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Codification Division of the United Nations Office of Legal Affairs

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LAW OF THE SEA
PROFESSOR TULLIO TREVES

Outline

Legal instruments and documents

4. Report of the Secretary-General on oceans and the law of the sea, Addendum, A/68/71/Add.1, 9 September 2013
5. Report of the Secretary-General on oceans and the law of the sea, A/69/71, 21 March 2014

Case-law

6. 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

Legal writings (not reproduced here)

THE LAW OF THE SEA: GENERAL ASPECTS AND CONTEMPORARY DEVELOPMENTS

Course Outline

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4. The reasons for the new codification of 1973-82
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- Selected Issues

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Textes authentiques : arabe, chinois, anglais, français, russe et espagnol. Enregistrée d’office le 16 novembre 1994.)
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The States Parties to this Convention,

Prompted by the desire to settle, in a spirit of mutual understanding and co-operation, all issues 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,

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

**Have agreed as follows:**

(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:

(Continued on page 398)

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 308 (1):

PART I
INTRODUCTION

Article 1
Use of terms and scope

1. For the purposes of this Convention:

   (1) "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

   (2) "Authority" means the International Sea-Bed Authority;

   (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

   (4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

   (5) (a) "dumping" means:

      (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

      (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;

   (b) "dumping" does not include:

      (i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

      (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

2. (1) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.

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

PART II
TERRITORIAL SEA AND CONTIGUOUS ZONE

SECTION 1. GENERAL PROVISIONS

Article 2
Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 3
Breadth of the territorial sea

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

Article 4
Outer limit of the territorial sea

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

Article 5
Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State.
Article 6
Reefs

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

Article 7
Straight baselines

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

Article 8
Internal waters

1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

Article 9
Mouths of rivers

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

Article 10
Bays

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.

Article 11
Portes

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, 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; or

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

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

Article 19
Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State 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 impeding the right of innocent passage or
(b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.
2. The coastal State shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.

**Article 25**

**Rights of protection of the coastal State**

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

2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

**Article 26**

**Charges which may be levied upon foreign ships**

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

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

**Article 27**

**Criminal jurisdiction on board a foreign ship**

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

   (a) if the consequences of the crime extend to the coastal State;

   (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

   (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or

   (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall 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 strait is exercised subject to this Part and to other rules of international law.

Article 35
Scope of this Part

Nothing in this Part affects:

(a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;

(b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas;

(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 shall 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 incidental 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 impeding the right of transit passage as defined in this section.

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

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

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

Article 43
Navigational and safety aids and other improvements and the prevention, reduction and control of pollution

User States and States bordering a strait should by agreement co-operate:
   (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and
   (b) for the prevention, reduction and control of pollution from ships.

Article 44
Duties of States bordering straits

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

SECTION 3. INNOCENT PASSAGE

Article 45
Innocent passage

1. The régime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation:
   (a) excluded from the application of the régime of transit passage under article 38, paragraph 1; or
   (b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.

2. There shall be no suspension of innocent passage through such straits.

PART IV
ARCHIPELAGIC STATES

Article 46
Use of terms

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

Article 47
Archipelagic baselines

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including stolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

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

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

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

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.

2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

3. This sovereignty is exercised subject to this Part.

4. The régime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

### Article 50
Delimitation of internal waters

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

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

1. Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.

2. An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them.

### Article 52
Right of innocent passage

1. Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3.

2. The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

### Article 53
Right of archipelagic sea lanes passage

1. An archipelagic State may designate sea lanes and air routes thereupon, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

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

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

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

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

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

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

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

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

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

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.
Article 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 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 disabled 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 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 rela], inter alia, to the following:

(a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;

(b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

(c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;

(d) fixing the age and size of fish and other species that may be caught;

(e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;

(f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

(g) the placing of observers or trainees on board such vessels by the coastal State;

(h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;

(i) terms and conditions relating to joint ventures or other co-operative arrangements;

(j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;

(k) enforcement procedures.

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

**Article 63**

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

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.
Article 64

Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective 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 fishing these stocks, establish total allowable catches for stocks originating in its rivers.

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

(b) The State of origin shall co-operate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.

(c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.

(d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.

4. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall co-operate with the State of origin with regard to the conservation and management of such stocks.

5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

Article 67

Catadromous species

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.

2. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.

3. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68

Sedentary species

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

Article 69

Right of land-locked States

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

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

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 36 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

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

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 75
Charts and lists of geographical co-ordinates

1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

PART VI
CONTINENTAL SHELF

Article 76
Definition of the continental shelf

1. The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
(11) 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 36.

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, for both 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 specialised 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 based on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

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

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

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

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

Article 95
Immunity of warships on the high seas

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

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

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

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

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master’s certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

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

Article 98
Duty to render assistance

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

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

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

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

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

Article 99
Prohibition of the transport of slaves

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

Article 100
Duty to co-operate in the repression of piracy

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

Article 101
Definition of piracy

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

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

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.
Article 103

Definition of a pirate ship or aircraft

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

Article 104

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

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

Article 105

Seizure of a pirate ship or aircraft

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

Article 106

Liability for seizure without adequate grounds

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

Article 107

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

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

Article 108

Illicit traffic in narcotic drugs or psychotropic substances

1. All States shall co-operate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the co-operation of other States to suppress such traffic.

Article 109

Unauthorized broadcasting from the high seas

1. All States shall co-operate in the suppression of unauthorized broadcasting from the high seas.

2. For the purposes of this Convention, "unauthorized broadcasting" means the transmission of sound radio or television 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 right of 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 begin when the foreign ship or one of its boats is within 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 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 area of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, co-operate to establish subregional or regional fisheries organizations to this end.

Article 119

Conservation of the living resources of the high seas

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:

(a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.

3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

Article 120

Marine mammals

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

PART VIII

REGIME OF ISLANDS

Article 121

Régime of Islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

PART IX

ENCLOSED OR SEMI-ENCLOSED SEAS

Article 122

Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.
Article 123
Co-operation of States bordering enclosed or semi-enclosed seas

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

(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:
   (a) to acquire technology and scientific knowledge relating to activities in the Area; and
   (b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.

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

Article 145
Protection of the marine environment

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

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

(b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Article 146
Protection of human life

With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.
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 (h) of that article, the Authority, acting through existing forums or such new arrangements or agreements as may be appropriate, in which all interested parties, including both producers and consumers, participate, shall take measures necessary to promote the growth, efficiency and stability for those commodities produced from the minerals derived from the Area, at prices remunerative to producers and fair to consumers. All States Parties shall co-operate to this end.

(b) The Authority shall have the right to participate in any commodity conference dealing with those commodities and in which all interested parties including both producers and consumers participate. The Authority shall have the right to become a party to any arrangement or agreement resulting from such conferences. Participation of the Authority in any organs established under those arrangements or agreements shall be in respect of production in the Area and in accordance with the relevant rules of those organs.

(c) The Authority shall carry out its obligations under the arrangements or agreements referred to in this paragraph in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the Enterprise.

2. (a) During the interim period specified in paragraph 3, commercial production shall not be undertaken pursuant to an approved plan of work until the operator has applied for and has been issued a production authorization by the Authority. Such production authorizations may not be applied for or issued more than five years prior to the planned commencement of commercial production under the plan of work unless, having regard to the nature and timing of project development, the rules, regulations and procedures of the Authority prescribe another period.

(b) In the application for the production authorization, the operator shall specify the annual quantity of nickel expected to be recovered under the approved plan of work. The application shall include a schedule of expenditures to be made by the operator after he has received the authorization which are reasonably calculated to allow him to begin commercial production on the date planned.

(c) For the purposes of subparagraphs (a) and (b), the Authority shall establish appropriate performance requirements in accordance with Annex III, article 17.

(d) The Authority shall issue a production authorization for the level of production applied for unless the sum of that level and the levels already authorized exceeds the nickel production ceiling, as calculated pursuant to paragraph 4 in the year of issuance of the authorization, during any year of planned production falling within the interim period.
(e) When issued, the production authorization and approved application shall become a part of the approved plan of work.

(f) If the operator's application for a production authorization is denied pursuant to subparagraph (d), the operator may apply again to the Authority at any time.

3. The interim period shall begin five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. If the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period and the production ceiling originally calculated shall be adjusted accordingly. The interim period shall last 25 years or until the end of the Review Conference referred to in article 155 or until the day when such new arrangements or agreements as are referred to in paragraph 1 enter into force, whichever is 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 however that a 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 its production authorization, provided that the over-all amount of production shall not exceed that specified in the authorization. Any excess over 8 per cent and up to 20 per cent in any year, or any excess in the first and subsequent years following two consecutive years in which excesses occur, shall be negotiated with the Authority, which may require the operator to obtain a supplementary production authorization to cover additional production.

(b) Applications for such supplementary production authorizations shall be considered by the Authority only after all pending applications by operators who have not yet received production authorizations have been acted upon and due account has been taken of other likely applicants. The Authority shall be guided by the principle of not exceeding the total production allowed under the production ceiling in any year of the interim period. It shall not authorize the production under any plan of work of a quantity in excess of 46,500 metric tonnes of nickel per year.

7. The levels of production of other metals such as copper, cobalt and manganese extracted from the polymetallic nodules that are recovered pursuant to a production authorization should not be higher than those which would have been produced had the operator produced the maximum level of nickel from those nodules pursuant to this article. The Authority shall establish rules, regulations and procedures pursuant to Annex III, article 17, to implement this paragraph.

8. Rights and obligations relating to unfair economic practices under relevant multilateral trade agreements shall apply to the exploration for and exploitation of minerals from the Area. In the settlement of disputes arising under this provision, States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements.

9. The Authority shall have the power to limit the level of production of minerals from the Area, other than minerals from polymetallic nodules, under such conditions and applying such methods as may be appropriate by adopting regulations in accordance with article 161, paragraph 8.

10. Upon the recommendation of the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation or take other measures of economic adjustment assistance including co-operation with specialized agencies and other international organizations to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area. The Authority on request shall initiate studies on the problems of those States which are likely to be most seriously affected with a view to minimizing their difficulties and assisting them in their economic adjustment.
Article 152
Exercise of powers and functions by the Authority

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

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

Article 153
System of exploration and exploitation

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

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

(a) by the Enterprise, and

(b) in association with the Authority by States Parties, or state enterprizes 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.

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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), (c), (d), e), (l), (q), (r), (s), (t), (u) in cases of non-compliance by a contractor or a sponsor; (w) provided that orders issued thereunder may be binding for not more than 30 days unless confirmed by a decision taken in accordance with subparagraph (d); article 162, paragraph 2, subparagraphs (x), (y), (z); article 163, paragraph 2; article 174, paragraph 3; Annex IV, article 11.

(d) Decisions on questions of substance arising under the following provisions shall be taken by consensus: article 162, paragraph 2(m) and (o); adoption of amendments to Part XI.

(e) For the purposes of subparagraphs (d), (f) and (g), "consensus" means the absence of any formal objection. Within 14 days of the submission of a proposal to the Council, the President of the Council shall determine whether there would be a formal objection to the adoption of the proposal. If the President determines that there would be such an objection, the President shall establish and convene, within three days following such determination, a conciliation committee consisting of not more than nine members of the Council, with the President as chairman, for
the purpose of reconciling the differences and producing a proposal which can be adopted by consensus. The committee shall work expeditiously and report to the Council within 14 days following its establishment. If the committee is unable to recommend a proposal which can be adopted by consensus, it shall set out in its report the grounds on which the proposal is being opposed.

(f) Decisions on questions not listed above which the Council is authorized to take by the rules, regulations and procedures of the Authority or otherwise shall be taken pursuant to the subparagraphs of this paragraph specified in the rules, regulations and procedures or, if not specified therein, then pursuant to the subparagraph determined by the Council if possible in advance, by consensus.

(g) When the issue arises as to whether a question is within subparagraph (a), (b), (c) or (d), the question shall be treated as being within the subparagraph requiring the higher or highest majority or consensus as the case may be, unless otherwise decided by the Council by the said majority or by consensus.

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

Article 162
Powers and functions

1. The Council is the executive organ of the Authority. The Council shall have the power to establish, in conformity with this Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority on any question or matter within the competence of its Authority.

2. In addition, the Council shall:

(a) supervise and co-ordinate the implementation of the provisions of this Part on all questions and matters within the competence of the Authority and invite the attention of the Assembly to cases of non-compliance;

(b) propose to the Assembly a list of candidates for the election of the Secretary-General;

(c) recommend to the Assembly candidates for the election of the members of the Governing Board of the Enterprise and the Director-General of the Enterprise;

(d) establish, as appropriate, and with due regard to economy and efficiency, such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Part. In the composition of subsidiary organs, emphasis shall be placed on the need for members qualified and competent in relevant technical matters dealt with by those organs provided that due account shall be taken of the principle of equitable geographical distribution and of special interests;

(e) adopt its rules of procedure including the method of selecting its president;

(f) enter into agreements with the United Nations or other international organizations on behalf of the Authority and within its competence, subject to approval by the Assembly;

(g) consider the reports of the Enterprise and transmit them to the Assembly with its recommendations;

(h) present to the Assembly annual reports and such special reports as the Assembly may request;

(i) issue directives to the Enterprise in accordance with article 170;

(j) approve plans of work in accordance with Annex III, article 6. The Council shall act upon each plan of work within 60 days of its submission by the Legal and Technical Commission at a session of the Council in accordance with the following procedures:

(i) if the Commission recommends the approval of a plan of work, it shall be deemed to have been approved by the Council if no member of the Council submits in writing to the President within 14 days a specific objection alleging non-compliance with the requirements of Annex III, article 6. If there is an objection, the conciliation procedure set forth in article 161, paragraph 8(e), shall apply. If, at the end of the conciliation procedure, the objection is still maintained, the plan of work shall be deemed to have been approved by the Council unless the Council disapproves it by consensus among its members excluding any State or States making the application or sponsoring the applicant;

(ii) if the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may approve the plan of work by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members participating in the session;

(k) approve plans of work submitted by the Enterprise in accordance with Annex IV, article 12, 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.

Art. 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 organisations with competence in the subject matter of such consultation.

Article 164
The Economic Planning Commission

1. Members of the Economic Planning Commission shall have appropriate qualifications such as those relevant to mining, management of mineral resource activities, international trade or international economics. The Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications. The Commission shall include at least two members from developing States whose exports of the categories of minerals to be derived from the Area have a substantial bearing upon their economies.

2. The Commission shall:

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

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

(c) examine any situation likely to lead to the adverse effects referred to in article 150, subparagraph (h), brought to its attention by the State Party or States Parties concerned, and make appropriate recommendations to the Council;

(d) propose to the Council for submission to the Assembly, as provided in article 151, paragraph 10, a system of compensation or other measures of economic adjustment assistance for developing States which suffer adverse effects caused by activities in the Area. The Commission shall make the recommendations to the Council that are necessary for the application of the system or other measures adopted by the Assembly in specific cases.

Article 165
The Legal and Technical Commission

1. Members of the Legal and Technical Commission shall have appropriate qualifications such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise. The Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications.

2. The Commission shall:

(a) make recommendations with regard to the exercise of the Authority's functions upon the request of the Council;

(b) review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission shall base its recommendations solely on the grounds stated in Annex III and shall report fully thereon to the Council;

(c) supervise, upon the request of the Council, activities in the Area, where appropriate, in consultation and collaboration with any entity carrying out such activities or State or States concerned and report to the Council;

(d) prepare assessments of the environmental implications of activities in the Area;

(e) make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;

(f) formulate and submit to the Council the rules, regulations and procedures referred to in article 162, paragraph 2(o), taking into account all relevant factors including assessments of the environmental implications of activities in the Area;

(g) keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;

(h) make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area, ensure that existing regulations are adequate and are complied with and 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);
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.

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. 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(e);

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

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

(d) funds borrowed pursuant to article 174;

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

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

Article 172
Annual budget of the Authority

The Secretary-General shall draft the proposed annual budget of the Authority and submit it to the Council. The Council shall consider the proposed annual budget and submit it to the Assembly, together with any recommendations thereof. 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(c);

(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(d).

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

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

Article 175
Annual audit

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

Article 176
Legal status

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

Article 177
Privileges and Immunities

To enable the Authority to exercise its functions, it shall enjoy in the territory of each State Party the privileges and immunities set forth in this subsection. The privileges and immunities relating to the Enterprise shall be those set forth in Annex IV, article 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 whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Article 180
Exemption from restrictions, regulations, controls and moratoria

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

Article 181
Archives and official communications of the Authority

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

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

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

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

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

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

(b) if they are not nationals of that State Party, the same exemptions from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of 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 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;

(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. (a) Disputes concerning the interpretation or application of a contract referred to in article 187, subparagraph (c)(i), shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree. A commercial arbitral tribunal to which the dispute is submitted shall have no jurisdiction to decide any question of interpretation of this Convention. When the dispute also involves a question of the interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question shall be referred to the 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 Rules1 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 juridical person is a party to a dispute referred to in article 187, the sponsoring State shall be given notice thereof and shall have the right to participate in the proceedings by submitting written or oral statements.

2. If an action is brought against a State Party by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), the respondent State may request the State sponsoring that person to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange to be represented by a juridical person of its nationality.

Article 191

Advisory opinions

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

PART XII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

SECTION 1. GENERAL PROVISIONS

Article 192

General obligation

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

Article 193

Sovereign right of States to exploit their natural resources

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

Article 194

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

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

(a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;

(b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;

(c) pollution from installations and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;

(d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.
5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

**Article 195**

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

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

**Article 196**

*Use of technologies or introduction of alien or new species*

1. States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

2. This article does not affect the application of this Convention regarding the prevention, reduction and control of pollution of the marine environment.

**SECTION 2. GLOBAL AND REGIONAL CO-OPERATION**

**Article 197**

*Co-operation on a global or regional basis*

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

**Article 198**

*Notification of imminent or actual damage*

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

**Article 199**

*Contingency plans against pollution*

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

**Article 200**

*Studies, research programmes and exchange of information and data*

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

**Article 201**

*Scientific criteria for regulations*

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

**SECTION 3. TECHNICAL ASSISTANCE**

**Article 202**

*Scientific and technical assistance to developing States*

States shall, directly or through competent international organizations:

(a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, inter alia:

(i) training of their scientific and technical personnel;

(ii) facilitating their participation in relevant international programmes;

(iii) supplying them with necessary equipment and facilities;

(iv) enhancing their capacity to manufacture such equipment;

(v) advice on and developing facilities for research, monitoring, educational and other programmes;

(b) provide appropriate assistance, especially to developing States, for the 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 harmonize 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 69.

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 permission 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 express
prior approval of the coastal State, which has the right to permit, regulate
and control such dumping after due consideration of the matter with other
States which by reason of their geographical situation may be adversely
affected thereby.

6. National laws, regulations and measures shall be no less effective
in preventing, reducing and controlling such pollution than the global rules
and standards.

