations of different categories of States. The preference granted to this approach is due to the importance given to the claims of coastal States and to the need to adopt nuanced solutions necessary to reconcile these claims with the interests of other States and of the international community as a whole.

24 The maritime zones set out in the UN Convention on the Law of the Sea are the following: 1) the territorial sea, including special provisions on international straits; 2) the contiguous zone; 3) archipelagic waters; 4) the exclusive economic zone; 5) the continental shelf; 6) the high seas; 7) the – (International Seabed Area (the Area)). Also considered are: 8) internal waters which, although mentioned in various provisions, are not treated systematically; 9) a zone, described in Art. 303 and which is sometimes referred to as the ‘archaeological zone’, collocated with the contiguous zone, for the removal of archaeological and historical objects found at sea; 10) historic bays, which, as historic titles, are mentioned in the UN Convention on the Law of the Sea but not regulated by it. Provisions linked to the zonal approach concern the regime of islands and enclosed or semi-enclosed seas.

25 A consequence of the ‘zonal approach’ is that certain activities, which can be conducted in different zones, and which might have been considered in an unified manner, are dealt within separate provisions set out under different zones. Examples are fishing and the laying of cables and pipelines, dealt with respectively in the parts on the exclusive economic zone and on the high seas, and in the parts on the continental shelf and on the high seas. The provisions on the nationality of ships and on the duties of flag States, which are relevant for all maritime zones, are included in the parts on the high seas.

26 The titles of certain parts of the UN Convention on the Law of the Sea refer to activities or problems that can arise in all maritime zones. This indicates that on these subjects a non-zonal, transversal or problem- (or activity-) oriented approach is adopted. This is, however, completely true only as regards Part XIV, on the development and transfer of marine technology. In most cases the rules set out in this part are, however, couched in ‘soft language’, the operative verbs being ‘endeavour to promote’ or ‘promote’. As regards Part XII, on the protection and preservation of the marine environment, and Part XIII, on marine scientific research, it is true that they contain sets of general provisions on international cooperation (as well as, in Part XII, on → technical assistance and on monitoring and → environmental impact assessment) that apply to all zones. Nevertheless, the more numerous and detailed provisions they set out are organized according to a zonal approach. This applies to, or within, various rules concerning legislation and enforcement set out in Part XII and, more explicitly, to the rules of Part XIII concerning the conduct and promotion of marine scientific research. This is confirmed by the historical fact that, at the Third UN Conference of the Law of the Sea, agreement on the regime of scientific research conducted in the exclusive economic zone was one of the key features of the compromise solution that brought States to agree, in 1977, on the regime of the exclusive economic zone.


27 Domestic legislation of States, including States parties to the UN Convention on the Law of the Sea establish some zones differently from those mentioned in the UN Convention on the Law of the Sea. Among these one finds exclusive fisheries zones, environmental protection (or ecological) zones, – security zones, and customs zones.

28 This gives rise to the question of whether the maritime zones mentioned in the UN Convention on the Law of the Sea are the only zones permissible. In answering this question, it is important to stress that what has to be assessed is substance not form; not the name of the zone, but rather its extension and regime. So, certain zones of 200 miles denominated ‘territorial sea’ cannot be considered incompatible with the Convention if the regime provided includes a distinction between a 12-mile portion corresponding to the regime of the territorial sea, and a 188-mile portion whose regime corresponds to that of the exclusive economic zone, as in the case of the law 13.1833 adopted in 1969 by Uruguay.

29 The answer to the question would seem to be that, whenever the coastal State adopts a zone in which it claims rights that are included in those it could claim by adopting a zone to which it would be entitled under the UN Convention on the Law of the Sea, this zone is compatible with international law. Exclusive fishery or environmental protection zones not exceeding 200 miles—as the rights claimed therein are included in those the coastal State would enjoy if it adopted an exclusive economic zone—are consequently compatible with international law. To the contrary, a 50-mile security zone as the one proclaimed by North Korea can hardly be considered as including rights compatible with those recognized by the UN Convention on the Law of the Sea within that space. Similarly, the 150-kilometres customs zone proclaimed by Guinea was considered incompatible with the UN Convention on the Law of the Sea by the → International Tribunal for the Law of the Sea (ITLOS) in its 1999 judgment MV ‘SAIGA’ (No 2) (Saint Vincent and the Grenadines v Guinea) (Merits) (Judgment) (ITLOS Case No 2 [1 July 1999] 1999 ITLOS Reports 10).

4. Maritime Zones Regulating and not Requiring Express Proclamation

30 Among the zones on which the coastal State exercises sovereign rights or jurisdiction, only in the case of the continental shelf the UN Convention on the Law of the Sea states that the corresponding rights ‘do not depend on occupation, effective or notional, or on any express proclamation’ (Art. 77 (3)). As regards all other such zones, there is no indication concerning whether occupation or a proclamation is required. Considering the practice, it would seem that while the sovereignty of the coastal State on its territorial sea is the automatic consequence of the exercise of its sovereignty on its territory (as it is also true as regards the sovereign rights on the continental shelf), for all other zones such exercise is a condition that, although necessary, is not sufficient. The contiguous zone, archipelagic waters and the exclusive economic zone, as well as archaeological zones and zones whose content is subsumed within that of the exclusive economic zones, require some form of proclamation, although not occupation. It is a fact that coastal States explicitly claim all these zones through formal proclamations, and that other States do not recognize them unless they have been proclaimed.

31 It must also be added that as regards the continental shelf, the rights of the coastal State on the part of it laying beyond 200 miles depend on the coastal State expressly establishing its outer limits. Even within the 200 mile limit States follow a practice of adopting laws in which, inter alia, they proclaim their rights on the shelf and regulate resource exploration and exploitation. The importance the external limits assume makes it necessary, in practice, that also the territorial sea is made the subject of laws of the coastal States stating inter alia its width.

5. Zone overlaps: High Seas Areas above the Continental Shelf

32 The fact that certain zones concern only the seabed, while others include the water column may give rise to difficulties when the seabed falls under the regime applicable to one maritime area and the water column falls under the regime applicable to another maritime area. Relevant examples are marine scientific research and fishing in the parts of the high seas lying over the continental shelf of a State, when no exclusive economic zone has been proclaimed or where the shelf lies beyond the 200 mile limit.
In such a situation, as regards marine scientific research, the freedom to conduct to a certain extent is limited to the water column while excluding the seabed. The Alfred Wegener Institute for Polar and Marine Research, for example, may conduct marine scientific research on the high seas while excluding the seabed.

34. As a result of national and international fishing, the high seas are subjected to heavy pressure. Some fish species have been overfished to such an extent that their populations are now threatened with extinction. The IUCN Red List of Threatened Species, for example, lists 13 species of marine fish as critically endangered, and 30 species as endangered or threatened.