Article 211
Pollution from vessels

1. States, acting through the competent international 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
organisation. Whenever such requirements are established in identical form by
two or more coastal States in an endeavour to harmonize policy, the
communication shall indicate which States are participating in such
co-operative arrangements. Every State shall require the master of a vessel
flying its flag or of its registry, when navigating within the territorial sea of
a State participating in such co-operative arrangements, to furnish, upon
the request of that State, information as to whether it is proceeding to a
State of the same region participating in such co-operative arrangements and,
in so doing, whether it complies with the port entry requirements of
that State. This article is without prejudice to the continued exercise by a
vessel of its right of innocent passage or to the application of article 25,
paragraph 2.

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

5. Coastal States, for the purpose of enforcement as provided for in
section 6, may in respect of their exclusive economic zones adopt laws and
regulations for the prevention, reduction and control of pollution from vessels
conforming to and giving effect to generally accepted international
rules and standards established through the competent international
organization or general diplomatic conference.

6. (a) Where the international rules and standards referred to in
paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a
particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory
measures for the prevention of pollution from vessels is required
for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the
protection of its resources and the particular character of its
traffic, the coastal States, after appropriate consultations
through the competent international organization with any other
States concerned, may, for that area, direct a communication to
that organization, submitting scientific and technical evidence in support of its proposal. 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 15 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 organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

Article 214
Enforcement with respect to pollution from sea-bed activities

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

Article 215
Enforcement with respect to pollution from activities in the Area

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

Article 216
Enforcement with respect to pollution by dumping

1. Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:

(a) by the coastal State with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf;

(b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;

(c) by any State with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals.

2. No State shall be obliged by virtue of this article to institute proceedings when another State has already instituted proceedings in accordance with this article.

Article 217
Enforcement by Flag States

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

3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates, in conformity with the actual condition of the vessels, are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose co-operation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.

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

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

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

Article 218
Enforcement by port States

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

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

3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, in conformity with the actual condition of the vessels, be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose co-operation could be useful in clarifying the circumstances of the case. States shall 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
Measures relating to seaworthiness of vessels to avoid pollution

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

Article 220
Enforcement by coastal States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.

2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.
3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

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

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

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

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

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

Article 221

Measures to avoid pollution arising from maritime casualties

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

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

Article 222

Enforcement with respect to pollution from or through the atmosphere

States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 211, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation.

SECTION 7. SAFEGUARDS

Article 223

Measures to facilitate proceedings

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

Article 224

Exercise of powers of enforcement

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

Article 225

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

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

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

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 research vessel 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 it 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 vessel, 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 246; 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 research or 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 paragraph 1 shall provide to the above-mentioned land-locked and geographically disadvantaged States, at their request, the information and data specified in article 249, paragraph 1(d), subject to the provisions of article 249, paragraph 2.

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

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

Article 256
Marine scientific research in the Area

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

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

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

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

Article 258
Deployment and use

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

Article 259
Legal status

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

Article 260
Safety zones

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

Article 261
Non-interference with shipping routes

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

Article 262
Identification markings and warning signals

Installations or equipment referred to in this section shall bear identification markings indicating the State of registry or the international organization to which they belong and shall have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account rules and standards established by competent international organizations.
SECTION 5. RESPONSIBILITY AND LIABILITY

Article 263
Responsibility and liability
1. States and competent international organisations 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 organisations 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 organisations, and shall provide compensation for damage resulting from such measures.

3. States and competent international organisations 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 organisation authorised 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 organisations, 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 organisations, 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 organisations, 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 co-ordinate their activities, including any regional or global programmes, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.

Article 273
Co-operation with international organizations and the Authority

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

Article 274
Objectives of the Authority

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

(a) on the basis of the principle of equitable geographical distribution, nationals of developing States, whether coastal, 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 TECHNOCENTRES

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 demelisation technologies;

(b) management studies;

(c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;

(d) organization of regional conferences, seminars and symposia;

(e) acquisition and processing of marine scientific and technological data and information;

(f) prompt dissemination of results of marine scientific and technological research in readily available publications;

(g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;

(h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;

(i) technical co-operation with other States of the region.

SECTION 4. CO-OPERATION AMONG INTERNATIONAL ORGANIZATIONS

Article 278

Co-operation among international organizations

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

PART XV

SETTLEMENT OF DISPUTES

SECTION 1. GENERAL PROVISIONS

Article 279

Obligation to settle disputes by peaceful means

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

Article 280

Settlement of disputes by any peaceful means chosen by the parties

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

Article 281

Procedure where no settlement has been reached by the parties

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

2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

Article 282

Obligations under general, regional or bilateral agreements

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

Article 283

Obligation to exchange views

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

Article 284
Conciliation

1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.

2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.

3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.

4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

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

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

SECTION 2. COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS

Article 286
Application of procedures under this section

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

Article 287
Choice of procedure

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

(a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;

(b) the International Court of Justice;

(c) an arbitral tribunal constituted in accordance with Annex VII;

(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

6. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.

7. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.

8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.
**Article 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 *proprò 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 4, 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 sequo 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 *proprò 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) 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 recognised 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 territorial 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 sixty-ninth instrument of ratification or accession.

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

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

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

5. The Authority and its organs shall act in accordance with resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment and with decisions of the Preparatory Commission taken pursuant to that resolution.
Article 309
Reservations and exceptions

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

Article 310
Declarations and statements

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

Article 311
Relation to other conventions and international agreements

1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.

2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

4. States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depository of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides.

5. This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.

6. States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

Article 312
Amendment

1. After the expiry of a period of 10 years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, other than those relating to activities in the Area, and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within 12 months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

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

Article 313
Amendment by simplified procedure

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

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

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

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

1. A State Party may, by written communication addressed to the Secretary-General of the Authority, propose an amendment to the provisions of this Convention relating exclusively to activities in the Area, including Annex VII, 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 50 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.
(iii) texts of amendments referred to in paragraph 2(d), for their information.

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

**Article 320**

**Authentic texts**

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

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

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

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

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**Annex I. Highly Migratory Species**

1. Albacore tuna: *Thunnus alalunga*.
2. Bluefin tuna: *Thunnus thynnus*.
4. Skipjack tuna: *Katsuwonus pelamis*.
5. Yellowfin tuna: *Thunnus albacares*.
7. Little tuna: *Euthynnus alletteratus; Euthynnus affinis*.
8. Southern bluefin tuna: *Thunnus maccoyii*.
9. Frigate mackerel: *Auxis thazard; Auxis rochei*.
11. Marlines: *Tetrapturus angustirostris; Tetrapturus belone; Tetrapturus pfluegeri; Tetrapturus albidus; Tetrapturus audax; Tetrapturus georgei; Makaira mazara; Makaira indica; Makaira nigricans*.
13. Swordfish: *Xiphias gladius*.
14. Sauries: *Scomberesox saurus; Cololabis saira; Cololabis adocetus; Scomberesox saurus scombroidei*.
15. Dolphin: *Coryphaena hippurus; Coryphaena equilis*.
16. Oceanic sharks: *Hexanchus griseus; Cetorhynchus maximus; Family Alopidae; Rhincodon typus; Family Cercharhinidae; Family Sphyrinae; Family Isuridae*.
17. Cetaceans: Family *Physeteridae*; Family *Selenorapteridae*; Family *Salenidae*; Family *Kochichthiidae*; Family *Monodontidae*; Family *Sphingidae*; Family *Delphinidae*. 
ANNEX II. COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Article 1

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

Article 2

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

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

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

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

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

Article 3

1. The functions of the Commission shall be:

(a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea.\(^1\)

(b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).

2. The Commission may co-operate, to the extent considered necessary and useful, with the Intergovernmental Oceanographic Commission of UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information which might be of assistance in discharging the Commission's responsibilities.

Article 4

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

Article 5

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

Article 6

1. The sub-commission shall submit its recommendations to the Commission.

2. Approval by the Commission of the recommendations of the sub-commission shall be by a majority of two thirds of Commission members present and voting.

3. The recommendations of the Commission shall be submitted in writing to the coastal State which made the submission and to the Secretary-General of the United Nations.

Article 7

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

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\(^1\) See vol. 1835, p. 291.
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
Explanation 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;
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, without exception, shall as part of his application undertake:

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

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

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

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

Article 5
Transfer of technology

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

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

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

   (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 contract 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;
Article 6
Approval of plans of work

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for approval of a plan of work in the form of a contract, the Authority shall first ascertain whether:

(a) the applicant has complied with the procedures established for applications in accordance with article 4 of this Annex and has given the Authority the undertakings and assurances required by that article. In cases of non-compliance with these procedures or in the absence of any of these undertakings and assurances, the applicant shall be given 45 days to remedy these defects;

(b) the applicant possesses the requisite qualifications provided for in article 4 of this Annex.

3. All proposed plans of work shall be taken up in the order in which they are received. The proposed plans of work shall comply with and be governed by the relevant provisions of this Convention and the rules, regulations and procedures of the Authority, including those on operational requirements, financial contributions and the undertakings concerning the transfer of technology. If the proposed plans of work conform to these requirements, the Authority shall approve them provided that they are in accordance with the uniform and non-discriminatory requirements set forth in the rules, regulations and procedures of the Authority, unless:

(a) part or all of the area covered by the proposed plan of work is included in an approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority;

(b) part or all of the area covered by the proposed plan of work is disapproved by the Authority pursuant to article 162, paragraph 2 (x); or

(c) the proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved areas that, together with either part of the area covered by the application for a plan of work, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved areas which, taken together, constitute 2 per cent of the total sea-bed area which is not reserved or disapproved for exploitation pursuant to article 162, paragraph (2) (x).
4. For the purpose of the standard set forth in paragraph 3(c), a plan of work submitted by a partnership or consortium shall be counted on a pro rata basis among the sponsoring States Parties involved in accordance with article 4, paragraph 3, of this Annex. The Authority may approve plans of work covered by paragraph 3(c) if it determines that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.

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

Article 7
Selection among applicants for production authorisations

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 authorisations submitted during the immediately preceding period. The Authority shall issue the authorisations 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 authorisations 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 authorisation.

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

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

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

Article 8
Reservation of areas

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

Article 9
Activities in reserved areas

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

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with Annex XIV, 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 XII, 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 XII 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) (i) The first period of commercial production referred to in subparagraphs (a) and (c) shall commence in the first accounting year of commercial production and terminate in the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus, as follows:

In the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less cash surplus in that year. In each subsequent accounting year, unrecovered development costs shall equal the unrecovered development costs at the end of the preceding accounting year, plus interest thereon at the rate of 10 per cent per annum, plus development costs incurred in the current accounting year and less contractor's cash surplus in the current accounting year. The accounting year in which unrecovered development costs become zero for the first time shall be the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus. The contractor's cash surplus in any accounting year shall be his gross proceeds less his operating costs and less his payments to the Authority under subparagraph (c).

(ii) The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract.

(e) "Attributable net proceeds" means the product of the contractor's net proceeds and the ratio of the development costs in the mining sector to the contractor's development costs. If the contractor engages in mining, transporting polymetallic nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the contractor's net proceeds. Subject to subparagraph (a), 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 (3).

(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)(iii), "contractor's gross proceeds" means the gross revenues from the sale of the semi-processed metals from the polymetallic nodules recovered from the area covered by the contract, and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority.

"Contractor's development costs" means:

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

(ii) 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 not 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 subparagraphs (h)(i) and (n)(iv) shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The contractor's development costs incurred subsequent to the commencement of commercial production referred to in subparagraphs (h)(ii) and (n)(iv) shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract.

"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:

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

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

(iii) "contractor's gross proceeds" means the gross revenues from the sale of the polymetallic nodules, and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority;

(iv) "contractor's development costs" means all expenditures incurred prior to the commencement of commercial production as set forth in subparagraph (h)(i), and all expenditures incurred subsequent to the commencement of commercial production as set forth in subparagraph (h)(ii), which are directly related to the mining of the resources of the area covered by the contract, in conformity with generally recognized accounting principles;

(v) "contractor's operating costs" means the contractor's operating costs as in subparagraph (k) which are directly related to the mining of the resources of the area covered by the contract in conformity with generally recognized accounting principles;

(vi) "return on investment" in any accounting year means the ratio of the contractor's net proceeds in that year to the contractor's development costs. For the purpose of computing this ratio, the contractor's development costs shall include expenditures on new or replacement equipment less the original cost of the equipment replaced.
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 tenets and condition of the plan of work, at time intervals determined by the Authority all data which are both necessary for and relevant to the effective exercise of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

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

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

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

Article 16
Exclusive right to explore and exploit

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

Article 17
Rules, regulations and procedures of the Authority

1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(f)(ii), and article 162, paragraph 2(a)(i), 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 subsequently to approving the plan of work.

(c) Performance requirements:

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

(d) Categories of resources:

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

1. that certain resources require the use of similar mining methods; and

2. that some resources can be developed simultaneously without undue interference between operators developing different resources in the same area.

(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 16
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 on the transferee 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(e). 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(f);
(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 organisation, 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 landlocked and geographically disadvantaged among them.

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

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

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

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

Article 13
Legal status, privileges and immunities

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

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

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

(b) The property and assets of the Enterprise, wherever located
and by whomever held, shall be free from discriminatory
restrictions, regulations, controls and moratoria of any nature.

(c) The Enterprise and its employees shall respect local laws and
regulations in any State or territory in which the Enterprise or
its employees may do business or otherwise act.

(d) States Parties shall ensure that the Enterprise enjoys all
rights, privileges and immunities accorded by them to entities
conducting commercial activities in their territories. These
rights, privileges and immunities shall be accorded to the
Enterprise on no less favourable a basis than that on which they
are accorded to entities engaged in similar commercial activities.
If special privileges are provided by States Parties for developing
States or their commercial entities, the Enterprise shall enjoy
those privileges on a similarly preferential basis.

(e) States Parties may provide special incentives, rights,
privileges and immunities to the Enterprise without the obligation
to provide such incentives, rights, privileges and immunities to
other commercial entities.

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

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

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

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

Article 1

Institution of proceedings

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

Article 2

List of conciliators

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

Article 3

Constitution of conciliation commission

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

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

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

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

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

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

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

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

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

Article 4

Procedure

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

Article 5

Amicable settlement

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

Article 6

Functions of the commission

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

Report

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

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

Article 8

Termination

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

Article 9

Fees and expenses

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

Article 10

Right of parties to modify procedure

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

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

Article 11

Institution of proceedings

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

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

Article 12

Failure to reply or to submit to conciliation

The failure of a party or parties to the dispute to reply to notification of institution of proceedings or to submit to such proceedings shall not constitute a bar to the proceedings.
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 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 my have begun before the date of their replacement.

4. In the case of the resignation of a member of the Tribunal, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of that letter.

Article 6
Vacancies

1. Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Registrar shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in article 4 of this Annex, and the date of the election shall be fixed by the President of the Tribunal after consultation with the States Parties.

2. A member of the Tribunal elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
Article 7
Incompatible activities

1. No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the sea-bed or other commercial use of the sea or the sea-bed.

2. No member of the Tribunal may act as agent, counsel or advocate in any case.

3. Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

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

1. No member of the Tribunal may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity.

2. If, for some special reason, a member of the Tribunal considers that he should not take part in the decision of a particular case, he shall so inform the President of the Tribunal.

3. If the President considers that for some special reason one of the members of the Tribunal should not sit in a particular case, he shall give him notice accordingly.

4. Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

Article 9
Consequence of ceasing to fulfil required conditions

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

Article 10
Privileges and immunities

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

Article 11
 Solemn declaration by members

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

Article 12
President, Vice-President and Registrar

1. The Tribunal shall elect its President and Vice-President for three years; they may be re-elected.

2. The Tribunal shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

3. The President and the Registrar shall reside at the seat of the Tribunal.

Article 13
Quorum

1. All available members of the Tribunal shall sit; a quorum of 11 elected members shall be required to constitute the Tribunal.

2. Subject to article 17 of this Annex, the Tribunal shall determine which members are available to constitute the Tribunal for the consideration of a particular dispute, having regard to the effective functioning of the chambers as provided for in articles 14 and 15 of this Annex.

3. All disputes and applications submitted to the Tribunal shall be heard and determined by the Tribunal, unless article 14 of this Annex applies, or the parties request that it shall be dealt with in accordance with article 15 of this Annex.

Article 14
Sea-Bed Disputes Chamber

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

Article 15
Special chambers

1. The Tribunal may form such chambers, composed of three or more of its elected members, as it considers necessary for dealing with particular categories of disputes.

2. The Tribunal shall form a chamber for dealing with a particular dispute submitted to it if the parties so request. The composition of such a chamber shall be determined by the Tribunal with the approval of the parties.

3. With a view to the speedy dispatch of business, the Tribunal shall form annually a chamber composed of five of its elected members which may hear and determine disputes by summary procedure. Two alternative members shall be selected for the purpose of replacing members who are unable to participate in a particular proceeding.

4. Disputes shall be heard and determined by the chambers provided for in this article if the parties so request.

5. A judgment given by any of the chambers provided for in this article and in article 14 of this Annex shall be considered as rendered by the Tribunal.
Article 16
Rules of the Tribunal

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

Article 17
Nationality of members

1. Members of the Tribunal of the nationality of any of the parties to a dispute shall retain their right to participate as members of the Tribunal.

2. If the Tribunal, when hearing a dispute, includes upon the bench a member of the nationality of one of the parties, any other party may choose a person to participate as a member of the Tribunal.

3. If the Tribunal, when hearing a dispute, does not include upon the bench a member of the nationality of the parties, each of those parties may choose a person to participate as a member of the Tribunal.

4. This article applies to the chambers referred to in articles 14 and 15 of this Annex. In such cases, the President, in consultation with the parties, shall request specified members of the Tribunal forming the chamber, as many as necessary, to give place to the members of the Tribunal of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the members specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be considered as one party only. Any doubt on this point shall be settled by the decision of the Tribunal.

6. Members chosen in accordance with paragraphs 2, 3 and 4 shall 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. PROCEEDURES

Article 24
Institution of proceedings

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

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

3. The Registrar shall also notify all States Parties.

Article 25
Provisional measures

1. In accordance with article 290, the Tribunal and its 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 13, paragraph 3, of this Annex. Notwithstanding article 15, paragraph 4, of this Annex, such provisional measures may be adopted at the request of any party to the dispute. They shall be subject to review and revision by the Tribunal.

Article 26
Hearing

1. The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President. If neither is able to preside, the senior judge present of the Tribunal shall preside.

2. The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted.

Article 27
Conduct of case

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

Article 28
Default

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

Article 29
Majority for decision

1. All questions shall be decided by a majority of the members of the Tribunal who are present.

2. In the event of an equality of votes, the President or the member of the Tribunal who acts in his place shall have a casting vote.

Article 30
Judgment

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the members of the Tribunal who have taken part in the decision.

3. If the judgment does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion.

4. The judgment shall be signed by the President and by the Registrar. It shall be read in open court; due notice having been given to the parties to the dispute.

Article 31
Request to intervene

1. Should a State Party consider that it has an interest of a legal nature which may be affected by the decision in any dispute, it may submit a request to the Tribunal to be permitted to intervene.