35. High seas fishing is typically conducted within the EEZ of a coastal state, although some vessels may fish beyond the EEZ. This is because the high seas are defined as the area outside the EEZ, and therefore any fishing activities conducted in this area are considered to be high seas fishing. The high seas are divided into two zones: the common area and the high seas area.

36. The common area is defined as the area within 200 nautical miles of the baseline of a coastal state, while the high seas area is defined as the area beyond 200 nautical miles from the baseline of a coastal state. The high seas area is divided into two zones: the high seas area proper and the high seas area adjacent to the continental shelf.

37. The high seas area proper is defined as the area beyond 200 nautical miles from the baseline of a coastal state, while the high seas area adjacent to the continental shelf is defined as the area within 200 nautical miles from the baseline of a coastal state but beyond the exclusive economic zone.

38. The high seas area is divided into two zones: the common area and the high seas area proper. The common area is defined as the area within 200 nautical miles of the baseline of a coastal state, while the high seas area proper is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

39. The IUCN Red List of Threatened Species is a list of species that are considered to be threatened with extinction.

40. The high seas area is divided into two zones: the common area and the high seas area proper. The common area is defined as the area within 200 nautical miles of the baseline of a coastal state, while the high seas area proper is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

41. The high seas area proper is divided into two zones: the high seas area adjacent to the continental shelf and the high seas area beyond the continental shelf.

42. The high seas area adjacent to the continental shelf is defined as the area within 200 nautical miles from the baseline of a coastal state but beyond the exclusive economic zone. The high seas area beyond the continental shelf is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

43. The United Nations Convention on the Law of the Sea (UNCLOS) is an international treaty that establishes the framework for the use of the high seas.

44. Article 51 of UNCLOS provides that the rights of a coastal state in the high seas consist of the rights to explore and utilize the high seas and its resources, subject to the provisions of the Convention.

45. Article 52 of UNCLOS provides that the rights of a coastal state in the high seas consist of the rights to navigate, plant, and construct objects, and to establish and maintain establishments on the high seas.

46. The high seas are divided into two zones: the common area and the high seas area proper. The common area is defined as the area within 200 nautical miles of the baseline of a coastal state, while the high seas area proper is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

47. The high seas area proper is divided into two zones: the high seas area adjacent to the continental shelf and the high seas area beyond the continental shelf.

48. The high seas area adjacent to the continental shelf is defined as the area within 200 nautical miles from the baseline of a coastal state but beyond the exclusive economic zone. The high seas area beyond the continental shelf is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

49. The high seas area is divided into two zones: the common area and the high seas area proper. The common area is defined as the area within 200 nautical miles of the baseline of a coastal state, while the high seas area proper is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

50. The high seas area proper is divided into two zones: the high seas area adjacent to the continental shelf and the high seas area beyond the continental shelf.

51. The high seas area adjacent to the continental shelf is defined as the area within 200 nautical miles from the baseline of a coastal state but beyond the exclusive economic zone. The high seas area beyond the continental shelf is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

52. The high seas area is divided into two zones: the common area and the high seas area proper. The common area is defined as the area within 200 nautical miles of the baseline of a coastal state, while the high seas area proper is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

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54. The high seas area adjacent to the continental shelf is defined as the area within 200 nautical miles from the baseline of a coastal state but beyond the exclusive economic zone. The high seas area beyond the continental shelf is defined as the area beyond 200 nautical miles from the baseline of a coastal state.

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62. The high seas area proper is divided into two zones: the high seas area adjacent to the continental shelf and the high seas area beyond the continental shelf.

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68. The high seas area proper is divided into two zones: the high seas area adjacent to the continental shelf and the high seas area beyond the continental shelf.

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74. The high seas area proper is divided into two zones: the high seas area adjacent to the continental shelf and the high seas area beyond the continental shelf.

75. The high seas area adjacent to the continental shelf is defined as the area within 200 nautical miles from the baseline of a coastal state but beyond the exclusive economic zone. The high seas area beyond the continental shelf is defined as the area beyond 200 nautical miles from the baseline of a coastal state.
a) Coastal States shall take into account 'the recommendations of the competent international organization' in the designation of sea lanes and in the prescription of traffic separation schemes in the territorial sea (Art. 22 (3)) and 'any generally accepted international standards' in regulating the removal of abandoned or disused installations in the exclusive economic zone (Art. 60 (3)); b) derogations to certain obligations of the coastal State are permitted only if authorized by the competent international organization. For instance, the breath of safety zones around artificial islands, installations and structures in the exclusive economic zone can exceed 500 metres only if authorized by generally accepted international standards or recommended by the competent organization (Art. 60 (5)); c) the coastal State is allowed to adopt special mandatory arrangements or traffic separation schemes only if the IMO has determined that the area corresponds to prescribed requirements, and if it implements 'such international rules and standards as they are made applicable, through the organization, for special areas' (Art. 211 (6)); d) States bordering straits, as well as archipelagic States, may designate or substitute sea lanes or traffic separation schemes only after having submitted a proposal to the IMO 'with a view to their adoption', provided that adoption is with the agreement of, respectively, the States bordering the strait and the archipelagic State (Arts 41 (4) and 53 (9)). The procedure before the Commission on the Limits of the Continental Shelf pursues a similar objective.

8. The UN Convention on the Law of the Sea at the Centre of a Judicially Guaranteed World

The UN Convention on the Law of the Sea has brought the law of the sea under the jurisdiction of international courts and tribunals. Contrary to the Geneva Conventions and contrary to most codification conventions, under the UN Convention on the Law of the Sea, disputes arising between States Parties and concerning its interpretation or application may be submitted, at the initiative of one party to the dispute (as well as, obviously, through the agreement of both parties) to an international court or tribunal whose judgment is binding.

This compulsory mechanism for the settlement of disputes is not without limitations and exceptions. Disputes concerning the exercise of the coastal State's jurisdiction especially as regards fisheries and marine scientific research are excluded under Art. 297, and disputes concerning delimitation, military activities and enforcement activity in the exclusive economic zone may be excluded by specific declarations under Art. 298. Moreover, the exercise of compulsory jurisdiction under the UN Convention on the Law of the Sea is entrusted to a plurality of adjudicating bodies, the ITLOS, the International Court of Justice and arbitration tribunals, with a built-in preference for the latter (Art. 287), and priority is given to mechanisms which are envisaged to exist in the future (Art. 283). This indicates that uniformity of jurisprudence was not seen as deserving high priority by the States negotiating the UN Convention on the Law of the Sea, a fact that may seem somewhat strange in light of today's concerns for 'fragmentation of international law caused by 'professionalisation' of international courts and tribunals. This indicates also, however, that the framers of the UN Convention on the Law of the Sea were perfectly aware that the decision they were taking in submitting the Convention to compulsory dispute-settlement was a momentous one, well worth accepting exceptions and limitations as well as a plurality of adjudicating bodies.

Since the UN Convention on the Law of the Sea has entered in force, practice shows that recourse to international judges and arbitrators is becoming a physiological, not necessarily hostile, occurrence in international relations as regards law of the sea questions. The ITLOS and annex VII arbitration tribunals have been seized, on the basis of the jurisdictional clauses of the UN Convention on the Law of the Sea, more than twenty times since 1994. The ICJ, although it has never been seized under these clauses, has had a number of opportunities to apply the UN Convention on the Law of the Sea and has made a significant contribution to the interpretation of some of its provisions. So far, conflicting views have emerged as between these different adjudicating bodies.

A further aspect to be underlined is the 'deterrence' effect of compulsory settlement. Even though these cases receive little publicity, it is well known that various disputes have not materialized in courts and tribunals, and have been quietly settled by the parties, in light of the fact that one party was fully aware that the other was ready to utilize the compulsory means of settlement set out in the UN Convention on the Law of the Sea.


Most rules of the UN Convention on the Law of the Sea concern relationships between States and State interests. This notwithstanding, and consistent with trends emerging in other branches of international law, the UN Convention on the Law of the Sea makes relevant in various ways the position of individuals. Some of its provisions aim at protecting individual interests. One example concerns the protection of human life at sea through the obligation imposed on States by Art. 90 to request masters of ships flying their flag to render assistance to persons lost at sea or in distress or in cases of collision.

52 In some cases the UN Convention on the Law of the Sea grants rights to individuals. These rights are limited, however, to procedural matters. This is the case of persons allowed to act 'on behalf of the flag State in prompt release proceedings under Art. 292 (2) and of State enterprises or natural or juridical persons which may be granted contracts for conducting activities in the International Seabed Area under Art. 153 (2) (b).

53 In both cases the granting of rights to private entities is conditional and might be seen as a fiction. The flag or national State may exclude the exercise of the right by the individual, or, if such right has been granted, it can replace the individual in its exercise. So the flag State may abstain from authorizing the interested private party to act on its behalf in prompt release proceedings and proceed on its own or deciding not to proceed at all. The State whose nationality the entities mentioned in Art. 153 (2) (b) have, may abstain from sponsoring the private person, making it impossible to exercise the right to obtain a contract; moreover, if the national State of the contractor has become a sponsoring State, in case the sponsored person acts as plaintiff in a case, the State may be requested to appear in the proceedings on behalf of that person (Art. 190 (2), thus making its procedural rights ineffective.

54 In other cases the best way for a State Party to implement certain obligations set out by the UN Convention on the Law of the Sea consists of introducing in its domestic law, rules that can be invoked by individuals before domestic courts. This is the case in Arts 73 (3) and 230 concerning penalties that can or cannot be imposed as regards fisheries violations and pollution. This is also the case in Arts 21 (2) Annex III and 39 Annex VI concerning enforcement in the territories of States Parties of decisions concerning the Authority or adopted by the Sea Bed Disputes Chamber of ITLOS. Depending on the manner in which the relationship between treaty obligations and domestic law is regulated in a given State Party's domestic legal system, this result is obtained automatically because the State is bound by the UN Convention on the Law of the Sea, or through the adoption of specific provisions.

F. The Present Post-Codification Era: the Law of the Sea 'System'

1. A Plurality of Sources

(a) Introductory

Almost three decades have elapsed since the adoption of the UN Convention on the Law of the Sea and almost two since its entry into force. The current international law of the sea, although dominated by the UN Convention on the Law of the Sea, has a life of its own. Rules set out by other sources are relevant and it becomes important to examine the relationship between them and the UN Convention on the Law of the Sea. The most important sources to be considered are customary law and treaties. Non-binding soft-law instruments must also be taken into consideration.

(b) Customary Law

For the majority of existing States, as parties to the UN Convention on the Law of the Sea, most of the general law of the sea is customary law and they are rules. Still, also in an area of international law dominated by a convention whose ambition is to function as ‘the constitution of the Oceans’, customary law continues to play a relevant role. Not all of the law is the sea questions are regulated by the UN Convention on the Law of the Sea and not all States are parties to the UN Convention on the Law of the Sea. The last paragraph of the preamble of the UN Convention on the Law of the Sea recognizes the continuing role of customary law stating that: ‘matters not regulated by this Convention continue to be governed by the rules of general international law’. The fact that the UN Convention on the Law of the Sea as an international treaty does not bind States that are not parties to it, entails that among non-parties, and in relations between parties and non-parties, customary rules apply (unless both States involved are parties to the Geneva Convention relevant in the concrete case).

The relevance of customary law and its relationship with the UN Convention on the Law of the Sea emerges clearly in recent international instruments. These instruments, also because of the influence of non-parties to the UN Convention on the Law of the Sea in their negotiation, put on the same level the UN Convention on the Law of the Sea and customary law, and give them priority over their own provisions. So the Convention on the Protection of the Underwater Cultural Heritage provides that nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea (Art. 3). The Preamble to the 2007 IMO Nairobi International Convention on the Removal of Wrecks (‘Wreck Removal Convention’) recalls the importance of the UN Convention on the law of the sea and of the customary law of the sea. In FAO-sponsored instruments the clause referring to ‘international law, as reflected in the United Nations Convention on the Law of the Sea’ is normally included (eg, Preamble 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; Art. 3.1 1995 FAO Code of Conduct for Responsible Fisheries; Art. 10
FAO 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing). The same meaning is to be given to the reference to ‘international law’ as providing ‘important rights and obligations’ on various specified matters set out in the 2008 Bills at Declaration on the Arctic.

There is a wide area of overlap between customary law of the sea and the UN Convention on the Law of the Sea. At the time of its adoption, the UN Convention on the Law of the Sea included provisions repeating, in essence, customary law often as already codified in the Geneva Conventions, and provisions progressively developing the law and sometimes crystallizing rules that were in the process of acquiring customary status. This seems to be the case of those concerning the exclusive economic zone. Other provisions, especially those involving institutions and the settlement of disputes, because of their very nature, had, and still have, a merely conventional character. At the time the UN Convention on the Law of the Sea was adopted, in order to determine whether a provision contained in it corresponded to a customary rule, the interpreter had to make a specific assessment on a case by case basis.