2. It shall be for the Tribunal to decide upon this request.

3. If a request to intervene is granted, the decision of the Tribunal in respect of the dispute shall be binding upon the intervening State Party in so far as it relates to matters in respect of which the 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 elected members, who shall hold office for the remainder of his predecessor's term.

7. A quorum of seven of the members selected by the Tribunal shall be required to constitute the Chamber.

Article 36
Ad Hoc 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 appoint an appointment or from among its members, after consultation with the parties.

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

Article 37
Access

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

Article 38
Applicable law

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

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

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

Article 39
Enforcement of decisions of the Chamber

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

Article 40
Applicability of other sections of this Annex

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

2. In the exercise of its functions relating to advisory opinions, the Chamber shall be guided by the provisions of this Annex relating to procedure before the Tribunal to the extent to which it recognises 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.
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 of the tribunal 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 of the tribunal 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 to this Convention. At the time of signature an international organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States which are signatories, and the nature and extent of that competence.

Article 3
Formal confirmation and accession

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

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

Article 4
Extent of participation and rights and obligations

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

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

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

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

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

Article 5
Declarations, notifications and communications

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

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

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

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

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

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

Article 6
Responsibility and liability

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

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

Article 7
Settlement of disputes

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

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

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

Article 8
Applicability of Part XVII

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

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

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

(ii) the instrument of formal confirmation or of accession of an international organization to an amendment, the entire subject-matter over which the international organization has competence under article 5 of this Annex, shall be considered to be the instrument of ratification or accession of each of the member States which are States Parties, for the purposes of applying article 316, paragraphs 1, 2 and 3.
(iii) the instrument of formal confirmation or of accession of the international organization shall not be taken into account in the application of article 316, paragraphs 1 and 2, with regard to all other amendments;

(c) (i) an international organization may not denounce this Convention in accordance with article 317 if any of its member States is a State Party and if it continues to fulfill the qualifications specified in article 1 of this Annex;

(iii) an international organization shall denounce this Convention when none of its member States is a State Party or if the international organization no longer fulfills the qualifications specified in article 1 of this Annex. Such denunciation shall take effect immediately.
No. 31364

MULTILATERAL


Authentic texts: Arabic, Chinese, English, French, Russian and Spanish.
Registered ex officio on 16 November 1994.

MULTILATÉRAL


Textes authentiques : arabe, chinois, anglais, français, russe et espagnol.
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 (*), signed, notified the Secretary-General of its provisional adoption or had acceded to it, in accordance with Article 7 (1):

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MINDFUL of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (hereinafter referred to as "Part XI"),

Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1

Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

(FOOTNOTE 1 CONTINUED FROM PAGE 42)

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Article 2

Relationship between this Agreement and Part XI

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

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

Article 3

Signature

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

Article 4

Consent to be bound

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

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

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

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

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

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

   (d) Accession.

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

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

Article 5

Simplified procedure

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

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

Article 6

Entry into force

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

Article 7

Provisional application

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

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

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

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

(d) States which accede to this Agreement.

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

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

Article 8

States Parties

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

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

Article 9

Depository

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10

Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

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

(ii) Notwithstanding the provisions of resolution II, paragraph 8 (a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11 (a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US$ 250,000 paid pursuant to resolution II, paragraph 7 (a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a) (i) shall include arrangements which shall be similar to and no less favourable than those agreed with any registered pioneer investor referred to in subparagraph (a) (ii). If any of the States or entities or any components of such entities referred to in subparagraph (a) (i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a) (ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a) (i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;

(v) Resolution II, paragraph 8 (c), shall be interpreted and applied in accordance with subparagraph (a) (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 (a), 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.
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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

[English Text — Texte anglais]

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 implemen-
tation 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 arti-
cle 5.

3. States shall give due consideration to the respective
capacities of developing States to apply articles 5, 6 and 7
within areas under national jurisdiction and their need for
assistance as provided for in this Agreement. To this end,
Part VII applies mutatis mutandis in respect of areas under
national jurisdiction.

Article 4
Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdic-
tion 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 sci-
   entific evidence available and are designed to maintain or
   restore stocks at levels capable of producing maximum sus-
   tainable 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-
asures;

(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.

**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-

**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 10
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 fulfil 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 trans-shipment 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 moni-
toring systems, including, as appropriate, satellite transmitter systems, in accordance with any national pro-
grammes and those which have been subregionally, region-
ally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI
COMPLIANCE AND ENFORCEMENT
Article 19

Compliance and enforcement by the flag State
1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;
(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;
(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20
International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional proce-
dure 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, fulfill 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 fulfill its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.
13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies mutatis mutandis to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

**Article 22**

**Basic procedures for boarding and inspection pursuant to article 21**

1. The inspecting State shall ensure that its duly authorized inspectors:
(a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
(b) initiate notice to the flag State at the time of the boarding and inspection;
(c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
(d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
(e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State
shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:
(a) accept and facilitate prompt and safe boarding by the inspectors;
(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
(f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23
Measures taken by a port State
1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII
REQUIREMENTS OF DEVELOPING STATES
Article 24
Recognition of the special requirements of developing States
1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:
(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25
Forms of cooperation with developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:
(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and
(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26
Special assistance in the implementation of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII
PEACEFUL SETTLEMENT OF DISPUTES

Article 27
Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or 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 arbitrament 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 fulfill in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not consti-
Article 38
Ratification
This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39
Accession
This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40
Entry into force
1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41
Provisional application
1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate

provisional application.

Article 42
Reservations and exceptions
No reservations or exceptions may be made to this Agreement.

Article 43
Declarations and statements
Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44
Relation to other agreements
1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification
or suspension for which it provides.

Article 45
Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and
(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 46
Denunciation

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

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

Article 47
Participation by international organizations

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply mutatis mutandis to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) article 2, first sentence; and
(b) article 3, paragraph 1.

2. In cases where an international organization referred to
in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 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 managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

**Article 2**

**Principles of data collection, compilation and exchange**

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seines, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;

(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

**Article 3**

**Basic fishery data**

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

(a) time series of catch and effort statistics by fishery and fleet;

(b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings]
(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

(d) effort statistics appropriate to each fishing method; and

(e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

(a) composition of the catch according to length, weight and sex;

(b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Article 4
Vessel data and information

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 specifica-

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.
**Sixty-eighth session**

Item 76 (a) of the provisional agenda*

**Oceans and the law of the sea**

**Report of the Secretary-General** *

**Addendum**

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## Summary

The present report is submitted pursuant to paragraph 272 of General Assembly resolution 67/78, 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 67/78, for consideration at its sixty-eighth 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 the present report.

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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 and other developments related to ocean affairs and the law of the sea. The report should be read in conjunction with (a) the report of the Secretary-General on oceans and the law of the sea (A/68/71), which addressed the topic of focus of the fourteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (the Consultative Process); (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/68/82); (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 fourteenth meeting (A/68/159); (d) the summary of proceedings of the intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group in accordance with the terms of reference annexed to General Assembly resolution 67/78, prepared by 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 (A/AC.276/6); (e) the report of the twenty-third Meeting of States Parties to the United Nations Convention on the Law of the Sea (SPLOS/263); as well as other relevant documents, such as the statements by the Chair of the Commission on the Limits of the Continental Shelf on progress of work in the Commission (CLCS/76, 78 and 80).

2. The present report covers the period between 1 September 2012 and 31 August 2013.

2. The Secretary-General is grateful to the United Nations specialized agencies, programmes and bodies, as well as other intergovernmental organizations, which contributed information to the present report.


A. Status of the Convention and its implementing agreements


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During the reporting period, declarations under article 287 of the Convention were made upon accession by Timor-Leste on 20 December 2012, and by Madagascar, following its ratification in August 2012. Argentina partially withdrew a declaration made upon ratification with respect to article 298 of the Convention.

B. Meeting of States Parties

5. A special Meeting of States Parties to the Convention was held on 19 December 2012 to elect one member of the Commission on the Limits of the Continental Shelf. The Meeting elected Szymon Uğcinowicz (Poland) to serve from the date of election until 15 June 2017. The Meeting elected Szymon Uğcinowicz (Poland) to serve from the date of election until 15 June 2017.

6. The twenty-third Meeting of States Parties to the Convention was held in New York from 10 to 12 June 2013. Among other matters, the States parties decided to establish an open-ended working group to consider the conditions of service of the members of the Commission on the Limits of the Continental Shelf.

C. Commission on the Limits of the Continental Shelf and its workload

7. The workload of the Commission has continued to increase. During the reporting period, five new submissions and one partial revised submission were received. The Commission adopted six sets of recommendations.

8. To date, the Commission has adopted 18 sets of recommendations. The Commission has held 15 sessions per year to 21 in order to address its considerable workload. Its thirty-first and thirty-second sessions, held from 15 July to 30 August 2013, will be held in New York from 7 October to 22 November 2013.

9. The benefits of utilizing this product specification are manifold and could include: (a) greater and unified accuracy of the location of the outer limits of the continental shelf and its extension as well as the outer limits of the exclusive economic zone; (b) a stronger basis for the definition and delimitation of the limits of national jurisdiction and the outer limits of the continental shelf; (c) the establishment of a consistent and transparent framework for the determination of the outer limits of the continental shelf; and (d) improved management of resources.

D. International Seabed Authority

9. To date, 16 plans of work for exploration in the Area have been approved. The Authority has also adopted a new mining code, which was developed in response to the Authority's mandate to ensure that the benefits of the exploitation of the Area are shared equitably among all States, in accordance with the purposes of the Agreement. The new mining code aims to ensure that the benefits of the exploitation of the Area are shared equitably among all States, in accordance with the purposes of the Agreement. The new mining code aims to ensure that the benefits of the exploitation of the Area are shared equitably among all States, in accordance with the purposes of the Agreement.
appropriate intergovernmental process, it would be used by the Division to store and process deposits and disseminate the deposited information through its website.

15. The draft project specification having been developed, it is essential that Member States provide further guidance to the Division and IHO with a view to the adoption of the specification and its subsequent maintenance.

16. The Division continues to publish information on the deposit of charts and geographical coordinates and other developments, including in the most recent issues of the Law of the Sea Bulletin, Nos. 80 to 82. Actions by States parties in implementing the United Nations Convention on the Law of the Sea were given publicity through Law of the Sea Information Circular No. 36 and No. 37. Information on State practice is also available on the website of the Division. 13

IV. Developments relating to international shipping activities

17. The maintenance of ships and navigation, in particular through the implementation and enforcement of relevant international conventions, continues to be of critical importance. The present section sets out recent main developments in ensuring the safety of ships and navigation and should be read together with sections V and VI and paragraphs 96 and 97 below.

18. Ensuring the safety of ships and navigation, in particular through the implementation and enforcement of relevant international conventions, continues to be of critical importance. The present section sets out recent main developments

19. The measures that flag States are required to implement and enforce under the United Nations Convention on the Law of the Sea to ensure safety at sea must conform to the generally accepted international rules, procedures and practices contained in the legal instruments developed by the competent international organizations. A comprehensive body of global rules and regulations to regulate maritime safety has been developed within the International Maritime Organization (IMO), the International Labour Organization (ILO), the International Atomic Energy Agency (IAEA), IHO and other organizations.

20. The IHO secretariat has noted that many government-sponsored surveying activities are now decreasing as a result of financial constraints and conflicting priorities, notwithstanding the fact that hydrographic information has an impact on what can be achieved in terms of economic and sustainability at sea. It is also noted that the lack of adequate data impedes progress and economic development. 15

21. Over the past year, IMO has continued to further develop regulations, procedures and practices on ship construction, equipment and seafariness contained in IMO conventions, including the International Convention for the Safety of Life at Sea, 1974, the International Convention on Load Lines, 1966 and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, including safety standards for passenger ships. For example, it adopted an amendment to the International Convention for the Safety of Life at Sea requiring new ships to be constructed to reduce on-board noise and to protect personnel from noise. IMO also amended the latter Convention in order to provide for the mandatory application of the Code for Recognized Organizations. The Code contains, inter alia, criteria against which recognized organizations that may be authorized by flag States to carry out surveys and issue certificates on their behalf are assessed and authorized/recognized. It also provides guidance for subsequent monitoring of recognized organizations by administrations. Furthermore, also with respect to the International Convention for the Safety of Life at Sea, in the wake of the Costa Concordia incident, IMO adopted a new regulation, III/17-1, which will require ships to have plans and procedures to recover persons from the water; it also adopted related guidelines, as well as a resolution on the implementation of regulation III/17-1 for ships other than those engaged in international voyages. 16

22. The adoption at a diplomatic conference in October 2012, of the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, is expected to play a significant part in helping to improve safety standards and reduce the loss of life at sea. The Agreement updates and amends a number of provisions of the Torremolinos Protocol relating to the safety of fishing vessels, with a view to addressing the technical and legal issues that had prevented the Protocol from entering into force. The Agreement will enter into force 12 months after the date on which not less than 22 States, the aggregate number of whose fishing vessels of 24 metres in length and over operating on the high seas is not less than 3,600, have expressed their consent to be bound by it. 17

23. The Food and Agriculture Organization of the United Nations (FAO), ILO and IMO jointly developed guidelines to assist competent authorities in the implementation of voluntary instruments on the design, construction and equipment of all fishing vessels of all types and sizes and a safety standard for small fishing vessels. 18

24. The shipping industry’s international regulatory regime has been significantly strengthened with the entry into force of the Maritime Labour Convention, 2006 (see para. 27 below). Other recent measures, which will also enhance the implementation and enforcement of the Convention include the adoption by IMO of amendments to the International Management Code for the Safe Operation of Ships and for Pollution Prevention, to inter alia, require the company to ensure that the ship is appropriately manned. 19 Furthermore, in November 2013, the IMO Assembly will consider the draft IMO instruments implementation code (III Code) and draft amendments to the International Convention for the Safety of Life at Sea...

15  IHO contribution.
16  See IMO documents MSC 91/22 and MSC 92/22.
17  IMO contribution; see also IMO documents MSC 92/26/Add.2.
18  See report of the thirtieth session of the Committee on Fisheries, Rome, 9-13 July 2012 (FIPI/R1012).
19  See IMO document MSC 92/22.
and the International Convention on Load Lines, 1966 in order to make the III Code and auditing mandatory. The Assembly will also consider draft amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 and the International Convention on Tonnage Measurement of Ships, 1969. IMO will continue to focus its technical assistance on the implementation of the IMO Audit Scheme, with more emphasis on the training of maritime administrators from developing countries.  

V. People at sea

25. International efforts to improve the working conditions of seafarers and fishers were considerably strengthened with the entry into force of the Maritime Labour Convention, 2006 on 20 August 2013 and of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 on 25 September 2012, as well as the adoption of the Cape Town Agreement of 2012 (see paras. 22 above and 28 below). However, international migration by sea, often marred by tragic incidents at sea and characterized by complex legal, enforcement and human rights considerations, remains a matter of grave concern for the international community.

26. Seafarers. On 25 June 2013, the Day of the Seafarer was celebrated for the third time, reflecting growing support and recognition of the service of, and difficulties faced by, the world’s more than 1.5 million seafarers. Under the theme “Faces of the sea”, the Day highlighted the critical role of seafarers in delivering more than 90 per cent of the world’s goods.  

27. The Maritime Labour Convention, 2006 will strengthen the legal regime of the United Nations Convention on the Law of the Sea relating to labour conditions to which reference is made in the Maritime Labour Convention. The latter convention sets out comprehensive rights and protection at work for the world’s seafarers. It consolidates 68 existing ILO conventions and recommendations into a single agreement comprising three parts: the articles; the regulations; and the Code. The Code is divided into mandatory standards (part A) and non-mandatory guidelines (part B). It covers five general areas: minimum requirements for seafarers to work on a ship; conditions of employment; accommodation, recreational facilities, food and catering; health protection, medical care, welfare and social security protection; and compliance and enforcement. The Convention contains measures providing for inspection in foreign ports and a clause that will keep the ships of a State that has not ratified the Convention from being treated more favourably than ships flying the flag of a State that has done so. The port State control mechanism builds upon well-established arrangements under the various regional memorandums of understanding on port State control.

28. Fishers. Important developments to improve fishers’ safety and working conditions include the adoption of the Cape Town Agreement of 2012 (see para. 22 above) and the entry into force of the International Convention on Standards of Training Certification and Watchkeeping for Fishing Vessel Personnel, 1995 on 29 September 2012. The latter sets the certification and minimum training requirements for crews of seagoing fishing vessels of 24 metres in length and above.

29. While it is recognized that most of the industry provides decent working and living conditions to fishers, the 2013 International Labour Office report Caught at Sea: Forced Labour and Trafficking in Fisheries identifies serious incidents of abuse in some fisheries and on-board some fishing vessels, amounting to forced labour and human trafficking. The Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No. 188), held at the International Labour Office in May 2013, noted that the enforcement and monitoring procedures of Convention No. 188 could help prevent forced labour and human trafficking in the sector.

30. International migration by sea and stowaways. Owing to the clandestine nature of such migration, often associated with organized crime (see paras. 34, 35 and 37 below), it is difficult to estimate the number of migrants and stowaways who use maritime routes to cross international borders. In 2012, 86 incidents involving 978 migrants trafficked or transported by sea were reported to IMO. Furthermore, in 2012, 90 stowaway incidents involving 166 stowaways were reported to IMO. It has been noted with concern that the statistics published by IMO clearly underreport the scale of the problem of stowaways.

31. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), 107,500 African refugees and migrants made the perilous sea journey from the Horn of Africa to Yemen in 2012, the largest such influx since UNHCR began compiling these statistics in 2006. On 5 July 2013, UNHCR announced that an estimated 8,400 migrants and asylum-seekers landed safely on the coasts of Italy and Malta in the first six months of 2013. The need for greater practical cooperation to address rising levels of irregular maritime movements in the Asian and Pacific region has been recognized.

32. The United Nations Convention on the Law of the Sea sets out the duty to render assistance to persons in distress at sea and the obligation of coastal States to establish search and rescue services. It also sets out the rights and duties of States in the various maritime zones, which include enforcement measures they may take to address any criminal activities associated with international migration by sea. The

27. See IMO document FAL.2/Circ.126.
28. See IMO document FAL.2/Circ.126.
29. See IMO document FAL.18/15, para. 6.20.
provisions of the Convention are supplemented by a number of other international instruments.