The present situation is different. Practice—including, since 1994, the fact that a growing number of States have become bound by the provisions of the Convention—has made the rules of the Convention fixes universally consulted in order to deal with most questions of international law of the sea. At present it can be said that there is a presumption that the provisions of the Convention correspond to customary law. It is, however, a rebuttable presumption as, again on a case by case basis, evidence can be submitted to argue that a specific provision has a merely treaty character. Of course, when institutions and mechanisms for the settlement of disputes are concerned, the UN Convention on the Law of the Sea provisions only apply as conventional rules.

(c) Treaties

A substantial amount of treaties, different to the UN Convention on the Law of the Sea, complete the texture of the international law of the sea. Some of them have been concluded after the UN Convention on the Law of the Sea and aim at completing and sometimes correcting its provisions on specific issues. Others, concluded before and after also the UN Convention on the Law of the Sea, may be seen as implementing the ‘framework convention’ function of the UN Convention on the Law of the Sea.

In one category particular relevance to the so-called ‘implementing agreements’, namely agreements that explicitly state the purpose of implementing certain provisions of the UN Convention on the Law of the Sea. Two agreements state that purpose in their very title: the 1994 Agreement for the Implementation of Part XI of the UN Convention on the Law of the Sea and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement). The two implementing agreements do not have the same relationship with the UN Convention on the Law of the Sea. The 1994 Implementing Agreement extends the Convention and becomes a necessary part of it as States must, after its adoption, become parties to the Convention and to the Agreement at the same time. The UN Fish Stocks Agreement may be ratified or acceded to also by States that are not parties to the UN Convention on the Law of the Sea. Agreements and Conventions concluded after the UN Fish Stocks Agreement and implementing it on a regional basis, as well as the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1994) 33 ILM 968), the UNESCO Convention on the Protection of the Underwater Cultural Heritage of 2001 (2002) 41 ILM 40), and the IMO Wreck Removal Convention do not state a purpose the implementation of provisions of the UN Convention on the Law of the Sea, but all contain provisions recognizing the particular role of the UN Convention on the Law of the Sea.

A review, or even a list, of all treaties that are to be applied together with the UN Convention on the Law of the Sea, and whose existence is presupposed by it or whose conclusion and further development is encouraged by it, would be too long. It is suffice to recall the universal and regional conventions concerning the protection of the marine environment, especially those concluded within the framework of the IMO; and the conventions regarding fisheries in whose preparation the FAO plays an important role.


The Article the UN Convention on the Law of the Sea ‘shall prevail’ over the 1958 Geneva Conventions (Art. 311) (5). These include the ‘long-standing international conventions’ concerning the regime of certain straits, preserved in Art. 35 (c), the agreements establishing regional or subregional fishery organizations and those setting out international rules and standards for the protection of the marine environment which not only are permitted but positively encouraged, respectively, in Arts 118 and 197 as well as in other articles of Part XII.

As regards agreements already binding for States Parties, the UN Convention on the Law of the Sea ‘shall not alter’ the rights and obligations arising from them, provided that they are ‘compatible’ with it and that they ‘do not affect the enjoyment by other States Parties of their rights and obligations’ under the UN Convention on the Law of the Sea (Art. 311 (2)). On the basis of the two indicated tests, which may in practice prove controversial, the provision establishes for States Parties, conflicts of obligations in their relations with non-parties that are bound by the other agreements concerned.

As regards agreements between States Parties concluded after the UN Convention on the Law of the Sea, Art. 311 (3)

envisages those ‘modifying or suspending the operation of provisions of [the UN Convention on the Law of the Sea], applicable solely in the relations between them’. These agreements must meet three requirements: that they do not ‘relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of [the UN Convention on the Law of the Sea]’; that they shall not affect the application of the basic principles embodied in the UN Convention on the Law of the Sea, and that they ‘do not affect the enjoyment by other States Parties of their rights and obligations’ under the UN Convention on the Law of the Sea. Art. 311 (6) specifies that ‘States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in Art. 136 and that they shall not be party to any agreement in derogation thereof’. The abovementioned requirements may give rise to interpretative difficulties and conflicts with other States Parties, which Art. 311 (4) seeks to prevent through a procedural rule. States Parties intending to conclude an agreement mentioned in paragraph 3 shall notify the other States Parties ‘of their intention to conclude the agreement and of the modification or suspension for which it provides’. No indication is given as regards the follow-up of these notifications. Art. 311 seems to imply that agreements compatible with the UN Convention on the Law of the Sea are always allowed. The lack of notification under paragraph 4 would indicate that, in the view of the contracting parties, their agreement is compatible with the UN Convention on the Law of the Sea and does not derogate from its basic principles including the common heritage principle.

(d) Soft Law Rules

Non-binding rules, the so-called ‘soft law rules’, exist in the international law of the sea as in other branches of international law. Standards and recommended practices and procedures for the prevention of pollution, mentioned for instance in the UN Convention on the Law of the Sea Arts 207 (4), 208 (5), 210 (4), and 212 (3) are examples. Non-binding rules are often adopted in the field of fisheries within the framework of FAO and in the field of navigation in the framework of IMO.

A number of soft law rules have had an influence on customary law (see for instance UN General Assembly resolution 2574 (XXIV) (15 December 1991) on drift-net fishing and the FAO Code of Conduct for Responsible Fisheries of 1995).

Sometimes, through references made in the UN Convention on the Law of the Sea, soft law rules are given an effect similar to that of binding rules. For example, under Art. 211 (2) UN Convention on the Law of the Sea, laws and regulations adopted by States Parties to prevent pollution by vessels ‘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’. The non-binding ‘standards’ are made binding in the sense that they function as a minimum standard for legislation. And the ‘rules’, binding for States Parties to the conventional instruments that contain them, obtain also for States that are not parties the same kind of binding character. In both cases it is necessary, however, that the instruments be ‘generally accepted’. For non-binding standards or recommended practices it is enough for their being ‘generally accepted’ that they have been adopted by consensus or without substantial opposition in a universal forum, such as the IMO; for conventional rules, it seems necessary that the treaties in which they are contained be binding for a broad and representative majority of States (the number of ratifications and the conditions relating to tonnage provided for in most IMO conventions as conditions for entry into force seem to be a good approximation to what is required for rules to be ‘generally accepted’).

In some cases, soft law rules are ‘hardened’ through the adoption of binding instruments regulating or approximating their content. The European Union has resorted to this practice adopting regulations (instruments binding for its Member States also within their domestic legal systems) which correspond to non-binding international instruments. Examples are the regulations corresponding to the Paris Memorandum of Understanding on the North East Atlantic Zone (NEAFC) and the Fishing of Deep-Sea Fish in the Southern Ocean (SOFYA), the Regulations of the FAO soft law Action Plan of 2001 and the Guidelines of 2008. The FAO has resorted also to this technique by adopting in 2009 an Agreement on Port
2. A Law of the Sea System?

The primary of the UN Convention on the Law of the Sea, at least among its 160 States Parties, over other treaties concerning the law of the sea and the connections established in provisions of the UN Convention on the Law of the Sea as well as in provisions of other treaties, as regards the relationship between the UN Convention on the Law of the Sea and these other treaties, is strengthened by a number of provisions set out in the UN Fish Stocks Agreement (Art. 30) and in other multilateral instruments adopted after the entry into force of the UN Convention on the Law of the Sea. These provisions concern the settlement of disputes relating to the interpretation or application of these instruments. They provide that the rules concerning the settlement of disputes set out in the UN Convention on the Law of the Sea shall also apply to these disputes, independently of whether the parties to the dispute are also parties to the UN Convention on the Law of the Sea. Moreover, parties to the UN Fish Stocks Agreement agree, through Art. 30 (2) to apply the UN Convention on the Law of the Sea dispute-settlement provisions also to disputes concerning the interpretation or application of global or regional – fisheries agreements relating to straddling or highly migratory fish stocks of which they are parties (about 20 agreements). A strong link is established through these provisions between the UN Convention on the Law of the Sea and other agreements that do not necessarily bind the same parties. Even though under Art. 287 UN Convention on the Law of the Sea a plurality of adjudicating bodies (the ICJ, the ITLOS and arbitral tribunals) may be competent to settle disputes, these clauses create a mechanism to foster the uniform interpretation of the UN Convention on the Law of the Sea as well as the interpretation of one instrument in light of the others.

2. Stability and Flexibility of the System

The UN Convention on the Law of the Sea was seen by its framers as the ‘constitution of the oceans’. They were keen to ensure its stability than its adaptability. This explains why the conditions set out in the Convention for amendments and revision are very difficult to satisfy. While since November 2004 the amendment procedure of Art. 312 can be triggered by any State Party, none has done so, nor has any State proposed an amendment by simplified procedure under Art. 313 or an amendment to provisions relating exclusively to the Area under Art. 314. The review by the Assembly of the Seabed Authority of the functioning of the seabed mining system which, under section 4 of the Annex to the 1994 Implementing Agreement may be undertaken at any time, has not been proposed yet. The chances of not succeeding have probably been considered too high, especially in view of the overwhelming support for the balance achieved in the Convention. The idea of a Fourth Law of the Sea Conference, or of changes to key provisions, has been sometimes advocated but never seriously pursued in view of the negative reactions.

The need for stability of the law of the sea, while a commonly shared objective, cannot make adaptability to new circumstances impossible. While the UN Convention on the Law of the Sea, as mentioned, is entrenched by its amendment procedures as an almost unchangeable nucleus, the need for flexibility is satisfied in various ways as evidenced by practice subsequent to its adoption.

States have agreed to introduce important changes to Part XI, through the 1994 Implementing Agreement. This agreement has had the political result of opening the way for the ratification or accession of most industrialized States.

Since the adoption of the UN Fish Stocks Agreement, the system has proved to be resilient by developing tools for change. A limited number of these have emerged within the UN Convention on the Law of the Sea, while more relevant others have found a place outside the Convention’s framework, although maintaining a strong link with it.

Within the UN Convention on the Law of the Sea, as mentioned above, the meeting of the States parties has been utilized, through consensus decisions, to derogate certain provisions of the Convention concerning time-limits for elections and, more remarkably, for submitting applications to the Commission on the Limits of the Continental Shelf.

Another tool for change within the scope of the Convention is the mechanism for the settlement of disputes. Through interpretation by adjudicating bodies, questions not explicitly considered in the Convention may be envisaged in the framework of the conventional rules.

Yet, the most important tools for change have emerged outside the UN Convention on the Law of the Sea framework. The agreements mentioned above concerning law of the sea matters concluded after the entry into force of the UN Convention on the Law of the Sea are of great importance. Most of them are in force, even though the number of States bound by them is far lower than that of States Parties to the UN Convention on the Law of the Sea. Some, as the UN Fish Stocks Agreement and the UNESCO Convention on Underwater Cultural Heritage, consider subjects at least in part dealt with by the UN Convention on the Law of the Sea, while others, as the Wreck Removal Convention, do not.

The United Nations as well as IMO and FAO are the most important forums where new issues are debated and addressed. In these forums the primary of the UN Convention on the Law of the Sea is always confirmed. For instance, UN General Assembly Resolution 65/57 (7 December 2010), fourth preambular paragraph, emphasizes ‘the universal and unified character of the Convention’ and reaffirms ‘that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained’.

Still, it is through these forums that additions, interpretations and subtle changes to the law of the sea are discussed and introduced. The UN has established an informal forum, the UNCOPOLOS, to debate important matters concerning the seas and oceans with the participation of scientists, economists, and other specialists and not of diplomats and legal experts only. The yearly debate at the General Assembly, and even more so, the negotiations leading to the adoption of the yearly resolutions on the oceans and on fisheries, as well as these ever-expanding resolutions, are the opportunity to bring into focus new questions and to address the basic ideas and the mechanisms to deal with them. IMO and FAO have often been entrusted by the General Assembly with the task to convene negotiations in order to develop new instruments, be they of a binding or non-binding nature. As regards one particularly sensitive subject, marine genetic resources, the General Assembly has resulted pressures to entrust it to the International Seabed Authority, establishing a Working Group that has met in 2006, 2008 and 2010.

G. The Open Challenges

1. Introductory

A number of challenges face the contemporary law of the sea. Some consist of tasks to be undertaken by States on the basis of the rules of the UN Convention on the Law of the Sea. Others arise because of the need to tackle new problems which are not always envisaged by the UN Convention on the Law of the Sea, or cannot be dealt with only on the basis of the UN Convention on the Law of the Sea.

2. The Completion of the Zonal Approach

The most important task States have to undertake on the basis of the UN Convention on the Law of the Sea is to complete the process of delimitation of maritime areas that is necessary to make the ‘zonal approach’ of the Convention functional and, in general, to further the good governance of the seas and oceans. This process relates to the delimitation of maritime areas between States whose coasts are opposite or adjacent, and to the determination of the external limits of continental shelves beyond 200 miles.

(a) Delimitation of Maritime Areas between States: Treaties

As regards the first task, as prescribed by the Geneva Territorial Sea and Continental Shelf Conventions, as well as by the UN Convention on the Law of the Sea (Arts 74 and 83) and confirmed by judicial decisions, ‘delimitation must be sought and effected by means of an agreement’ (see, for instance Delimitation of the Maritime Boundary in
Annex II, Art. 8). Once they agree, they have to establish the outer limit of their continental shelves in conformity with the agreed recommendations. This may require the adoption of complex provisions within their domestic law systems.