33. The General Assembly has, inter alia, underscored the obligation of masters of ships to provide assistance to persons in distress at sea and the need for States to fulfil their search and rescue responsibilities in accordance with international law, including the United Nations Convention on the Law of the Sea, and to take effective action to address, to the extent feasible, the issue of unseaworthy ships and small craft. The Assembly has also called upon States to continue to cooperate in developing comprehensive approaches to international migration and development.\(^{32}\)

VI. Maritime security

34. Criminal activities at sea take various forms and include piracy and armed robbery at sea, illicit traffic in narcotic drugs and psychotropic substances and the smuggling of migrants (see also paras. 30 and 31 above and 79 below). Indeed, the maritime route is extensively used and favoured by organized criminals. For example, globally, each maritime seizure of illicit drugs and psychotropic substances is reportedly several times larger than seized consignments trafficked by air, with East and West African routes gaining in prominence, together with a new maritime route going southwards from Afghanistan via ports in the Islamic Republic of Iran or Pakistan.\(^{33}\) Since 2009, seizures of heroin have increased sharply in Africa, especially in East Africa, where they have increased almost tenfold.\(^{34}\) In a recent report, entitled “Transnational organized crime in East Asia and the Pacific—a threat assessment report”, the United Nations Office on Drugs and Crime (UNODC) provided information on the smuggling of migrants from South and West Asia through South-East Asia to Australia and Canada.\(^{35}\)

35. In its resolution 22/6, entitled “Promoting international cooperation and strengthening capacity to combat the problem of transnational organized crime committed at sea”, adopted in April 2013, the Commission on Crime Prevention and Criminal Justice urged Member States to strengthen international cooperation at all levels to combat transnational organized crime committed at sea, including piracy off the coast of Somalia and in the Gulf of Guinea.\(^{36}\)

36. International cooperation to address crimes at sea has increased, in particular with regard to the repression of piracy at sea. States are also taking more steps to criminalize and prosecute the perpetrators of crimes committed at sea. This has resulted in a reduction in the incidence of some such crimes in some regions. The United Nations has played a pivotal role in this regard, in particular in terms of fostering the recognition and application of the United Nations Convention on the Law of the Sea as the main legal framework for the prevention and repression of crimes at sea.

37. On 25 June 2013, 22 States signed the Code of Conduct concerning the Prevention of Piracy, Armed Robbery against Ships and Illicit Maritime Activity in West and Central Africa. The signatories of the Code intend to cooperate to the fullest possible extent in the prevention and repression of piracy and armed robbery against ships, transnational organized crime in the maritime domain, maritime terrorism, illegal, unreported and unregulated fishing and other illegal activities at sea. IMO has pledged its support to this initiative through a new multi-donor trust fund.

Piracy and armed robbery at sea

38. Piracy is defined in article 101 of the United Nations Convention on the Law of the Sea and occurs on the high seas and in the exclusive economic zone. Acts which would be considered acts of piracy except that they occur in the territorial sea, internal waters or archipelagic waters of a State are classified as acts of armed robbery against ships.\(^{37}\) In 2012, 341 acts of piracy and armed robbery against ships worldwide were reported to IMO as having occurred or having been attempted, a decrease of 203 (37.32 per cent) compared to 2011. The number of Somalia-based piracy attacks, in particular, dropped from 286 incidents in 2011 to 99 incidents in 2012. The number of attacks in the South China Sea, the Indian Ocean and in South America and the Caribbean also declined. On the other hand, the number of attacks in West Africa, in the Malacca Strait and in the Mediterranean Sea increased. The majority of the reported incidents in 2012 were ascribed to Somali pirates operating in the Arabian Sea and East Africa (99), followed by incidents in the South China Sea (90), West Africa (64), the Indian Ocean (33), the Malacca Strait (24), South America (21), the Mediterranean Sea (6), the Far East (2), the North Atlantic Ocean (1) and the Persian Gulf (1). The majority of the attacks worldwide in 2012 were reported to have occurred or have been attempted in port areas.\(^{38}\)

39. Worldwide, 26 ships were reportedly hijacked in 2012, compared to 50 in 2011. About 313 crew members were reportedly taken hostage/kidnapped, compared to 599 crew members taken hostage/kidnapped in 2011. No crew member was reported to be missing in 2012.\(^{39}\) Disturbing levels of violence were employed in West Africa, where five crew members were killed. In order to address this situation, in January 2013 the European Union launched the Critical Maritime Routes in the Gulf of Guinea project to combat piracy in the Gulf of Guinea.\(^{40}\)

40. These declining trends in piracy and armed robbery against ships appear to have been continuing in the first half of 2013, during which the International Maritime Bureau reported 120 incidents worldwide, including four hijackings. Seven reported incidents, including one hijacking, involved Somali pirates.

41. However, owing to the continuing situation off the coast of Somalia, the Security Council decided, in November 2012 to renew the authorizations previously

\(^{32}\) See resolution 67/78.


\(^{34}\) Ibid.

\(^{35}\) Ibid.

\(^{36}\) Ibid.


\(^{38}\) IMO document MSC.4/Circ.193. See also www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures.

\(^{39}\) Ibid.

\(^{40}\) For the latest figures, see www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures.
granted to States and regional organizations cooperating with Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia.\(^{41}\)

42. The Contact Group on Piracy off the Coast of Somalia met on 11 December 2012 and 1 May 2013, inter alia, to consider the outcomes of its five working groups.\(^{42}\) The Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia continued to provide support to capacity-building initiatives in the region by approving a new set of projects for funding in May 2013.\(^{43}\)

43. More than 20 States are involved in prosecuting, or have prosecuted, over 1,200 persons suspected of piracy. IMO, UNODC and others have provided capacity-building to facilitate such prosecutions.\(^{44}\)

44. A number of initiatives remain under way to address the use of privately contracted armed security personnel on board commercial vessels, including initiatives by IMO,\(^{45}\) the United Nations Interregional Criminal Research Institute,\(^{46}\) the International Standards Organization and Working Group 2 of the Contact Group (on legal issues).\(^{47}\)

VII. Marine science and technology

45. Continued efforts to improve understanding and knowledge of the oceans and of their interface with the atmosphere is important, particularly considering the role of the oceans and their resources in achieving sustainable development, including eradicating poverty, contributing to food security, protecting and preserving the marine environment and its resources, and monitoring and forecasting climate change. To that end, Parts XIII and XIV of the United Nations Convention on the Law of the Sea can play a critical role in the promotion and facilitation of marine scientific research and the transfer and development of marine technology.

46. Following the United Nations Conference on Sustainable Development in June 2012, the importance of focusing on research and technical programmes that have the strongest impact in terms of societal benefits, safety, protection of the marine environment and technological innovations was emphasized by the Assembly of the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO). In that regard, it was recognized that the highest priority should be given to ocean observations, data assessment and exchange, and early warning systems.\(^{48}\)

47. With regard to early warning systems, efforts have continued towards a global coverage of warning and mitigation systems for tsunamis and other coastal hazards. As of 31 March 2013, the regional tsunami service providers of Australia, India and Indonesia assumed full operational responsibility for the provision of tsunami advisories for the Indian Ocean area of responsibility. Some States are also pursuing the establishment of warning and mitigation systems at the national level.\(^{49}\)

A. Marine science

48. Since the adoption of the United Nations Convention on the Law of the Sea, several trends have emerged, in particular in relation to marine data acquisition and dissemination, as a result, inter alia, of the development of autonomous technology, the adoption of standards and protocols to enhance data exchange, and greater use of national, regional and global oceanographic data centres. The emergence of large-scale, international collaborative programmes is also a noticeable trend.

49. IOC has conducted a global and regional assessment of capacity-development needs in the field of marine scientific research and ocean observation, especially in developing countries and small island developing States. It is expected that this will lead to the formulation and implementation of a global strategy on capacity-building to meet those needs.\(^{50}\)

50. In this context, a meeting of a group of experts was organized jointly by the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States and IOC, in collaboration with the Division for Ocean Affairs and the Law of the Sea, in New York, in May 2013, on the significance of marine science and technology for small island developing States and the importance of capacity-building and marine technology transfer to them to support sustainable development. The meeting recommended, inter alia, that the collection of data and information, including in areas under the jurisdiction of small island developing States, should be carried out pursuant to the provisions of the United Nations Convention on the Law of the Sea on marine scientific research, including article 244. In addition, it was concluded that article 276 of the Convention should be implemented to allow for a coordinated approach involving global and regional ocean and marine science institutions, including those particular to small island developing States, to enhance support for the capacity-development of those States on marine scientific research and technology and to facilitate the transfer of marine technology to them.\(^{51}\)

51. Ocean observing programmes. In July 2013, the IOC Assembly noted that all sustained ocean observations and services activities of IOC should fall under the framework of the United Nations Convention on the Law of the Sea.\(^{52}\) In November 2012, the Argo profiling float network collected its one millionth profile of vertical temperature and salinity. Every year, 120,000 new profiles are collected, about one new profile every four minutes.\(^{53}\) In September 2012, the South Pacific Regional Environment Programme (SPREP) agreed to support Argo float deployment in the Pacific.\(^{54}\)

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\(^{42}\) See www.thecgpcs.org/.
\(^{43}\) See www.unicri.it/topics/piracy/security_contractors.
\(^{44}\) See IOC-XXVII/3 prov.Pt.2A.
\(^{45}\) IMO and UNODC contributions.
\(^{46}\) IMO and UNODC contributions.
\(^{48}\) See S/2012/735, see also Summary of the fourteenth plenary session of the Contact Group on Piracy off the Coast of Somalia, available from www.state.gov/t/pm/r/sh/oth/misc/208936.htm.
\(^{49}\) IOC contribution.
\(^{50}\) See IOC-XXVII/3 prov.Pt.4.
\(^{51}\) Contribution by the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States.
\(^{52}\) See IOC-XXVII/3 prov. Pt.3.
\(^{53}\) IOC contribution.
52. The governing structures of the Global Oceans Observing System have been aligned with a Framework for Ocean Observing and organized around essential ocean variables, rather than specific observing systems, programmes or regions.

53. International Oceanographic Data Exchange. The IOC Assembly endorsed a revised IOC Strategic Plan for Oceanographic Data and Information Management (2013-2016) aimed at modernizing old structures, increasing the focus on standards and best practices, raising the profile of marine information management and the establishment of the International Oceanic Data Exchange (IODE) international coastal Atlas Network project. The IOC Assembly urged the continuation or revitalization of the Ocean Data and Information Networks in all regions.

54. The Ocean Biogeographical Information System, which is part of the IODE programme, now integrates 1,130 datasets and serves 35 million observations of 120,000 marine species. It provides the world’s largest global online-access database on the diversity, distribution and abundance of all known marine life and provides an important baseline against which future change can be measured.

B. Recent developments in marine technology

55. Autonomous underwater vehicles used for research and exploration are encompassing a greater diversity of platforms and are being applied in more diverse fields. Exploration of resources of the ocean floor, such as metals and methane, is a major part of the sector, although research applications continue to push forward the autonomous remote analysis of more of the oceans and their resources.

56. A recent study of the International Renewable Energy Agency, entitled “International standardization in the field of renewable energy”, highlights the value of clear, consistent, internationally accepted standards to ensure the successful deployment of renewable energy technologies. The study further calls for a more structured informational platform to make appropriate standards accessible to a variety of users.

57. In the Western Pacific region, advanced research and development in marine renewable energy technology is expected to be promoted by a working group established in 2012 pursuant to a proposal by an IOC Sub-Commission for the Western Pacific workshop on the status of marine renewable energy technology development in the Western Pacific.

VIII. Sustainable development of oceans and seas

58. Marine renewable energy is also an area of great interest in the United Kingdom of Great Britain and Northern Ireland, which has an installed offshore wind capacity of nearly 3 GW as of 2012. In Asia, China is setting a development target of up to 30 GW by 2020. As highlighted by many States, the challenges with regard to renewable energy, in particular offshore wind energy, include ensuring access to the power grid.

59. Oceans and seas continue to play a critical role in sustainable development, underpinning a wide range of ecosystem goods and services and providing a source of livelihood for millions of people around the world. However, while an increasing number of measures are being taken to protect and preserve this natural resource base, the individual and cumulative impacts of various human activities in the oceans are increasingly putting at risk the marine ecosystems upon which the economies of many countries depend. Some marine species are moving towards extinction at an ever faster pace, with declines in both populations and distribution. The loss in productivity of marine ecosystems resulting from these trends will hamper efforts to meet development goals, especially those related to poverty eradication, food security and health.

60. The United Nations Convention on the Law of the Sea provides the legal framework for the sustainable development of oceans and seas and their resources. It establishes a delicate balance between the need for economic and social development through the use of the oceans and their resources and the need to protect and preserve the marine environment, and conserve and manage its resources. At the Conference, all parties were urged to fully implement their obligations under the Convention and the United Nations Fish Stocks Agreement.

61. The General Assembly has annually considered the sustainable development of oceans and seas in the context of its resolutions on oceans and the law of the sea and sustainable fisheries and the processes it has established, in particular the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (see para. 145 below). In recognition of the need for better scientific understanding to support decision-making, the Assembly also established a regular process for global reporting and assessment of the state of the marine environment, including socioeconomic aspects (the “Regular Process”; see paras. 65-69 below). It also established 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 (the “Ad Hoc Open-Ended Informal Working Group”) (see para. 81 below).

62. Among the outcomes of the United Nations Conference on Sustainable Development held in 2012 was the launch of a process to develop a set of sustainable development goals based on identified priority areas. The intergovernmental open working group established to make recommendations to that effect will consider the theme of oceans and seas from 3 to 7 February 2014.

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55 See IOC/INF-1284, rev.
56 IOC-XXVII/3 prov. Pt.3.
57 IOC contribution.
58 See www.digitalwavepublishing.com/pdfs/NWM/marinetechnologyreporter/201306.
60 The study is available from www.irena.org/DocumentDownloads/Publications/GWEC_WindReport_All_web%20display.pdf.
63. The present section sets out recent measures that have been adopted at the global and regional levels in support of the sustainable development of oceans and seas.

A. Scientific information and assessments to support decision-making

64. There is a need to strengthen the regular scientific assessment of the state of the marine environment in order to enhance the scientific basis for policymaking. Recent measures that have been taken towards that end are described below and in section G.

65. Regular Process. The first global integrated assessment of the state of the marine environment (the “World Ocean Assessment”) is scheduled to be completed by 2014. The Ad Hoc Working Group of the Whole, which is mandated by the General Assembly to oversee and guide the Regular Process, held its fourth meeting from 22 to 25 April 2013 and provided recommendations to the General Assembly for consideration at its current session (A/68/82, sect. II). The Bureau of the Ad Hoc Working Group of the Whole met in September and November 2012 and March 2013 and adopted guidance for contributors.

66. The website of the Regular Process, which addresses the communication requirements of the Regular Process and facilitates the use of appropriate data handling and information schemes, became operational in January 2013.

67. With the support of IOC and the United Nations Environment Programme (UNEP), workshops were organized in order to support the first cycle of the Regular Process in the United States of America in November 2012, Mozambique in December 2012 and Australia in February 2013. Additional workshops are being planned in Côte d’Ivoire and India in 2013.

68. The General Assembly, in its resolution 67/78, urged Member States to continue to appoint individuals to the pool of experts of the Regular Process through the United Nations regional groups. As at 31 August 2013, there were only 435 experts in the pool of experts. It is therefore crucial for Member States to appoint experts if they have not yet done so.

69. The General Assembly also urged Member States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons to make financial contributions to the fund established for the Regular Process and to make other contributions (see the annex to the present report for information on the status of the fund).

B. Conservation and management of marine living resources

72. The overarching legal regime for the conservation and management of marine living resources within areas under national jurisdiction and on the high seas is set out in the United Nations Convention on theLaw of the Sea. It also contains specific provisions relating to straddling fish stocks and highly migratory fish stocks, which are further elaborated in the 1995 Fish Stocks Agreement. The tenth round of the Informal Consultations of States Parties to the Agreement will be held in 2014. Among the matters to be considered will be preparations for the Review Conference on the United Nations Fish Stocks Agreement, which is to be resumed at a date not earlier than 2015.

73. Over the past year, activities aimed at enhancing the conservation and management of marine fishery resources have continued to focus, in particular, on enhancing flag State implementation and enforcement. Many activities have also been undertaken pursuant to General Assembly resolution 67/79.

74. Sustainable fisheries. The Food and Agriculture Organization of the United Nations (FAO) continues to develop its programme for deep-sea high seas fisheries in support of the implementation of the 2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas. The programme includes a project supported by the Global Environment Facility (GEF) on sustainable fisheries management and biodiversity conservation of deep-sea living marine resources and ecosystems in areas beyond national jurisdiction. Particular work has been done on gathering best practices and assisting with capacity-development and knowledge-sharing on the protection of vulnerable marine ecosystems. FAO also hosted a technical consultation in May 2013, to be resumed in early 2014, to develop international guidelines for securing sustainable small-scale fisheries.

75. The Helsinki Commission reported on the Managing Fisheries in Baltic Marine Protected Areas (BALTFIMPA) project, created to produce a generic tool to assist in fisheries management decisions, including by studying the impacts of fisheries and finding new solutions to mitigate these impacts.

76. The Organization for Economic Cooperation and Development (OECD) Review of Fisheries: Country Statistics 2012 contains statistics on fisheries and aquaculture in OECD countries from 2003 to 2010, including information on government financial transfers, total allowable catches, landings, employment, fleet
capacity and aquaculture production. OECD reported that its Council recently adopted a recommendation that identifies principles and practices for fisheries rebuilding.

77. Compliance and enforcement. The FAO Technical Consultation on Flag State Performance, held in February 2013, agreed on voluntary guidelines for flag state performance, which will be presented to the Committee on Fisheries at its thirty-first session, in 2014, for endorsement. FAO has convened a number of workshops with partners to develop a prototype version of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels and to focus on capacity-building for the national and regional vessel registers. In addition, FAO is working with IMO on the non-mandatory application of the IMO Ship Identification Numbering Scheme to fishing vessels of 100 gross tonnage and above. FAO also reported that it had released the Fishing Vessels Finder portal in October 2012 to enable global search of data on fishing in the high seas.

78. With regard to port State measures, FAO has continued to develop its programme to support implementation of the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. The programme activities are aimed at facilitating the entry into force of the Agreement, to ensure its international acceptance, contribute to the development of national capacity to maximize benefits available through the Agreement and to promote bilateral, subregional and regional coordination. In preparing for entry into force of the Agreement, FAO also continued its global series of regional capacity-development workshops.

79. In February 2013, the first International Criminal Police Organization (INTERPOL) International Fisheries Enforcement Conference launched Project SCALE, an initiative to detect, combat and suppress fisheries crime and improve the exchange of fisheries enforcement information and intelligence between countries. It also established a permanent INTERPOL Fisheries Crime Working Group.

C. Conservation and sustainable use of marine biodiversity

80. A range of measures is under discussion to address the conservation and sustainable use of marine biodiversity and increased steps are also being taken towards a cross-sectoral coordination to address cumulative impacts on marine biodiversity in an effective manner still appears to be a challenge. The global role of the General Assembly in providing in enabling policy guidance and a harmonizing framework to ensure coordination is thus critical, in particular as regards marine biodiversity beyond areas of national jurisdiction.

81. In accordance with General Assembly resolution 67/78, two intersessional workshops were convened on 2 and 3 May and 6 and 7 May 2013, with a view to improving understanding of the issues and clarifying key questions as an input to the work of the Ad Hoc Open-ended Informal Working Group. The workshops considered, respectively, marine genetic resources, and conservation and management tools, including area-based management and environmental impact assessments. The Ad Hoc Open-ended Informal Working Group held its sixth meeting from 19 to 23 August 2013 and formulated recommendations for consideration by the General Assembly at its sixty-eighth session.

82. In October 2012, the Conference of the Parties to the Convention on Biological Diversity adopted a number of decisions on, or of relevance to, marine and coastal biodiversity. Marine and coastal biodiversity was also one of the main themes of the high-level segment of the Conference of the Parties.

83. At the 2012 International Union for Conservation of Nature (IUCN) World Conservation Congress in September 2012, IUCN members adopted a number of resolutions and recommendations related to the conservation and sustainable use of marine diversity, including in areas beyond national jurisdiction.

1. Measures for specific ecosystems and species

84. Meeting the growing challenge of the impacts of climate change on specific ecosystems, including coral reefs, will require significant investment to increase capacity for the effective management of various stressors. The Conference of the Parties to the Convention on Biological Diversity, in 2012, recognized the need for managers of coral ecosystems to formulate adaptation strategies. Proposals to update the specific work plan on coral bleaching will be considered by the Subsidiary Body on Scientific, Technical and Technological Advice prior to the twelfth meeting of the Conference of the Parties, in 2014.

85. Other measures taken to protect specific ecosystems and species include the addition of a number of coastal areas, including as transboundary Ramsar sites, to the Ramsar List of Wetlands of International Importance; and the addition of a number of marine species, including five shark species and manta rays, in the appendices to the Convention on Biological Diversity, for consideration by the Conference of the Parties to CITES in 2014.

86. At its 2013 meeting, the Scientific Committee of the International Whaling Commission decided to monitor and review developments in marine renewable energy and their impacts on cetaceans.

73 OECD contribution.
75 FAO contribution.
77 FAO contribution.
78 Ibid.
79 See www.interpol.int/Crime-areas/Environmental-crime/Conferences-and-meetings/Meetings/1st-INTERPOL-International-Fisheries-Enforcement-Conference.
80 See A/AC.276/6.
81 See A/68/399, annex I.
82 These include decisions XI/3, XI/14, XI/15, XI/17, XI/18, XI/20 and XI/24. See UNEP/CBD/COP/11/55, annex I.
83 Ibid., annex I.
84 See IUCN, Resolutions and Recommendations, World Conservation Congress, Jeju, Republic of Korea, 6-15 September 2012 (2012, Gland, IUCN).
87 Decisions of the Conference of the Parties to CITES in effect after its 16th meeting (3-14 March 2013).
86. Regional measures to address specific threats to marine species have included the adoption of conservation plans for shark species and porpoises under the umbrella of the Convention on Migratory Species of Wild Animals as well as cross-sectoral cooperative activities in relation to cetaceans in the Pacific Islands region and dugongs throughout their range. Measures to address the impacts of chemical pollution on small cetaceans of the Baltic, North East Atlantic, Irish and North Seas were also agreed upon.

2. Marine genetic resources

87. Recent developments and the outcome of recent research related to marine genetic resources, including regarding their social, economic, environmental and commercial potential, were presented at the Intersessional Workshop on Marine Genetic Resources in May 2013, with a view to improving understanding of the issues and clarifying key questions as an input to the work of the Ad Hoc Open-ended Informal Working Group.

88. As regards developments in other forums, it can be noted that the General Assembly of the World Intellectual Property Organization will consider, in September 2013, a consolidated document relating to intellectual property and genetic resources. In April 2013, the Commission on Genetic Resources for Food and Agriculture, in recognition of the central role of the General Assembly of the United Nations in addressing issues relating to the conservation and sustainable use of biodiversity beyond areas of national jurisdiction, decided that the scope of the FAO report on the State of the World’s Aquatic Genetic Resources for Food and Agriculture would be farmed aquatic species and their wild relatives within national jurisdiction.

89. Many States are in the process of adopting and/or revising their measures on access and benefit-sharing with regard to marine genetic resources within national jurisdiction in anticipation of their ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization. In 2014, the third meeting of the Intergovernmental Committee for the Protocol will further consider issues related to article 10 of the Protocol on a global multilateral benefit-sharing mechanism, on the basis of the outcome of an expert meeting to be held in September 2013.

D. Pressures on the marine environment

1. Environmental impact assessments

90. The United Nations Convention on the Law of the Sea requires that the risks or effects of pollution of the marine environment be observed, measured, evaluated and analysed by recognized scientific methods, as well as requiring the publication of reports of the results obtained. A number of global forums continue to work towards the development of practical guidance for the implementation of environmental impact assessments at the global level. In particular, the topic of environmental impact assessments was one of those considered at the intersessional workshop on conservation and management tools (see para. 81 above).

91. In October 2012, the Conference of the Parties to the Convention on Biological Diversity took note of voluntary guidelines for the consideration of biodiversity in environmental impact assessments and strategic environmental assessments annotated specifically for biodiversity in marine and coastal areas, emphasizing that the guidelines were without prejudice to the ongoing consideration of marine biodiversity by the General Assembly processes, in particular the Ad Hoc Open-ended Informal Working Group.

92. At its meeting in July 2013, the Legal and Technical Commission of the International Seabed Authority adopted recommendations for the guidance of contractors for the assessment of the possible environmental impact assessments arising from exploration for marine minerals in the Area.

2. Degradation of the marine environment from various sources and activities

93. During the period under review, the international community has continued to focus on measures to respond effectively to the main sources of pollution and activities that adversely affect the marine environment. A brief overview of mainly global measures is presented below, while regional measures are mainly presented in paragraphs 115 to 127.

94. Land-based sources and marine debris. On 19 January 2013, Governments agreed to the text of a global legally binding instrument on mercury, the Minamata Convention on Mercury, which is scheduled to be adopted and opened for signature in Japan in October 2013.

95. In line with the Manila Declaration on Furthering the Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, recent efforts to implement the Global Programme of Action have focused primarily on addressing three pollution source categories, namely nutrients, marine litter and wastewater, through the establishment and management of global multistakeholder partnerships. UNEP and the Government of Jamaica will organize the Second Global Conference on Land-Ocean Connections, in October 2013, in order to identify approaches to address current and emerging issues in the marine and coastal sector, with a focus on the three priority source categories of the Global Programme of Action for the period 2012-2016.
96. **Shipping activities.** In May 2013, IMO adopted, among other measures, amendments to annexes I and II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto to make the Code for Recognized Organizations mandatory (see also para. 21 above). It also revised its guidance with respect to the implementation of annex V. Furthermore, IMO continued its work on pollution from ships in polar areas. For developments at the regional level see paras. 115, 119, 124 and 125 below.

97. IMO granted basic approval to five, and final approval to three, ballast water management systems that make use of Active Substances. The GEF-UNDP-IMO GloBallast Partnerships programme continued to build developing-country capacity to comply with the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, and to stimulate investment in ballast water treatment technologies.

98. **Ship recycling.** In October 2012, IMO adopted the final two sets of guidelines referred to in the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, for the survey and certification of ships and for the inspection of ships under that instrument, respectively.

99. **Ocean noise.** While, 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, a number of forums, on a sectoral basis, continue to encourage increased research to address the impacts of ocean noise or the adoption of noise-reduction measures. For example, an expert workshop will be convened by the Secretariat of the Convention on Biological Diversity with a view to, inter alia, developing practical guidance and toolkits to minimize and mitigate the significant adverse impacts of anthropogenic underwater noise. The effects of anthropogenic sound on cetaceans and approaches to mitigate those effects were identified as priorities for the Scientific Committee of the International Whaling Commission in 2014. At its session in 2013, the Committee encouraged time/area closures and new quieting technologies to address noise pollution. It also encouraged further scientific investigations to better understand the effects of sound on cetaceans and their habitats, as well as the effectiveness of mitigation measures. Draft guidelines on available options for ship-quieting technologies and operational practices will be considered by IMO in 2014. At the regional level, underwater noise was also identified as a priority by the Meeting of the Parties to the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas, held in October 2012.

100. **Disposal of wastes.** The Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the London Convention) and to the 1996 Protocol (the London Protocol) will meet in October 2013 to consider, inter alia, a document prepared by the International Atomic Energy Agency regarding a radiological assessment procedure for determining the suitability of material for disposal at sea, as well as other issues (see paras. 136 and 137 below).

101. **Transboundary movement of wastes.** The Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted a framework for the environmentally sound management of hazardous wastes and other wastes, and agreed to develop, over the next two years, technical guidelines on transboundary movements of electronic and electrical wastes (e-waste).

### E. Management tools

102. Progress continues to be made in the development and application of various tools to manage the impacts of human activities on marine ecosystems. In some cases, consideration is being given to the need to evaluate the effectiveness of the tools in use.

1. **Integrated and ecosystem approaches**

103. The Secretariat of the Convention on Biological Diversity will develop a web-based information-sharing system linking existing sources of information on marine spatial planning and will convene an expert workshop to provide consolidated practical guidance and a toolkit for marine spatial planning, building upon existing guidance. IOC developed technical guidance on marine spatial planning and will publish a new guide in 2013, which will expand guidance on the practice of implementing monitoring and evaluation of marine spatial planning initiatives.

104. FAO continues to support the practical implementation of the ecosystem approach to fisheries management at the national and regional levels, including through the development of management plans in the context of the Caribbean Large Marine Ecosystem project and the Canary Current Large Marine Ecosystem project, training courses in the context of the Bay of Bengal Large Marine Ecosystem project and the Mediterranean Large Marine Ecosystem project, the development of a toolbox, and the collection of data and information on marine resources and the marine environment in several countries in sub-Saharan Africa through the Nansen Project. FAO also plays a leading role in the iMarine initiative, which develops data infrastructure for data sharing and multidisciplinary collaborative science in support of policy development and implementation towards the ecosystem approach to fisheries management and conservation of living marine resources.
2. Area-based management tools

105. Efforts are continuing in all regions of the world to establish marine protected areas, ranging from areas with full protection to areas where activities are allowed and regulated. Of the 9,603 marine protected areas included in the World Database on Protected Areas, 493 are in Africa, 3,022 in North, Central and South America, 1,808 in Asia, 3,162 in Europe and 1,052 in Oceania, marking a steady increase in all regions.

106. The Convention for the protection of the Marine Environment of the North-East Atlantic (OSPAR) Network of Marine Protected Areas has increased to 5 per cent of the total OSPAR maritime area, both within and beyond areas of national jurisdiction. In June 2013, the OSPAR Commission endorsed terms of reference for a workshop to develop suitable procedures to assess, by 2016, whether the OSPAR Network is well managed. The OSPAR Commission and the North East Atlantic Fisheries Commission developed a draft “collective arrangement” to set out how cooperation and coordination can take place in areas beyond national jurisdiction. They are also collaborating on the development of proposals for areas within the North-East Atlantic, beyond 200 nautical miles, that meet the Convention on Biological Diversity scientific criteria for ecologically or biologically significant marine areas.

107. Marine protected areas in East Antarctica and the Ross Sea region, as well as under ice shelves, glaciers and ice tongues, are under consideration within the framework of the Commission for the Conservation of Antarctic Marine Living Resources.

108. In October 2012, IMO designated the Saba Bank, in the north-eastern Caribbean area of the Kingdom of the Netherlands, as a particularly sensitive sea area.

109. In May 2013, several coastal and marine sites were added to the World Network of Biosphere Reserves by the International Coordinating Council of the UNESCO Man and the Biosphere Programme.

F. Liability and compensation

110. While large oil pollution incidents have decreased both in number and in size over recent decades, the potential threat of environmental damage and economic loss, and the significant clean-up costs associated with the carriage of oil remain a matter of concern, in particular for coastal developing countries and small island developing States with economies heavily dependent on income from fisheries and tourism. In that regard, it is noteworthy that a considerable number of coastal States, including developing countries, are not yet parties to the existing instruments for liability and compensation in relation to ship-based pollution.

111. In order to facilitate the entry into force and implementation of 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 Protocol of 2010 thereto, IMO endorsed a set of guidelines for reporting contributing cargo in April 2013.

112. Efforts are also continuing to facilitate the processing of claims for compensation in the context of the International Oil Pollution Compensation Funds, which continue to be seized of 12 incidents.

113. While most of the attention has been focused on liability and compensation for oil pollution damage from ships, it can be noted that IMO is currently also considering issues related to liability and compensation for transboundary pollution damage resulting from offshore oil exploration and exploitation activities.

114. As regards liability in the event of a nuclear accident or incident during the transport of radioactive material, the IAEA General Conference, at its fifty-sixth session, in its resolution GC(56)/RES/9 on measures to strengthen international cooperation in nuclear, radiation, transport and waste safety, stressed the importance of having effective liability mechanisms in place to ensure prompt compensation for damage to people, property and the environment as well as actual economic loss due to a radiological accident or incident during the transport of radioactive material, including maritime transport, and noted the application of the principles of nuclear liability, including strict liability.

G. Major trends in regional cooperation

115. Although a wide range of topics continued to be addressed through regional cooperation, issues such as the impacts of climate change, marine litter, land-based sources of pollution and assessments of the state of the marine environment were points of focus in several regions. For example, in the north-west Pacific, States focused on the implementation of the Regional Action Plan on Marine Litter.

116. At the Global Meeting of the Regional Seas Conventions and Action Plans in October 2012, the following strategic directions were considered for the period
2013-2016: the effective application of an ecosystem approach; the implementation of the Manila Declaration on the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities; the strengthening of capacities at the national level; the provision of tools to decouple economic growth from environmental pressures; the strengthening of cooperation to contribute to the World Oceans Assessment (see paras. 65-69 above); and the strengthening of collaborative mechanisms to address common regional objectives.  

117. Africa. The report of UNEP and GRID-Arendal on the “Sustainable seas” pilot workshop, held in November 2012, identified needs and priorities for the development of a full-scale sustainable seas programme in the area covered by the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region. 118 UNDP supported efforts towards establishing a permanent regional institutional mechanism for the Guinea Current large marine ecosystem and supported national and regional marine assessments in nine countries of the Agulhas/Somali Current large marine ecosystem.  

118. Antarctic. In May 2013, the Antarctic Treaty Consultative Meeting decided to develop a prioritized climate change response workplan, and adopted revised management plans for several Antarctic specially protected areas, some of which include marine areas. 119.

119. Arctic. The Kiruna Ministerial Declaration, adopted in May 2013, sets out the work of the Arctic Council for the period from 2013 to 2015, and outlines the joint vision of the Arctic States and the indigenous Permanent Participants for the development of the region. Arctic Council States also signed a new Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. As a sign of increasing cooperation in the area, China, India, Italy, Japan, the Republic of Korea and Singapore were welcomed to the Arctic Council as observer States, bringing the total number of such States to 12. Regional assessments of the marine environment included the Arctic Biodiversity Assessment, the Arctic Ocean Review and the Arctic Ocean Acidification Assessment.  

120. Baltic Sea. At the Helsinki Commission Ministerial Meeting in October 2013, parties are expected to evaluate progress in the implementation of the Baltic Sea Action Plan and consider the second Baltic Sea Experiment (BALTEX) Assessment of Climatic Change for the Baltic Sea Basin. A recently concluded checklist of macrospecies contains all Baltic Sea species visible to the human eye.  

121. Mediterranean Sea. The State of the Mediterranean Marine and Coastal Environment report, launched in January 2013, provides a synthesis of available knowledge about major drivers and pressures affecting the Mediterranean, environmental conditions, the current and prospective impacts of human activities and emerging issues in coastal and marine management in the region.  

122. North-East Atlantic. The OSPAR Commission finalized measures to further protect and conserve 23 species and habitats whose status has been classified by the Commission as threatened and/or declining. The regional coordination of the European Union’s Marine Strategy Framework Directive was another key area of the Commission’s work (see also para. 106 above).  

123. Pacific. In September 2012, SPREP endorsed revised Marine Species Action Plans for the period 2013-2017 and a Regional E-Waste Strategy and Action Plan (see also para. 51 above). It further considered its ongoing work to address waste management, adapt to climate change and access climate change financing, and develop a framework for regional state of the environment assessment and reporting.  

124. Red Sea and Gulf of Aden. In April 2013, two regional memorandums of understanding, on port state control and on cooperation in fisheries management, and two new regional strategies, for ballast water management and for the reduction of unintentional emission of persistent organic compounds in the coastal zone, were adopted by the Ministerial Council of the Regional Organization for the Conservation of the Red Sea and Gulf of Aden.  

125. Wider Caribbean. The UNEP Caribbean Environment Programme (UNEP-CEP), the International Coral Reef Initiative and other Caribbean counterparts developed a manual on the control and management of lionfish. In collaboration with IMO, the UNEP-CEP also continued to provide support to countries of the wider Caribbean region to meet their obligations under the Protocol concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region to the Cartagena Convention, annex V to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and other related IMO instruments (see also para. 139 below).  

126. The Secretariat of the Cartagena Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region and UNEP-CEP have supported the management of marine protected area projects in eight small island developing States and completed baseline assessments in 13 countries to determine policy, legislative, capacity-building and training needs for effective wastewater management.  

127. In May 2013, at the summit of Caribbean Political and Business Leaders, the second phase of the Caribbean Challenge Initiative was launched to accelerate

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125 See UNEP (DEPB)RS.14/11 RS.  
126 NEPAD contribution.  
127 UNDP contribution.  
133 OSPAR contribution.  
134 See report of the Twenty-third SPREP Meeting of Officials (2012).  
136 UNEP-CEP contribution.  
137 Ibid.  
139 OSPAR contribution.  
140 See UNEP-DEPB RS.14/11 RS.
marine conservation action in the Caribbean. A Leaders Declaration and a Corporate Compact were signed by eight Governments and 15 companies, respectively. A Summit communiqué highlighted new issues for further action, including the protection of sharks and rays across the Caribbean region, and alternative energy.139

IX. Small island developing States

128. The vast ocean spaces within which many small island developing States are located and the marine resources that they contain benefit not only those States but also the wider global community. The report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, entitled “A new global partnership: eradicate poverty and transform economies through sustainable development”, it is noted that poor management of the oceans could have particularly adverse impacts for small island developing States. Healthy oceans and seas are thus crucial to their survival. Their role as custodians of vast seas consequently requires financial and technical support from the international community.140 Since the previous report, an increasing number of events focusing on small island developing States in view of their unique and particular vulnerabilities have taken place or are planned. For example, on 21 May 2013, an event was held on strengthening partnerships towards disaster risk reduction for small island developing States141 (see also paras. 49 and 50 above).