As soon as exploration and exploitation of the resources of the outer continental shelf will be ready to start, the need to develop rules concerning the regime of this part of the shelf and of the supraregion high seas waters will become urgent. Conflicts between activities on the seabed and on the water column will have to be prevented. Scientific research, the protection of the environment, as well as some military activities, that often concern jointly the seabed and the water column will be the main subjects upon which implementation through detailed rules of the general concept of reciprocal due regard will have to be developed.

3. Tackling with New Problems

(a) Introductory

100 In the years following the entry into force of the UN Convention of the Law of the Sea problems have emerged in the law of the sea which are not covered by the Convention, or which, in order to be so covered, require some interpretative effort. In order to obtain a satisfactory solution to these problems, cooperative multilateral efforts are needed.

101 Most of the current trends and discussions concerning future developments and issues in the law of the sea focus on activities on the high seas and in, in particular, on the need to ensure the mix of regulation and institutions including the involvement of stakeholders, usually referred to as ‘governance’ or ‘good governance’ of the oceans.

102 The spatial limitation to the high seas of current discussions depends on that, as the UN Convention of the Law of the Sea allocates to the coastal State sovereign rights or jurisdiction on most maritime activities in the exclusive economic zone and on the continental shelf, the majority of coastal States consider it unacceptable to enter into discussions that might imply questioning recently obtained and hard-fought rights. Yet, the reasons for discussing and developing ocean governance as regards activities that have a general interest do not stop at the 200-mile line. Concepts such as the ecosystem approach, and concerns linked to climate change and its effect on the oceans, or to the preservation of marine biodiversity, are global in character, or not limited to the high seas, as is the rational management of many fisheries. One may wonder whether the future will bring a reassessment of the results obtained through the establishment of exclusive economic zones and whether new approaches envisaging areas lying within and outside national jurisdiction will emerge.

103 The problems presently emerging and whose solution is a task for future development of the law of the sea can be grouped in five main categories: a) conservation of high seas living resources; b) policing of the high seas against internationally prohibited activities; c) piracy; d) exploitation of genetic resources of the deep seabed; e) consequences of climate change on the law of the sea.

(b) Conservation of High Seas Living Resources

104 The provisions of the UN Convention of the Law of the Sea concerning high seas fisheries are insufficient to deal with the pressure these fisheries have been subject to since the coastal States have acquired exclusive rights of fishing within their exclusive economic zones. The 1993 FAO Compliance Agreement and the UN Fish Stocks Agreement are the first results of negotiations entered into in order to meet the need to develop rules more precise than those of the UN Convention of the Law of the Sea. They concern, in the 1993 FAO Compliance Agreement, the responsibilities of flag states as regards fishing by their vessels on the high seas, and in the UN Fish Stocks Agreement, enhanced cooperation for seeking a balance between the interests of flag States and those of the coastal States. Through the two meetings of the Review Conference of the latter agreement (2006 and 2010) States parties have succeeded in broadening the scope of the Agreement, in particular in extending its general principles to ‘discrete’ fish stocks.

105 The FAO, encouraged by the UN General Assembly, has been, and still is, the main forum for developing rules on high seas fisheries. This has been done mainly through the Code of Conduct for responsible fisheries (1995), the Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing (2001), the Model Scheme on Port State Measures to Regulate IUU Fishing (2005, followed by the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing of 2008) and the Guidelines for deep-sea fishing adopted on 29 August 2008 and which are supposed to become the basis for decisions of States and Regional Fisheries Management Organizations (RFMO’s).

106 RFMOs develop the rules set out in the abovementioned instruments. They have obtained remarkable, although far from sufficient, results in combating IUU fishing. One of the main drawbacks of their action is that they do not bind non-member States. While some of these behave almost as members by becoming ‘cooperating non-member States’, others stay out and lend their flags to vessels wishing to escape regulation. Still other States oppose RFMOs for reasons of principle, arguing that, if they became parties, they would be bound directly or indirectly by agreements they are not parties to, especially the UN Fish Stocks Agreement, and that RFMOs either do not admit them or admit them under conditions they consider disadvantageous.

107 One promising further new trend responds to the need to combat IUU fishing conducted under the protection of the flag State principle. The FAO, with the encouragement of the UN General Assembly, has started studies and negotiations concerning flag State performance, including ways to ascertain and perhaps measure the degree of compliance with their responsibilities.

108 The tasks for the future consist mainly in extending the geographical as well as the material scope of the existing network of RFMOs, and in making effective the existing law. The latter task requires economic measures, assistance to developing countries, and coordination between fishing activities on the high seas with those in the EEZs, as well as coordination of enforcement action by flag, coastal, and port States.

(c) Policing of the High Seas against Internationally Prohibited Activities

109 The UN Convention on the Law of the Sea confirms the fundamental rule of the freedom of the high seas, which prohibits interference with ships flying a foreign flag unless otherwise provided by applicable rules of international law. Such rules are rare in the UN Convention on the Law of the Sea. They concern the right of visit, set out in Art. 110, with respect to ships engaged in piracy (for which also more penetrating rights apply under Art. 105), in the slave trade and in unauthorized broadcasts as well the right of – hot pursuit and of intervention in case of pollution incidents. Treaty-based cases of interference have grown, although to a limited extent, especially in fishery matters with the UN Fish Stocks Agreement and in a small number of bilateral treaties for combating the smuggling of narcotic drugs.

110 After the adoption of the UN Convention on the Law of the Sea, States have become concerned about the development of several illicit activities conducted in whole or in part on the high seas: smuggling of drugs and psychotropic substances, transportation of – weapons of mass destruction, hijacking of vessels and their use as means for terrorist activities. All efforts to develop international cooperation in fighting these activities, while succeeding in facilitating in granting of consent by the flag State to interference with its vessels on the high seas, have failed to reach the result, hoped for by the US and other States, of allowing such interference without flag State authorization. Attempts to adopt a rule permitting such interference in Security Council resolutions adopted under Chapter VII UN Charter have also failed (see UNSC Res 1874 [26 June 2009] UN Doc S/RES/1876 para. 12) which, in the context of action under Art. 41 UN Charter against the People’s Republic of Korea, calls upon Member States to inspect vessels, with the consent of the flag State, on the high seas if they have information that these vessels carry prohibited cargo (emphasis supplied).

111 In tackling with the grave threats these illicit activities continue to pose, States should realistically take notice of the political and legal reasons for maintaining the principle of the flag States’ exclusive right on their vessels. They should develop rules aimed at making the obligations of flag States more precise as regards these activities, so that it would be clear that flag States not complying with these responsibilities are committing an international wrongful act violating – obligations erga omnes. Port State enforcement measures should be enhanced including controls on shipments at departure. Disincentives for lax behaviour by flag States and incentives for good behaviour should be introduced.