129. In recognition of the importance of coordinated, balanced and integrated action to address sustainable development challenges facing small island developing States, the topic of oceans, among others, is expected to figure prominently at the Third International Conference on Small Island Developing States, to be held in Apia, Samoa, from 1 to 4 September 2014. In preparation for the Conference, national preparatory meetings are being convened. In addition, three regional meetings were held in July 2013 and fed into an interregional meeting held in August 2013 in Barbados.142

130. In August 2012, Pacific Island Leaders agreed that, as “Large Ocean Island States”, Forum Island Countries have a leading role to play in management of the Pacific Ocean. The Pacific Island Leaders’ aspirations to maximize sustainable economic returns for Forum Members from ocean resources, including fisheries and seabed minerals, in accordance with the precautionary approach, were recognized.143

131. Among recent national initiatives has been the launch of a multi-stakeholder dialogue on ocean economy by the Government of Mauritius in July 2013, with a view to developing the ocean sector as one of the major pillars of the economy of Mauritius while ensuring that ocean resources are used in a sustainable manner.144

X. Climate change and oceans

132. Coastal communities are particularly affected by the adverse impacts of climate change on the oceans, such as sea-level rise, coastal erosion and extreme weather events, which threaten food security and global efforts to eradicate poverty and achieve sustainable development, especially in developing countries. Small island developing States are reliant on marine ecosystems and resources and are, therefore, especially vulnerable to the adverse impacts of climate change on the oceans.

133. In the face of these threats, greater efforts are needed for a better scientific understanding of the impacts of climate change on the oceans and of how to reduce the vulnerability of coastal communities. For example, recent research results indicate that salmon stocks in the North Atlantic have been affected by changing environmental conditions at sea, with climate change effects cascading through marine trophic levels and affecting salmon.145

A. Mitigating the impacts of climate change

134. Greenhouse gas emissions. Greenhouse gas emissions from shipping, estimated in 2007 at about 2.7 per cent of global CO₂ emissions, are expected to increase in the future. In May 2013, IMO agreed to initiate a study to update estimates of greenhouse gas emission from shipping, to be completed by March 2014.146 New requirements mandating the Energy Efficiency Design Index for new ships and the Ship Energy Efficiency Management Plan for all ships entered into force on 1 January 2013. During the reporting period, IMO continued the development of technical and operational measures relating to energy-efficiency measures for ships.147 IMO has been requested to provide technical assistance to enable cooperation in the transfer of energy efficient technologies to developing countries.148

135. FAO has been conducting workshops on the possible contributions of the fishing industry to climate change and ways to reduce the sector’s reliance on, and consumption of, fossil fuels.149 In March 2013, a workshop discussed the potential for reducing greenhouse gas emissions through changes in technology and practices, and the impacts of such changes. Follow-up activities to support efforts to mitigate greenhouse gas emissions in capture fisheries and aquaculture are under way and include the publication of a manual on fuel savings for small fishing vessels.150

136. Ocean fertilization. A proposal to amend the Protocol to the Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter (the London Convention) with the aim of regulating marine geo-engineering activities, including ocean fertilization, will be considered by the contracting parties to the London Convention and its Protocol in October 2013.151 In November 2012, the

139  Contribution of the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States.

140  Ibid.


142  Contribution of the Department of Economic and Social Affairs.

143  Ibid.

144  See www.investmauritius.com/oceaneconomy/.

145  Contribution of the North Atlantic Salmon Conservation Organization.

146  See IMO document MEPC 65/22.

147  IMO contribution. See IMO documents MEPC 64/23 and MEPC 65/22.

148  See IMO document MEPC 65/22.

149  FAO contribution.


151  IMO contribution. See IMO document LC 34/15.
Contracting Parties issued a statement to express grave concern over deliberate ocean fertilization activity reported to have taken place off the west coast of Canada in 2012. 137

137. Carbon sequestration. In November 2012, the contracting parties to the London Protocol adopted revised Specific Guidelines for Assessment of Carbon Dioxide Streams for Disposal into Sub-seabed Geological Formations to take into account transboundary migration of carbon dioxide waste streams within such formations after injection. The parties considered a draft text for the development and implementation of arrangements or agreements for the export of carbon dioxide streams for storage in sub-seabed geological formations. 153

B. Adapting to the impacts of climate change

138. In the light of the projected impacts of climate change, adaptation represents an immediate and urgent global priority. 154 In that regard, FAO is chairing the Global Partnership on Climate, Fisheries and Aquaculture, a voluntary global initiative to, inter alia, develop effective tools and management approaches and build international support. 155 The FAO secretariat is giving priority to identifying and reducing the vulnerability of fisheries and aquaculture systems by improving the resilience and adaptability of the fisheries and aquaculture sectors to shocks, climate change, ocean acidification and natural disasters. Its activities aimed at supporting policy, legal and implementation frameworks to mainstream climate change issues into fisheries and aquaculture management; reinforce capacity to address climate change issues; plan for adaptation and mitigation within the fisheries and aquaculture sectors; and integrate fisheries and aquaculture into national climate change adaptation and mitigation plans and enabling financial mechanisms. 156

139. UNEP-CEP continued to support efforts to increase resilience and reduce the vulnerability of coastal areas and small island developing States to the impacts of climate change. The European Union funded activities for the protection and development of coastal ecosystems, through the climate change adaptation and disaster risk reduction project in Jamaica. The activities included the replanting of mangroves in degraded coastal regions, the restoration of seagrass beds and areas, and designing and implementing climate change awareness campaigns. 157

XI. Settlement of disputes


141. On 19 November 2012, the International Court of Justice rendered its Judgment in the case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia). The Court found that Colombia had sovereignty over the maritime features in dispute and drew a single maritime boundary delimiting the continental shelf and the exclusive economic zones of Nicaragua and Colombia. 158 As at 31 August 2013, the Court had two other cases related to the law of the sea on its docket, namely Maritime Dispute (Peru v. Chile) and Whaling in the Antarctic (Australia v. Japan: New Zealand intervening).

142. During the reporting period, the International Tribunal for the Law of the Sea handled four cases: Case No. 18, The M/Y “Louisa” Case (Saint Vincent and the Grenadines v. Kingdom of Spain); Case No. 19, The M/Y “Virginia G” Case (Panama v. Guinea-Bissau); Case No. 20, The “ARAL Libertat” Case (Argentina v. Ghana); and Case No. 21, Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission. 159 After rendering judgments in Cases No. 18 160 and No. 20, 161 the Tribunal, as at 31 August 2013, had two cases on its docket, Cases No. 19 162 and No. 21. 163

143. The list of experts in the field of marine scientific research for use in special arbitration under annex VIII to the United Nations Convention on the Law of the Sea that is maintained by IUC was updated on 27 November 2012, 164 and the list maintained by IMO was updated on 5 July 2013. 165

XII. International cooperation and coordination

144. The United Nations Convention on the Law of the Sea is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, as recognized by the General Assembly. In the light of the fact that the problems of ocean space are closely interrelated and need to be considered as a whole through an integrated, interdisciplinary and intersectoral approach, the General Assembly has consistently reaffirmed the need to improve cooperation and coordination at the national, regional and global levels, in accordance with the Convention, in order to support and supplement the efforts of each State in promoting the implementation and observance of the Convention, and the integrated management and sustainable development of the oceans and seas. In that regard, it is essential to make full use of all available mechanisms aimed at facilitating cooperation and coordination, such as the Consultative Process and UN-Oceans.

145. The Consultative Process was established by the General Assembly, consistent with the legal framework provided by the United Nations Convention on the Law of the Sea and the goals of chapter 17 of Agenda 21, in order to facilitate the annual review by the General Assembly, in an effective and constructive manner, of developments in ocean affairs and the law of the sea, including by suggesting...
particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced. In resolution 67/78, the General Assembly, inter alia, recognized the primary role of the Consultative Process in integrating knowledge, the exchange of opinions among multiple stakeholders and coordination among competent agencies, and enhancing awareness of topics, including emerging issues, while promoting the three pillars of sustainable development. The Assembly decided to continue the Consultative Process for two additional years, and to further review its effectiveness and utility at its sixty-ninth session. The Consultative Process, at its fourteenth meeting, in June 2013, focused its discussions on the impacts of ocean acidification on the marine environment.

The inter-agency coordination mechanism on ocean and coastal issues within the United Nations system, UN-Oceans, has continued to work on its draft terms of reference, as requested by the General Assembly in resolution 67/78. In that context, UN-Oceans has undertaken constructive discussions with Member States with a view to facilitating the final approval of the revised terms of reference. UN-Oceans also held its annual meeting on 17 June 2013 to, inter alia, receive information about developments relating to the Open Working Group on Sustainable Development Goals and the World Bank Global Partnership for Oceans.

Following the launch of the Oceans Compact in August 2012 and consultations with Member States, and in view of ongoing relevant intergovernmental processes, the Secretary-General decided that it would be beneficial for the United Nations system to focus its attention on the preparation of a system-wide inventory of oceans-related mandates.

XIII. Capacity-building activities of the Division for Ocean Affairs and the Law of the Sea

In response to the importance placed by the General Assembly on capacity-building in the field of the law of the sea and ocean affairs, the Division for Ocean Affairs and the Law of the Sea has intensified its capacity-building activities, including through provision of advisory services; administration of trust funds; organization of briefings and training programmes; preparation of publications; maintenance of databases; administration of fellowship programmes; and dissemination of information through its website.

A. Technical assistance

In addition to the activities described in paragraph 50 above, the Division for Ocean Affairs and the Law of the Sea organized, on 11 September 2013, in collaboration with the United Nations Institute for Training and Research, a training seminar on selected recent developments in ocean affairs and the law of the sea.

The Division provided advice and assistance to several States pursuant to its mandate under resolutions 52/26 and 67/78. For example, from 17 to 18 October 2012, it assisted the Government of Qatar in conducting a training workshop in Doha on the legal and technical aspects of the implementation of the United Nations Convention on the Law of the Sea.

B. Trust funds

The Division for Ocean Affairs and the Law of the Sea continues to administer three voluntary trust funds established by the General Assembly to assist the work of two of the bodies established under the Convention, namely the Commission on the Limits of the Continental Shelf and the International Tribunal on the Law of the Sea. Additionally, the Division administers three other voluntary trust funds, which contribute, inter alia, to the dissemination and wider appreciation of international law and provide financial assistance for the participation of representatives from developing countries in meetings in accordance with the terms of reference of each of the funds. The Division also administers, jointly with FAO, the Assistance Fund under Part VII of the United Nations Fish Stocks Agreement. To ensure more efficient processing of applications for financial assistance, States may be invited to use application forms where appropriate. In some instances, in order to provide financial assistance, a grant agreement may need to be signed between the State requesting assistance and the United Nations.

C. Fellowships

1. Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea

Thus far, the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea has enabled 25 individuals from 25 Member States to be trained. In July 2013, Miguel Enrique Tesoro Torres of Cuba completed the requirements of the twenty-fifth Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea. With the contributions received for the voluntary trust fund during the reporting period, the Division for Ocean Affairs and the Law of the Sea will be in a position to administer one Fellowship award for the period 2013-2014. However, additional contributions will be required in order to make an additional award beyond 2014. Accordingly, an appeal is hereby made to Member States and others in a position to do so to contribute generously to the trust fund so as to enable the Secretariat to make additional annual awards.
2. The United Nations-Nippon Foundation of Japan Fellowship Programme

154. The United Nations-Nippon Fellowship Programme has trained 90 individuals from 58 Member States thus far. Currently, 10 individuals from Costa Rica, Côte d’Ivoire, Gambia, the Islamic Republic of Iran, Kiribati, Mexico, Saint Vincent and the Grenadines, Trinidad and Tobago, the United Republic of Tanzania and Vietnam are undertaking the Programme. Ten new awards will be made in the fourth quarter of 2013 for the new Fellowship cycle commencing in the first quarter of 2014.\(^{172}\)

155. Under the Alumni Fellowship Programme component, a meeting of regional alumni representatives was held in New York in December 2012 on the margins of the commemoration by the General Assembly of the thirtieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea. A regional meeting for the alumni of the Pacific Islands region, to be hosted by the Pacific Islands Forum Secretariat, will be held in October 2013 in Fiji.

XIV. Conclusions

156. The developments outlined in the present report reconfirm the ongoing need to address all ocean issues as a whole through an integrated, interdisciplinary and intersectoral approach. As stated in the Preamble to the United Nations Convention on the Law of the Sea, the problems of ocean space are closely interrelated and need to be considered as a whole.

157. More than 30 years after its adoption, the United Nations Convention on the Law of the Sea, which provides the legal framework for all activities in the oceans and seas and the basis for national, regional and global action and cooperation in the marine sector, remains critical for the maintenance and the strengthening of peace, security, cooperation and friendly relations among nations. It is the source of stability and legal certainty, which are critical to the economic and social advancement of people, and constitutes an essential unifying framework for processes following the United Nations Conference on Sustainable Development and post-2015.

158. The increasing number of States that have expressed their consent to be bound by the United Nations Convention on the Law of the Sea brings us closer to the goal of universality. Effective implementation by all parties and application by competent international organizations of the legal regime of the Convention is thus critical, not only for a robust legal order for the oceans and seas, but also for sustainable development.

159. Adequate capacity, be it human, technical or financial, is a fundamental building block for compliance with relevant instruments and to benefit from the oceans and their resources. In that regard, the Secretariat is committed to intensifying its assistance in order to promote a better understanding of the Convention and the related agreements and with a view to facilitating their wider acceptance, uniform and consistent application and effective implementation.

160. As demonstrated in the present report, a number of measures have been taken or are under consideration by the United Nations specialized agencies, programmes and bodies and other intergovernmental organizations to assist States in the implementation of the legal regime for oceans and seas. The role of the General Assembly in providing global policy guidance in the context of its agenda item entitled “Oceans and the law of the sea”, and a harmonizing framework to ensure coordination between and among States and competent international organizations, continues to be critical to avoid a fragmented approach, as well as duplications, overlaps and possible contradictions in the manner ocean issues are addressed, in particular as regards marine biodiversity beyond areas of national jurisdiction.

161. Following the United Nations Conference on Sustainable Development, in a context which has been characterized by a marked increase in ocean-related initiatives and activities on the part of States, international organizations and civil society, the significant role of the General Assembly, together with the bodies it has established, such as the Consultative Process, cannot be overstated. Those forums allow for an integrated, interdisciplinary and intersectoral consideration of ocean issues, but also ensure consistency with the legal framework provided by the United Nations Convention on the Law of the Sea. Such unique forums also foster cooperation and coordination among competent international organizations, thus minimizing the potential for duplication and optimizing resources.

162. Indeed, the Secretary-General wishes to re-emphasize the need to improve cooperation and coordination at all levels, in accordance with the United Nations Convention on the Law of the Sea and relevant General Assembly resolutions. Such cooperation and coordination are also an essential component of the integrated management, conservation and sustainable development of the oceans and seas. The Secretary-General is also mindful of the need for an enhanced and more coordinated contribution of the United Nations system and related intergovernmental organizations to those efforts, including through UN-Oceans. In this context, he will continue to do his utmost to support Member States in their efforts to achieve healthy oceans for prosperity.

\(^{172}\) Information regarding the eligibility requirements and the application procedures is available at www.un.org/depts/los/nippon.
### Status of voluntary trust funds administered by the Division for Ocean Affairs and the Law of the Sea (1 July 2012-31 July 2013)

<table>
<thead>
<tr>
<th>Voluntary trust fund</th>
<th>Countries that benefited from the trust fund during the reporting period</th>
<th>Countries that contributed to the trust fund during the reporting period</th>
<th>Fund balance estimate as at July 2013 (United States dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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, and compliance with article 76 of the United Nations Convention on the Law of the Sea</td>
<td>Cameroon, Ghana, Kenya, Mexico, Mozambique, Nigeria, Pakistan, Trinidad and Tobago</td>
<td>China, Costa Rica, Ireland, Japan, Mexico, Republic of Korea</td>
<td>1,087,906</td>
</tr>
<tr>
<td>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</td>
<td>Brazil, Burkina Faso, Djibouti, Honduras, Madagascar, Pakistan, Togo, Trinidad and Tobago</td>
<td>New Zealand</td>
<td>55,706</td>
</tr>
<tr>
<td>Voluntary trust fund for the purpose of assisting developing countries, in particular least developed countries, small island developing States and landlocked developing States, in attending meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea</td>
<td>Brazil, Burkina Faso, Djibouti, Honduras, Madagascar, Pakistan, Togo, Trinidad and Tobago</td>
<td>New Zealand</td>
<td>55,706</td>
</tr>
<tr>
<td>Voluntary trust fund to assist States in the settlement of disputes through the International Tribunal for the Law of the Sea</td>
<td>N/A</td>
<td>Ireland</td>
<td>190,409</td>
</tr>
<tr>
<td>Voluntary trust fund for the regular process for global reporting and assessment of the state of the marine environment, including socioeconomic aspects</td>
<td>Group of experts: Barbados, Brazil, Chile, Kenya, Republic of Korea, Uganda</td>
<td>Ireland, New Zealand, Norway, Republic of Korea</td>
<td>82,351</td>
</tr>
<tr>
<td>Voluntary trust fund for the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law — Hamilton Shirley Assistance Fund</td>
<td>Cuba</td>
<td>Finland, Ireland, Monaco, Sri Lanka, Trinidad and Tobago</td>
<td>92,621</td>
</tr>
<tr>
<td>Assistance Fund under Part VII of the United Nations Fish Stocks Agreement — implemented jointly with FAO</td>
<td>Cook Islands, Kiribati, Maldives, Micronesia, Marshall Islands, Mauritius, Namibia, Nauru, Palau, Samoa, São Tomé and Príncipe, South Africa, Sri Lanka, Tonga, Tuvalu, Uruguay</td>
<td>N/A</td>
<td>275,410</td>
</tr>
</tbody>
</table>

Report of the Secretary-General on oceans and the law of the sea,
A/69/71, 21 March 2014
Sixty-ninth session
Item 75 (a) of the preliminary list*
Oceans and the law of the sea

Oceans and the law of the sea

Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraph 284 of General Assembly resolution 68/70 of 9 December 2013, with a view to facilitating discussions on the topic of focus at the fifteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, on the theme entitled “The role of seafood in global food security”. It constitutes the first part of the report of the Secretary-General on developments and issues relating to ocean affairs and the law of the sea for consideration by the Assembly at its sixty-ninth session. The report is also being submitted to the States Parties to the United Nations Convention on the Law of the Sea, pursuant to article 319 of the Convention. In the light of the multifaceted nature of the topic being covered and the page limitations established by the General Assembly, the report does not purport to provide an exhaustive synthesis of available information.
I. Introduction

1. In paragraph 274 of its resolution 68/70 of 9 December 2013, the General Assembly decided 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 fifteenth meeting on the role of seafood in global food security. The present report addresses that topic.

2. Food security and nutrition has become a pressing global challenge underscoring the need for sustainable food sources. Seafood already plays an important, albeit perhaps underrecognized, role in global food security as a key source of food and nutrition, as an input into the food production chain and as a source of revenue for individuals and States. The future role of seafood in global food security, however, faces considerable pressures, including overexploitation and other unsustainable practices in seafood exploitation, as well as other stressors on the marine environment, such as habitat loss, pollution, climate change, ocean acidification and invasive alien species, which affect the health, productivity and resilience of marine ecosystems.

3. The present report highlights the current role of seafood in global food security as well as the pressures thereon. It also draws attention to activities and initiatives undertaken with a view to ensuring the continued role of seafood in global food security and highlights opportunities for, and challenges to, the future role of seafood in global food security.