112 Still, in extreme cases arrest and inspection on the high seas of vessels suspected of conducting the gravest illicit activities cannot be ruled out. In some cases such action may be justified invoking the concepts of – self-defence or necessity. In other cases it may be claimed to be a counter-measure by States having rights under erga omnes obligations.

113 The idea of introducing an obligation of – compensation in case of unfounded arrests and inspections—already existing as regards piracy (Art. 106 UN Convention on the Law of the Sea) and hot pursuit (Art. 111 (8) UN Convention on the Law of the Sea), as well as in the UN Fish Stocks Agreement (Art. 21) and in the 2005 amended Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Art. 8(2))—could be developed and implemented in cases of intervention on vessels suspected of conducting illicit activities including illicit fishing. It might be argued that this obligation has already become part of customary law.
(d) Piracy

114 Piracy represents a grave threat to international shipping. The UN Convention on the Law of the Sea codifying customary international law, permits the seizure of pirate vessels by every State (Art. 105). Piracy as defined by the UN Convention on the Law of the Sea must, however, be conducted on the high seas and involve two ships.

115 Recent developments, especially off the coast of Somalia, show that pirate acts may happen also in the territorial sea, in particular where the authority of the coastal State is weak or non-existent. In the case of Somalia, the possibility to conduct enforcement activity also in the territorial sea has been granted to foreign flag States by the permission of the local transitional and almost ineffective government as well as by resolutions adopted by the Security Council under Chapter VII of the United Nations Charter (UNSC Res 1816 [2 June 2008]; UNSC Res 1816; UNSC Res 1897 [30 November 2009]; UNSC Res 1897 [27 April 2010]; UN Doc S/RES/1816; 1897). The current debates on future developments seem to concern finding efficient ways to deal with captured pirates while observing their human rights. Looking at a more distant future, politically the elimination of the root causes of piracy seems the difficult but necessary task. Legally, it will be interesting to consider whether the resolutions of the Security Council on piracy off the coasts of Somalia—which purport to be exceptional and not to aim at changing customary law—will in fact have exactly that effect and broaden the notion of piracy and the area of the seas in which States may seize pirate vessels.

(e) Developing a Regime for Genetic Resources of the Deep Seabed

117 Perhaps the most controversial law of the sea question now under discussion in international forums, as well as among scholars, is the ‘conservation and sustainable use of marine biological diversity beyond the limits of national jurisdiction’, to borrow the title of the UN General Assembly’s Open-ended Informal Working Group set up in 2006 to deal with the subject.

118 The core aspect of this discussion concerns the legal regime regarding genetic resources in the areas beyond national jurisdiction. These resources are organisms with very peculiar characteristics which, once studied and their chemical mechanisms reproduced, can be highly profitable. Their natural peculiarity, the difficulty to adopt general assumptions as to whether they belong to the seabed or to the water column, the fact that only samples are needed for subsequent research, and that huge investments are often required to develop potential applications, explain how difficult it is to determine the law of the sea rules applicable to them.

119 The main divergence of views is between States holding the opinion that the key applicable principle should be that of the common heritage of mankind and States according to which the key principle should be that of the freedom of the high seas. This opposition of views often focuses on whether the regime of the Area encompasses resources other than mineral resources, sometimes arguing on the basis of an analogy with the status of sedentary species on the continental shelf, on whether Art. 143 of the UN Convention on the Law of the Sea concerning marine scientific research in the Area may be invoked to support the idea that prospecting for genetic resources must be conducted ‘for the benefit of mankind as a whole’, on whether the International Seabed Authority is entitled to play a role.

120 This opposition of views, while reflecting deep economic interests, is in part diplomatic posturing and in part ideological. The task for the future seems to consist in developing a pragmatic regime that does not embrace fully either of the two opposing positions. While some ideas are circulating, such as that of an implementing-agreement to the UN Convention on the Law of the Sea, that of establishing an institutional structure responsible for the management and conservation of the resources, and that stressing the need to work on the basis of integrated and ecosystem approaches, no concrete proposal has emerged that is recognized as a generally accepted basis for negotiation (see UNGA ‘Report for 2010 of the Open-ended Informal ad Hoc Working Group’ in Letter dated 16 March 2010 from the Co-Chairpersons to the Secretary-General’ [17 March 2010] UN Doc A/65/68, esp paras 70–77). The first task for the future should be to find such a basis. The main difficulty will consist of not to repeat the scheme of the regime for the mineral resources of the Area and to agree on an inventive and constructive way to avoid ideology and make the exploitation of genetic resources workable taking into account the different interests. A combination of the approaches of Part XI of the UN Convention on the Law of the Sea and of the UN Fish Stocks Agreement could be considered.

(f) Coping with the Consequences of Climate Change

121 To deal with the consequences of climate change on the oceans will continue to be a major task for the law of the sea in the future. The UN Secretary General’s Report on ‘Oceans and the Law of the Sea’ of 2010 (UN Doc A/65/69) states that: ‘Climate change continues to impact the oceans’ and briefly outlines as follows the various aspects of this impact: rising sea levels, melting Arctic ice, increasing acidity, loss of marine biodiversity, increasing frequency of extreme weather events and shifts in distribution of marine species’ (UN Doc A/65/69 Add 2 para. 374).

122 One of the major aspects of this that will have an impact on the law of the sea is the melting of the Arctic ice. While no new rules seem necessary, as stressed by the 2008 Ilulissat Declaration which confirms the applicability of the law of the sea to the Arctic ocean, the old rules will find new areas of application. New navigational routes will be open, continental shelves and beyond 200 miles will be claimed and become exploitable, fish stocks will migrate to former ocean areas and fishing activities will follow them. New dangers of pollution and the need for cooperation to prevent it will arise. Conflicts between coastal and other interested States are also likely.

123 Rising sea levels are likely to have consequences on certain island States that might disappear. The discussion as to the rights of maritime zones of such States after their disappearance has already started. Some low-tide elevations will remain submerged and other features relevant for the establishment of baselines will change or disappear. Uncertainty on baselines may bring about uncertainty on the outer limits of all maritime areas measured from them.

124 Action to contain the effects of climate change, such as efforts to limit greenhouse gas emission from ships under discussion in the framework of IMO, should be developed. Halting the decline of natural carbon ‘sinks’ such as mangroves, salt marshes and sea grasses will also be important. Measures to prevent the impact of ocean acidification on marine biodiversity and living resources should be studied and implemented.

125 Some proposed methods for mitigation of the impact of climate change, such as large scale ocean fertilization and carbon sequestration, after an early period of widespread enthusiasm, are now questioned as there is no agreement as to whether the dangers they pose are more important than the benefits.

H. The Law of the Sea and Other Branches of International Law

1. Introductory

126 It is becoming increasingly apparent that the law of the sea cannot be considered in isolation. Obviously, general international law cannot be excluded from the treatment of the law of the sea issues, as it emerges from Art. 293 UN Convention on the Law of the Sea and from judicial and arbitral practice. More noteworthy is that many questions relating to the law of the sea must be seen also in light of other branches of international law: first and foremost environmental law, but also international human rights law, international trade law, the law of international security including – terrorism and migration by sea, and developments in regional integration and cooperation.

2. Environmental Law

127 All the above mentioned developments concerning high seas fisheries and genetic resources, starting with the UN Fish Stocks Agreements, straddle law of the sea and environmental law. The application of environmental law concepts and principles, especially the eco-system and the precautionary approaches, are the main feature of these developments. Cases recently brought to adjudication before the ITLOS, such as the Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan) (ITLOS Cases Nos 3, 4 [27 August 1999]; the Max Plant Case (Ireland v United Kingdom) (ITLOS Case No 10 [3 December 2001]) and the Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore) (ITLOS Case No 12 [16 September 2003]), as well as the Advisory Opinion of 1 February 2011 of the Seabed Disputes Chamber on the Responsibilities and Obligations of States sponsoring Persons and Entities with respect to the Activities in the Area, have seen thorough discussions of the precautionary approach in the context of the UN Convention on the Law of the Sea. The just mentioned advisory opinion discusses also the obligation to conduct an environmental impact assessment, continuing the trend opened by the ICJ in Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) (20 April 2010). Other recently developed approaches in international environmental law, such as the ‘holistic’ one, that would try to envisage as a subject for domestic and international regulation a ‘coastal area’ including land and sea zones, may, if extended beyond the territorial sea, blend the regime of the various maritime areas and have political and legal consequences difficult to forecast.
3. International Trade Law

128 The interaction between the law of the sea and international trade law is another area for present and future development. Law of the sea aspects of the Swordfish dispute between Chile and the EC, concerning high seas fisheries, were brought, under the UN Convention on the Law of the Sea, to a Chamber of the ITLOS, while those concerning trade were submitted to a Panel under the WTO Disputes-Settlement Understanding. The possible conflicts that could ensue can only be the subject of speculation, as the two parallel cases after some years of a state of suspension have been discontinued in light of the agreement on a settlement reached by the parties (Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean [Chile/European Community] [Order] ITLOS Case No 7 [16 December 2009]). The connections and possible incompatibilities between trade rules and the exercise of the sovereign rights of States over their waters were one of the difficulties met by States negotiating the Agreement on Port State Measures to Combat IUU Fishing.

4. Human Rights Law

129 Human rights have become an important aspect in many areas of the law of the sea. The human rights impact of certain provisions of the UN Convention on the Law of the Sea, in particular that excluding imprisonment or any form of corporal punishment as regards fisherfolk violations in the exclusive economic zone (Art. 73(3)), and that providing that monetary penalties only may be imposed for pollution violations, except for wilful and serious acts in the territorial sea (Art. 230 (1) and (2)) was mentioned in the literature and aforesaid recognized by the ITLOS in its Juno Trader judgment (Juno Trader Case [Saint Vincent; Grenadines v. Guinea-Bissau] [Judgment] ITLOS Case No 13 [18 December 2004] para. 77; and the separate opinion of Judge Treves at 71–74).

Recent decisions of the – European Court of Human Rights (ECHR) show that the law of the sea may be relevant for the application of rules aimed at protecting human rights. The Court applied law of the sea rules on the rights of the flag State in Medvedev v France (Appl 3394/03), on interference with innocent passage in the case Women On Waves and Others v Portugal (Appl 31276/05), and utilized the jurisprudence of ITLOS on the reasonableness of bonds in prompt release cases for assessing the reasonableness of the amount of bail imposed to the captain of the Prestige accused of massive pollution of the coast of Galicia in the case Mangonui v. Spain (Appl 12050/04). It emerges from these judgments that the specific point of view of a Court whose function is to protect human rights has an influence on the interpretation of law of the sea rules, as the specific point of view of a court or tribunal entrusted with disputes relating to the UN Convention on the Law of the Sea may influence the way it applies rules concerning human rights.

5. Illegal Immigration and Other Illicit Activities at Sea

130 The fight against illegal immigration by sea, even when conducted in light of the coastal and flag States’ rights and duties recognized under the UN Convention on the Law of the Sea, cannot be envisaged only in the framework of the rules of the law of the sea. The human rights of the persons involved, and principles such as non refoulement cannot be left out of the picture. The same can be held with respect to all other cases of intervention on foreign ships on the high seas, for instance, in the repression of drug trafficking and of piracy. Similarly, the fight against terrorists at sea, even when conducted within the framework of Security Council resolutions adopted under Chapter VII UN Charter, cannot ignore basic human rights.

6. European Union Law

132 The impact on the law of the sea of the extension of the competences of the European Union to maritime activities is another growing phenomenon of interaction between different branches of the law in which the point of view adopted, namely that of the European Union legal system or that of international law, may be relevant. In maritime matters the European Union is much more than a particularly advanced framework of regional cooperation. The EU is a protagonist of the law of the sea, a party to the UN Convention on the Law of the Sea and other international conventions; its Common Fisheries Policy (CFP) may be assimilated to ‘laws and regulations’ and ‘conservation measures’ concerning fisheries as mentioned in Art. 62 (4) UN Convention on the Law of the Sea adopted by a big coastal State Party. Moreover, through the action of the European Court of Justice, the maritime competences of the EU expand to new fields, expanding in parallel the exclusive competence of the Court. The most emblematic moment of this process has been the Case C-459/03 Commission of the European Communities v Ireland (2006) ECR I-4635), in which the Court held that as the EU is a contracting party to the UN Convention on the Law of the Sea, the Convention becomes European Union law with the consequence that any dispute between Member States concerning its interpretation or application falls under the exclusive competence of the Court. In the – inter alia – Irish case the Court stated that the UN Convention on the Law of the Sea cannot be considered as directly applicable by private subjects. In doing so it does not mention, in particular, the provision of Art. 73 (3), concerning the prohibition of imprisonment for fishery violations that seems an obvious candidate, at least in most domestic systems, for direct applicability.

133 To find a balance between the maritime policy of the European Union, basically oriented towards the protection of the marine environment and of the Union’s interests as a coastal and trading entity, with the sometimes conflicting policies of its Member States, that include strategic objectives, will be a challenge for the future. Even more delicate will be the task of avoiding EU Member States finding themselves in a different and perhaps less favourable position, as regards the application of the UN Convention on the Law of the Sea, than States parties that are not EU members.

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