4. The Secretary-General wishes to express his appreciation to the organizations and bodies that contributed to the present report, namely, the European Union and the secretariats of the Convention on Biological Diversity and the Convention on the Conservation of Antarctic Marine Living Resources; the Council of Europe; the Department of Economic and Social Affairs of the Secretariat; the Food and Agriculture Organization of the United Nations (FAO); the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO); the International Atomic Energy Agency (IAEA); the International Commission for the Conservation of Atlantic Tunas; the International Council for the Exploration of the Sea; the International Coral Reef Initiative; the International Labour Organization (ILO); the North Atlantic Salmon Conservation Organization; the North East Atlantic Fisheries Commission; the North Pacific Anadromous Fish Commission; the Office for Disarmament Affairs of the Secretariat; the Parliamentary Assembly of the Mediterranean; the Partnerships in Environmental Management for the Seas of East Asia; the South Pacific Regional Fisheries Management Organization; the United Nations Industrial Development Organization (UNIDO); the United Nations University Fisheries Training Programme; and the World Meteorological Organization (WMO).1 The report also draws from information from a number of other sources, but does not purport to provide an exhaustive synthesis of available information.

II. The current role of seafood in global food security

A. Background

5. Despite the commitment of the international community in the United Nations Millennium Declaration (General Assembly resolution 55/2) to reduce by half the proportion of people who suffer from hunger by 2015, persistent hunger and malnutrition remain the norm for close to 842 million people around the world suffering from hunger, approximately 2 billion suffering from micronutrient deficiencies, and more than 200 million children under five years of age suffering from malnutrition.2 During the global food crisis of 2007-2008, a rapid rise in global staple food prices led to increased food insecurity and riots around the world.3 The close connection between food security and economic growth and social progress as well as with political stability and peace has been underlined.4

6. According to the Declaration of the World Summit on Food Security, food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, access, utilization and stability. The nutritional dimension is integral to the concept of food security.5

7. Food security is both a requirement for achieving sustainable development as well as one of the goals of sustainable development. Strong interdependencies exist between food security and nutrition and many other parts of the broader sustainable development agenda.6 Food security also has a human rights dimension and the right to adequate food has been recognized in international human rights instruments.8

1 Contributions authorized by the authors to be posted online are available at www.un.org/Depts/los/general_assembly/general_assembly_reports.htm.
5 Joint Statement on Global Food Security, adopted in L’Aquila, Italy, on 40 July 2009 (www.g8italia2009.it/static/G8_Algelato/LAquila_Joint_Statement_on_Global_Food_Security%5B1%5D翁.pdf).
6 Declaration of the World Summit on Food Security (Food and Agriculture Organization of the United Nations, document WSFS 2009/2).
8 Interim report of the Special Rapporteur on the right to food (A/68/288, annex, para. 1-3).
8. As the role of seafood in global food security gains recognition, the issue is being addressed by a growing number of forums, including the Committee on World Food Security. In the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, entitled “The future we want”, world leaders reaffirmed their commitments regarding the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger. These leaders acknowledged that food security and nutrition had become a pressing global challenge and, in that regard, further reaffirmed their commitment to enhancing food security and access to adequate, safe and nutritious food for present and future generations. They also 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.

9. The present section highlights the current role of seafood in global food security both directly, as a source of food and nutrition (sect. B.1), and indirectly, as an input into food production (sect. B.2) or as a source of revenue (sect. B.3). It also underscores how pressures on the sustainable exploitation of seafood and on the marine environment affect that role. Inland fisheries are not addressed in the present report, but it is noted that their contribution to global food security is closely related to that of seafood.

B. How seafood contributes to global food security

1. Seafood as food

10. For the purposes of the present report, seafood is considered to include all marine living resources used for food, including fish, shellfish, crustaceans, marine mammals, sea turtles and algae. This definition promotes a holistic view of the contribution of seafood to global food security. Due to space limitations, however, the present report will focus primarily on the contribution of marine living resources to global food security, in particular in the context of fisheries and aquaculture.

11. In order to meet the requirements of the four pillars of food security (see para. 6 above), it is important for seafood to have nutritional value (utilization) and for it to be available in sufficient quantities and on a consistent basis (availability). Individuals should be able to regularly acquire adequate quantities of seafood (access), and the supply of seafood should be resistant to spikes in price or temporary shortages (stability).

12. Utilization and nutritional value. Seafood plays an important role in human nutrition, in particular as a key source of protein and essential micronutrients. Fish contributes about 17 per cent to the world’s animal protein intake, and is the main source of animal protein along with essential micronutrients and fatty acids for 3 billion people. Populations in Africa and Asia rely even more on fish for their intake of animal proteins, and this contribution can reach up to 40 per cent or more in some small island developing States. According to one estimate, rural inhabitants of the Solomon Islands rely on fish and fish products for 94 per cent of their animal protein. Notably, seafood contributes almost a quarter of animal proteins consumed by people in low-income food-deficit countries.

13. Although fish plays an extremely important role in the supply of protein worldwide, it has been considered more important as a source of micronutrients and lipids. It is estimated that in excess of 2 billion people, especially in developing countries, are undernourished due to a lack of essential vitamins and minerals often contained in fish. These deficiencies are believed to be “especially important at key stages of human life (pregnancy, breastfeeding, childhood)”. Seafood plays an important part in the diet of many indigenous peoples, for example, the diet of the Yup’ik Eskimos contains 20 times more omega-3 fats from fish than the diet of the people in the rest of the United States of America.

14. Important micronutrients provided by fish consumption include minerals, certain vitamins and omega-3 fatty acids, as well as lysine, an essential amino acid. Regular consumption (one to three times per week) of fish can reduce the risk of various diseases and disorders, particularly cardiovascular disease. It can also benefit brain health and development and relieve inflammatory conditions, and may help reduce the risk of premature birth.

15. Different types of seafood may have different nutritional value. For example, it has been suggested that “large farmed freshwater fish often possess micronutrient and lipid profiles inferior to those of small species derived from marine and inland capture fisheries”.

11. Popular definitions of seafood differ, e.g., “Food obtained from the sea; fish, crustacea, etc., used as food” (www.oed.com); “Fish and shellfish that live in the ocean and are used for food” (www.m-w.com); “Seafood is any sea animal or seaweed that is served as food or is suitable for eating, particularly seawater animals, such as fish and shellfish (including mollusks and crustaceans”) (http://seafood.askdefine.com); “animals from the sea that can be eaten, especially fish or sea creatures with shells” (http://dictionary.cambridge.org/us/dictionary/english/seafood?q=seafood).
docosahexaenoic acid may be lower in certain types of farmed species.\(^\text{25}\) However, many of the factors that affect the quality and nutritional value of fish can be monitored and controlled during farming.\(^\text{26}\)

16. Other types of seafood also serve as important sources of protein and micronutrients. For example, various types of seaweed contain protein, dietary fibre, vitamins, minerals and amino acids.\(^\text{27}\) Seaweed is used for direct human consumption and hydrocolloids like agar, alginate and carrageenan have been extracted from seaweed and used as thickening and gelling agents in food products. Seaweed meal is also used in animal and fish feed.

17. Crustaceans and shellfish similarly provide important nutritional benefits.\(^\text{28}\) While not as widely consumed, for a variety of reasons, marine mammals can also provide an important source of nutrition, in particular for certain groups of indigenous peoples.\(^\text{29}\) Since 1990, people in at least 114 States have consumed one or more of at least 87 marine mammal species. These statistics include animals killed deliberately, or unintentionally as by-catch or strandings.\(^\text{30}\) A wide range of concerns have been expressed, however, over the consumption of marine mammals as food, arising from questions of sustainability and food safety as well as cultural, religious and spiritual beliefs. Such concerns have, for example, led to support for an international moratorium on commercial whaling since 1986.\(^\text{31}\) However, the food security needs of indigenous people are supported through catch limits set for aboriginal subsistence whaling.

18. Food safety can affect the nutritional value of seafood. If not properly produced, transported, stored or prepared, some types of seafood are prone to spoilage. Environmental factors, such as pollution and poor ecosystem health, may also affect the nutritional value of seafood, particularly through contamination. Food safety and environmental laws and regulations, effective quality control and consumer awareness can play an important role in minimizing the risks associated with the consumption of unsafe seafood.\(^\text{33}\)

19. Availability. In 2012, global fish production amounted to approximately 157 million tons, with marine fisheries and aquaculture accounting for approximately 100 million tons.\(^\text{34}\) With sustained growth in fish production and improved distribution channels, world fish food supply has grown substantially in the last five decades, with an average growth rate of 3.2 per cent per year in the period 1961-2009, outpacing the increase of 1.7 per cent per year in the world’s population.\(^\text{35}\)

20. While fish production from marine capture fisheries has been fairly stable in recent years (around 80 million tons in 2007-2012; see the table below), the increasing demand for fish and fishery products has been steadily met by a robust increase in aquaculture production. This growth has been estimated at an average 8.1 per cent yearly during the period 1970-2012.\(^\text{36}\)

**Global fish production and utilization, 2007-2012**

(Millions of tons)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (estimated)</th>
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<tbody>
<tr>
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<tr>
<td>Capture fisheries</td>
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<tr>
<td>Inland</td>
<td>10.1</td>
<td>10.2</td>
<td>10.4</td>
<td>11.2</td>
<td>11.1</td>
<td>11.5</td>
</tr>
<tr>
<td>Marine</td>
<td>80.7</td>
<td>79.9</td>
<td>79.6</td>
<td>77.7</td>
<td>82.4</td>
<td>79.5</td>
</tr>
<tr>
<td>Subtotal</td>
<td>90.7</td>
<td>90.1</td>
<td>90.0</td>
<td>89.0</td>
<td>93.5</td>
<td>91.0</td>
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<tr>
<td>Aquaculture</td>
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<tr>
<td>Inland</td>
<td>33.4</td>
<td>36.0</td>
<td>38.1</td>
<td>40.9</td>
<td>43.9</td>
<td>46.4</td>
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<tr>
<td>Marine</td>
<td>16.6</td>
<td>16.9</td>
<td>17.6</td>
<td>18.1</td>
<td>18.8</td>
<td>20.1</td>
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<td>55.7</td>
<td>59.0</td>
<td>62.7</td>
<td>66.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>140.7</td>
<td>143.0</td>
<td>145.7</td>
<td>148.0</td>
<td>156.2</td>
<td>157.5</td>
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<th>2012 (estimated)</th>
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<tr>
<td><strong>B. Utilization</strong></td>
<td></td>
<td></td>
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<tr>
<td>Human consumption</td>
<td>117.4</td>
<td>120.8</td>
<td>123.8</td>
<td>128.1</td>
<td>132.3</td>
<td>135.4</td>
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<td>Non-food uses</td>
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<td>22.3</td>
<td>21.9</td>
<td>19.9</td>
<td>23.9</td>
<td>22.1</td>
</tr>
<tr>
<td>Population (billions)</td>
<td>6.7</td>
<td>6.8</td>
<td>6.8</td>
<td>6.9</td>
<td>7.0</td>
<td>7.1</td>
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<tr>
<td>Per capita food fish consumption (kilograms)</td>
<td>17.6</td>
<td>17.9</td>
<td>18.1</td>
<td>18.5</td>
<td>18.9</td>
<td>19.1</td>
</tr>
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</table>

Source: FAO contribution.

21. In the past three decades, world food fish production of aquaculture has expanded by almost 12 times.\(^\text{37}\) As a result, the average annual contribution of food fish from aquaculture for human consumption has increased sevenfold, from 6 per


\(^{26}\) FAO, Committee on Fisheries, Sub-Committee on Aquaculture, “The role of aquaculture in improving nutrition: opportunities and challenges” (FAO document COFI/AQ/VII/2013/7).


\(^{29}\) See http://iwc.int/aboriginal.


\(^{31}\) The cat parasite Toxoplasma gondii, which can cause blindness in people, has been identified in a number of marine mammals, including beluga in the western Arctic and sea otters. See: “Parasite in cats killing sea otters” (www.csc.ucsd.edu/NEWSROOM/NEWS.RELEASES/2002/ParasiteKillingSeaOtters.html); “Cat parasite found in Arctic beluga” (www.wbc.com/news/science-environment-26197742).

\(^{32}\) See http://iwc.int/commercial.

cent in 1970 to 49 per cent in 2012. It continues to be the fastest growing food production sector in the world at nearly 6.5 per cent a year. Of this, 90 per cent is produced in developing countries, primarily from small-scale aquaculture. According to a recent study by the World Bank, fish production has the potential to increase by 23.6 per cent between 2010 and 2030, principally through increases in aquaculture outputs.

It has been projected that future fish supplies will be dominated by aquaculture systems because, among other reasons, feed conversion rates for many farmed fish are more efficient than those of land-based animal production, and aquaculture is an efficient user of water.

Despite the relative stability of yields from capture fisheries and the increased yields from aquaculture in recent years, there are concerns regarding the future sustainability of current production levels. Overexploited stocks are less productive and prone to collapse. Rapid growth in aquaculture has been due in some regions to unsustainable practices that have negatively affected the marine environment upon which aquaculture yields depend. A wide variety of other anthropogenic pressures also continue to affect the marine environment and seafood yields (see sect. III below).

There is therefore concern that the availability of fish and fishery products may not be able to keep up with increased demand, as the world’s population is expected to grow by 20.2 per cent from 2010 to 2030. For example, in approximately one half of Pacific island countries and territories, sustainable production is not expected to meet future needs based on predicted population growth and estimate sustainable catches.

Access. There are significant regional disparities in access to seafood. Of the 126 million tons available for human consumption in 2009, fish consumption was lowest in Africa (9.1 million tons, or 9.1 kg per capita), while Asia accounted for two thirds of total consumption. The corresponding per capita fish consumption figures for Oceania, North America, Europe and Latin America and the Caribbean were 24.6 kg, 24.1 kg, 22.0 kg and 9.9 kg, respectively.

The supply of fish in Africa has been described as being “in crisis”. Per capita consumption in sub-Saharan Africa is the lowest in all regions and it is the only part of the world where consumption is declining, principally owing to the levelling off in capture fish production and the increasing population. In order to simply maintain the current level of per capita supply of fish in sub-Saharan Africa (6.6 kg/year) up to 2015, fish production (capture fisheries and aquaculture) has to increase by 27.7 per cent over this period.

Transportability is also a key factor in access to seafood. Fish is very versatile as it can be processed into a wide array of products to increase its economic value and improve its transportability and durability. It is generally distributed in live, fresh, chilled, frozen, heat-treated, fermented, dried, smoked, salted, pickled, boiled, fried, freeze-dried, minced, powdered or canned form, or as a combination of two or more of these forms. The available processing methods vary considerably, even within countries, and may affect access to fish.

Stability. Although the global supply of fish from fisheries and aquaculture has been relatively stable, price fluctuations can occur in line with other food sources. During the global food crisis of 2007-2008, fisheries products rose in value, according to the FAO Fish Price Index (see figure 1). The rise appeared to be more pronounced in the capture fisheries sector, where fuel costs for fishing vessels are a major input.

Local seafood stability may also be subject to fluctuations based on severe and recurring weather events (including El Niño), disease and pollution incidents. Stability in this regard, however, may counteract instability in land-based food sources caused by factors such as droughts and flooding. Disease outbreaks have cost the global aquaculture industry tens of billions of dollars over the last 20 years.
31. **Food safety and post-harvest losses.** Food safety more generally affects the stability of seafood availability and cost. Being highly perishable, fish needs timely harvesting and procurement, efficient transportation and advanced storage, processing and packaging facilities for its marketing. For example, in many parts of Africa, lack of infrastructure has led to post-harvest losses of greater than 30 per cent of the catch. Specific requirements and preservation techniques are therefore needed in order to preserve the nutritional quality of seafood, extend its shelf life, minimize the activity of spoilage bacteria and avoid losses caused by poor handling.

32. For example, artisanal fisheries can suffer from high post-harvest losses because of low investment, low-level technology, variability in supply and contamination, especially during rainy periods. Spoilage and contamination of artisanal fisheries catch can create a significant source of food insecurity or even a public health hazard.

2. **Seafood and seafood products in food production**

33. In addition to serving as food, seafood also contributes to food security as a key input in the production of food. In particular, fishmeal and algae can be used in feed for marine and freshwater aquaculture, livestock and poultry, as well as in fertilizers used to grow crops. Fish oils can also be used in the manufacture of edible oils and fats, such as margarine.

34. Fishmeal, the crude flour obtained after milling and drying fish, is produced from whole fish, fish remains or other fish by-products resulting from processing. Many different species are used for fishmeal and fish-oil production, in particular anchoveta. The volume of fishmeal and fish oil produced worldwide annually fluctuates in line with catches of these species.

35. Another increasingly important source of raw material for the production of fishmeal is the processing waste from commercial fish species used for human consumption. In 2010, 15 million tons of the 148 million tons of fish supplied by capture fisheries and aquaculture was reduced to fishmeal and fish oil.

36. Aquaculture remains the largest user of fishmeal and fish oil. Aquafeeds are generally used for feeding omnivorous fishes, carnivorous fishes and crustacean species. According to FAO estimates, in 2008, about 31.7 million tons (46.1 per cent of total global aquaculture production including aquatic plants) of farmed fish and crustaceans were feed-dependent, making up 81.2 per cent of global farmed fish and crustacean production. The fishmeal used for these diets varied between 2 and 10 per cent, with the exception of those for tilapia and catfish in a few countries, where up to 25 per cent fishmeal use has been reported.

37. While the total amounts of fishmeal and fish oil used in aquafeeds have grown, the use of fishmeal to feed land animals has decreased in recent years. However, the percentage of aquafeeds made up of fishmeal has also decreased as the costs of fishmeal have increased. Some alternative protein sources have been identified. For example, algal products can be used to enhance the nutritional value of food and animal feed owing to their chemical composition and thus play a crucial role in aquaculture.

3. **Seafood as a source of revenue**

38. Apart from being an important source of food, the seafood sector has also been an important provider of livelihoods and economic benefits to millions of people engaged in harvesting, cultured, processing and trading seafood. This is especially true for coastal communities in developing countries, where large sections of the population have limited opportunities for employment and fish trade is sometimes the only option open for earning a livelihood and improving the quality of lives.

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54 Béné and Heck, note 46 above, p. 12.
55 FAO, note 33 above, p. 63.
56 Contribution of the United Nations University Fisheries Training Programme.
57 See www.fao.org/wairdocs/tan/x5926e/x5926e01.htm.
58 FAO, note 33 above, p. 65.
59 Ibid., p. 13.
60 Ibid., p. 172.
61 Ibid., p. 13.
39. Worldwide, around 56 million people are directly employed in fisheries and aquaculture and some 200 million along the value chain from harvesting to distribution. Thus the livelihoods of some 660 to 820 million people, representative of 9 to 12 per cent of the global population, are dependent on the sector.64

40. The value of the global fish trade exceeds the value of international trade in all other animal proteins combined.65 Most trade is dependent on the labour of those who work on the world’s merchant ships and commercial fishing vessels.66 Trade in seafood, as well as the granting of fishing licenses to foreign fishing vessels, can also be an important source of revenue for developing coastal States. However, some concerns have been expressed regarding the fair distribution of benefits from international fisheries between coastal States, particularly small island developing States, and distant-water fishing nations.67

41. The value of the marine capture seafood production at the point of harvest is approximately 20 per cent of the $400 billion global fish market.68 In 2012, the value of international trade in seafood was about $129 billion, while preliminary data for 2013 pointed to further growth to $136 billion. Over 53 per cent of this trade originated in developing countries whose net trade income (exports minus imports), valued at $35 billion in 2012, is greater than the net trade income of the other agricultural commodities combined.69

42. It is estimated that, overall, women accounted for at least 15 per cent of all people directly engaged in the fisheries primary sector in 2010. As much as 60 per cent of seafood is marketed by women in Asia and West Africa. In Africa, 59 per cent of fishers (marine, inland and aquaculture) are women.70 Commonly, in coastal artisanal fishing communities, women manage the smaller boats and canoes that go out fishing. Women are also involved in gathering shells, sea cucumbers and aquatic plants in the intertidal zone and contribute as entrepreneurs and provide labour before, during and after the catch in both artisanal and commercial fisheries.71 By generating incomes for female workers, especially in fish processing and marketing, employment in aquaculture has enhanced the economic and social status of women in many places in developing countries, where more than 80 per cent of aquaculture output occurs.

43. However, pressures on the role of seafood in global food security are affecting the economic contribution of the seafood sector (see sect. III below). Recent studies have demonstrated that, as a result of overfishing, the difference between the potential and actual net economic benefits from marine fisheries is approximately $50 billion per year, equivalent to more than half the value of the global seafood trade. Thus, global marine capture fisheries are currently an underperforming global asset.72

44. Aquaculture has made important contributions to livelihoods, poverty alleviation, income generation, employment and trade, even though its potential has not yet been fully realized across all continents.73 Mediterranean aquaculture, for example, which is a large and dynamic industry and plays an important social and economic role in the region, has grown substantially over recent years. Aquaculture can also provide opportunities to meet increased consumer demand for aquatic products, while reducing the dependence on often overexploited wild stocks.74

45. Global production of algae has been dominated by marine macroalgae, or seaweeds, grown in both marine and brackish waters. Aquatic algae production by volume increased at average annual rates of 9.5 per cent in the 1990s and 7.4 per cent in the 2000s — similar to the rates for farmed aquatic animals — with production increasing from 3.8 million tons in 1990 to 19 million tons in 2010. Cultivation has overshadowed production of algae collected from the wild, which accounted for only 4.5 per cent of total algae production in 2010. The total value of farmed aquatic algae in 2010 is estimated at $5.7 billion, while that for 2008 is now re-estimated at $4.4 billion.75

46. In sharp contrast to fish aquaculture, the cultivation of aquatic algae is practised in far fewer countries. Only 31 countries and territories are recorded as having engaged in algae farming production in 2010, and 99.6 per cent of global cultivated algae production comes from just eight countries in Asia and Africa.76 China contributes 62.3 per cent of global production.

47. The total value of seaweed production was estimated by FAO in 2003 at $6 billion, of which $5 billion was the value of seaweed for human consumption. Carrageenan seaweed farming is a profitable activity with great potential (see figure II), especially for coastal communities with abundant labour and few alternative activities. Among other advantages, it has a short production cycle, low capital requirement and relatively simple farming technology. The price of carrageenan in the international market was generally stable in the first half of the 2000s but has increased rapidly since the mid-2000s and become more volatile. Seasonality, disease, inclement weather and competition are the biggest risk factors for seaweed farming. The seaweed value chain involves four stages: cultivation,
post-harvest treatment, trading and processing,77 with women playing an important role in seaweed farming. In India, for example, women were the first and primary adopters of seaweed farming which offered them an income.78

Figure II
World carrageenan seaweed farming production

![Graph showing world carrageenan seaweed farming production]

Note: Carrageenan seaweeds under cultivation are *Kappaphycus* and *Eucheuma* seaweeds (Gelidiales)

III. Pressures on the role of seafood in global food security

48. The seafood industry faces numerous pressures that affect the current, as well as the future, availability, access, utilization and stability of seafood in global food security, including ecosystem degradation and unsustainable exploitation and production practices. The capacity of marine ecosystems to support the production of seafood to meet the food security and nutritional needs of present and future generations is directly dependent on their health and resilience.

A. Unsustainable practices in the exploitation of seafood resources

49. A wide range of unsustainable practices in marine capture fisheries, including overfishing, illegal, unreported and unregulated fishing and destructive fishing, as well as unsustainable aquaculture practices, can affect the health of marine ecosystems and, therefore, the sustainability of resource exploitation and food security.

50. Unsustainable exploitation of marine capture fisheries. The share of marine fish stocks that are overexploited has increased during the last decades, from 10 per cent in 1970 to nearly one third in 2009. A further 52 per cent of the fish stocks are fully exploited.79 Overexploitation may also have other detrimental impacts on marine ecosystems, including by upsetting predator-prey relationships, particularly in relation to associated and dependent species.80

51. Harmful subsidies create overcapacity in the fishing industry and have resulted in marine capture fisheries underperforming as a global asset (see sect. IV.B.3 below). These subsidies, such as support for vessel construction and fuel tax waivers, reduce the real costs of fishing and enable unprofitable fishing to continue.81 The cumulative economic loss to the global economy over the last three decades has been estimated to be in the order of 2 trillion dollars.82

52. Technological advances have the potential to contribute to the role of seafood in food security (see sect. IV.B.3 below). However, they have also accelerated overfishing and contributed to by-catch, destructive fishing practices and ecosystem degradation. The effectiveness and efficiency of fishing fleets has increased through technological improvements, including advanced hydraulic power applications, stronger materials for fishing gear, electronic aids to navigation, seafloor mapping, fish finding, gear deployment and communication.83 Many of these technologies are also becoming more widely available, cheap and compact so they can be operated from smaller vessels.84 The future modernization of small-scale and artisanal fisheries could increase their effectiveness and efficiency and further impact global fish catch.85

53. Discards are another contributor to overfishing. In its most recent global assessment of discards, FAO reports that 7.3 million tons of fish and other animals are captured and thrown away at sea annually. Much of the discarding is associated with the use of poorly selective fishing gears and often includes large quantities of juveniles of food fish species.86

54. Destructive fishing practices impair the ability of one or more key components of an ecosystem to provide essential ecosystem functions. While a few fishing
practices are inherently destructive, such as the use of explosives and toxins, adverse impacts also occur from commonly used fishing gears, such as trawls, dredges, gillnets, pots, traps, hooks and lines. The magnitude and extent of such impacts varies widely and depends to a large extent on the physical characteristics of the gear, the mechanics of its operation, where, when and how the gear is used and the extent of its use. Synthetic pots, traps, gillnets and fish aggregating devices lost or discarded at sea can continue to catch and kill fish and other animals through a process known as ghost fishing.

55. The practice of illegal, unreported and unregulated fishing, estimated globally at 11 to 26 million tons a year, further undermines efforts to manage fisheries sustainably and conserve marine biodiversity, often leading to the collapse of local fisheries. This practice puts unsustainable pressure on fish stocks, marine wildlife and habitats, subverts labour standards and distorts markets. Products derived from illegal, unreported and unregulated fishing enter local or overseas trade markets, thus undermining the local fisheries economy, depriving local communities of guaranteed food supplies and threatening the livelihoods of fishers and other fishery-sector stakeholders.

56. Many factors contribute to illegal, unreported and unregulated fishing, including economic incentives that negate attempts to make fishing behaviour more responsible, as well as limited capacity or weak governance arrangements. Such fishing imposes significant economic costs on some of the poorest countries in the world, where dependency on fisheries for food, livelihoods and revenues is high, and undermines efforts by these countries to manage natural resources.

57. Unsustainable aquaculture practices. Like any rapidly growing industry, aquaculture faces serious challenges. In many regions, ineffective governance and regulatory arrangements have failed to protect supporting ecosystems, with consequent impacts on marine resources and habitats. Aquaculture operations, for example, can negatively impact the local biophysical environment and thereby affect the food security of stakeholders competing with aquaculture for natural resources, such as capture fisheries.

58. Capture fisheries and aquaculture may also compete with one another in relation to food security, with consequent trade-offs in relation to marine habitats, access to resources and fish utilization. Production from aquaculture may be economically profitable in the short term, but biologically wasteful processes may use more biomass to produce less.

B. Other pressures on the marine environment

59. Habitat alteration and destruction. Much of the world’s marine production originates from coastal ecosystems, such as wetlands, mangroves, coral reefs and seagrass beds. These ecosystems play a major role in the life cycle of many marine organisms by providing breeding, nursery and feeding grounds. However, owing to a range of factors, including unsustainable coastal area development, unsustainable tourism, unsustainable aquaculture and destructive fishing practices (see sect. II.A above), major marine ecosystems and habitats have been degraded or lost, with resultant threats to fisheries productivity. For example, destruction of mangroves removes the nursery grounds of many fish species and can result in reduced productivity of fish stocks.

60. Pollution. Pollution can have lasting effects on marine ecosystems. It originates from a number of marine and land-based sources, including riverine discharges, run-offs from industrial, agriculture and aquaculture operations, municipal wastewater, atmospheric deposition, dumping, accidents (e.g., oil spills), fishing operations, shipping and offshore installations. Marine pollution occurs in various forms, including heavy metals, persistent organic pollutants, pesticides, nutrients (nitrogen and phosphorus), plastics, abandoned, lost and otherwise discarded fishing gear, oil, hazardous substances, chemical munitions, radioactive materials, and anthropogenic underwater noise.

61. The impacts of pollution include the formation of hypoxic zones in the oceans, where oxygen levels in surface water can no longer support life. Dead zones are linked with increasingly frequent outbreaks of harmful algal blooms, where mass mortality events of fish and marine mammals are caused by toxin build-ups owing to lower oxygen levels in their environment. Seafood is also contaminated with toxins which may subsequently be transmitted to humans through consumption. Through their bioaccumulation to levels that may adversely affect marine living resources and human health, marine pollutants can adversely affect productivity of stocks and international trade in seafood products. Reproductive and
developmental issues, behavioural problems, diseases and cancers have been linked to chemical and other pollutants in seafood.\textsuperscript{103}

62. \textit{Alien species}. There has also been a considerable increase in the accidental introduction of alien species, both from shipping through ballast water and from escaped farmed species. In favourable conditions, alien species may become invasive and out-compete local marine species and result in biodiversity loss, thereby impacting local marine ecology, complex food webs, food security and human health.\textsuperscript{106} Genetic interactions between escaped farmed species, including possibly those that have been genetically modified, and wild fish populations may also affect the health and productivity of wild stocks.\textsuperscript{105} Contamination of wild fish stocks, including from parasites and disease transmitted from farmed species to wild species,\textsuperscript{106} can also create a significant source of food insecurity or even a public health hazard.\textsuperscript{107}

63. \textit{Climate change and ocean acidification}. The atmosphere and oceans have warmed, sea level is rising, and the concentrations of greenhouse gases have increased.\textsuperscript{108} The ocean has absorbed about 30 per cent of the emitted anthropogenic carbon dioxide, causing ocean acidification.\textsuperscript{109} Although ocean acidification and climate change are separate phenomena, increased levels of CO\textsubscript{2} in the atmosphere contribute to both.\textsuperscript{110}

64. Global climate change is expected to alter terrestrial inputs to the sea, the production of organic matter in the ocean, marine ecosystem composition and trophic interactions, the ice forming and melting dynamic, as well as the release of methane from permafrost areas in the Arctic, accelerating the green-house effect. As a result, the chemical composition of the organic matter may change accordingly with unknown consequences for global fish stocks.\textsuperscript{111}

65. Fisheries (both capture and aquaculture) and resulting food security are closely linked to weather and climate conditions. Extreme weather and long-term climate change pose important challenges to fisheries and food security. Owing to projected climate change by the mid-twenty-first century and beyond, global marine species redistribution and marine biodiversity reduction in regions sensitive to climate change will challenge the sustained provision of fisheries productivity and other ecosystem services.\textsuperscript{112} Fishers, fish farmers and coastal inhabitants will bear the full force of these impacts through less stable livelihoods, changes in the availability and quality of fish for food, and rising risks to their health, safety and homes.\textsuperscript{113}

66. The implications of climate change for food security and livelihood are of particular concern in developing countries, including small island developing States,\textsuperscript{114} where undernourishment is already widespread and reliance on seafood as a source of food is high. Redistribution of marine fisheries catch potential towards higher latitudes poses risk of reduced supplies, income and employment in tropical countries, with potential implications for food security. Spatial shifts of marine species owing to projected warming will cause high-latitude invasions and high local extinction rates in the tropics and semi-enclosed seas. Species richness and fisheries catch potential are projected to increase, on average, at middle and high latitudes and decrease at tropical latitudes. This is shown by model projections for the years 2040 to 2060, based on evidence from the Global Ocean Observing System coordinated by the Intergovernmental Oceanographic Commission of UNESCO.\textsuperscript{115} Moreover, effects of climate change on land-based food sources could also create increased reliance and pressure on seafood.\textsuperscript{116}

67. In light of these pressures on fisheries and aquaculture, the question of how to meet increasing demand for fish in the face of climate change will increasingly pose a great challenge to fisheries and aquaculture management.\textsuperscript{117} In fact, increasing climate variability will make fisheries management and the forecasts of fisheries production more difficult.\textsuperscript{118}
IV. Opportunities for, and challenges to, the future role of seafood in global food security

A. Current activities and initiatives to ensure the continued role of seafood in global food security

68. A wide range of ongoing activities and initiatives are being taken by the international community to address the pressures described in section III above, including through strengthening implementation of the international legal and policy framework, protecting and restoring the health, productivity and resilience of marine ecosystems, enhancing the conservation and sustainable use of marine living resources and capacity-building and the transfer of technology.119

69. The international legal and policy framework relevant to the role of seafood in global food security is drawn from a variety of binding and non-binding instruments. Of central importance among the binding instruments is the United Nations Convention on the Law of the Sea, which sets out the legal framework within which all activities in the oceans and seas must be carried out, including in relation to seafood and its role in global food security. The Convention contains detailed rights and obligations of States including regarding the equitable and efficient utilization of their resources, the conservation of living resources and the study, protection and preservation of the marine environment.

70. The legal regime in the Convention is complemented by two implementing agreements, including the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as a wide range of other instruments120 relating to the conservation and management of marine living resources, the protection and preservation of the marine environment, sustainable development, food security121 and human rights.122 Together they provide the international legal and policy framework of seafood in global food security.

71. National legal and policy frameworks are also vital to improving food security and ensuring the role of seafood in global food security. Given the wide variety of relevant international instruments, however, States are faced with challenges in incorporating their commitments in national legal frameworks.123

72. The following sections, inter alia, provide information on initiatives and activities described in the contributions to the present report (see para. 4 above).

1. Protecting and restoring the health, productivity and resilience of marine ecosystems

73. In the outcome document of the United Nations Conference on Sustainable Development, States committed themselves to protect and restore the health, productivity and resilience of oceans and marine ecosystems, to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations, and to effectively apply an ecosystem approach and the precautionary approach in the management, in accordance with international law, of activities having an impact on the marine environment, to deliver on all three dimensions of sustainable development.124 Many other forums have also recognized the importance to food security of healthy and productive ecosystems, as indicated below.125

74. Increasing scientific understanding. Good supporting science and data, which increase understanding of the biology and ecology of species and the key linkages among species,126 are an essential underpinning for managing the health and resilience of marine ecosystems and food security.

75. The first global integrated marine assessment of the state of the marine environment of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, to be completed by 2014, will provide the international community with a sound, scientific basis for decision-making. It will include assessments on food security and food safety.

76. A number of recent initiatives have also focused on assessing the impacts of ocean acidification, climate change and weather events on marine ecosystems. For example, IAEA is using nuclear and isotopic techniques to assess the effects of ocean acidification, increasing water temperatures and co-contaminants on marine organisms.127 It also expanded its support for collaborations among international researchers on the effects of rising acidity of ocean water.128 IAEA recently initiated a four-year coordinated research project focused on key ocean ecosystems south of

119 Past reports of the Secretary-General on oceans and the law of the sea have provided information on past activities and initiatives (see www.un.org/Depts/los).

120 Ibid. Additional information on the legal framework for oceans and the law of the sea is set out in past reports of the Secretary-General.


122 For example, article 25 of the 1948 Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) and article 11 of the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI), annex). See also the interim report of the Special Rapporteur on the right to food (A/68/288).


124 General Assembly resolution 66/288, annex, para. 158.


127 Contribution of IAEA.

30°N latitude to evaluate potential biological and socioeconomic impacts of ocean acidification and the implications for sustainable food security.

77. WMO, in partnership with the Secretariat of the Pacific Regional Environment Programme, is organizing a regional consultation on the Global Framework for Climate Services for small island developing States in the Pacific to address weather, climate and water events and climate change effects that have an impact on the socioeconomic development of those States, including fisheries.\(^\text{139}\)

78. The North Pacific Anadromous Fish Commission encourages international collaborative research to provide the best available scientific information on ecological mechanisms regulating production of anadromous populations, climate impact on salmon populations in the North Pacific and the extent to which salmon populations can be used as indicators of conditions in marine ecosystems.\(^\text{140}\)

79. **Integrated management and ecosystems approaches.** Increased emphasis is being placed on adopting integrated management and ecosystem approaches. Many initiatives adopt a suite of management tools in an integrated, cross-sectoral manner, including environmental impact assessments, area-based management tools, including marine protected areas and marine spatial planning,\(^\text{151}\) management of land-sea interactions, watershed and catchment planning and management,\(^\text{132}\) gear restrictions\(^\text{133}\) and promotion of cleaner production and environmentally sound technologies,\(^\text{134}\) as well as pollution prevention and control.\(^\text{135}\)

80. Ecosystem approaches are also increasingly being implemented and promoted within sectors, in particular, the fisheries sector. Cooperation is also currently taking place to improve policy integration in ecosystem approaches between the fisheries and biodiversity sectors. For example, the Conference of the Parties to the Convention on Biological Diversity at its eleventh meeting, held in Hyderabad, India, from 8 to 19 October 2012, adopted decision XI/18 (see UNEP/CBD/COP/11/35, annex I), in which it encouraged inter-agency collaboration between biodiversity and fisheries bodies and the participation by a range of experts on biodiversity, indigenous and local communities in fisheries management, and invited fisheries management bodies to integrate biodiversity considerations into their work.\(^\text{136}\)

81. The Partnerships in Environmental Management for the Seas of East Asia developed and implemented a multi-faceted, comprehensive, ecosystem-based approach. Its Sustainable Development of Coastal Areas Framework calls for the creation of food security and sustainable livelihood programmes to directly address fisheries concerns in the context of other programmes that also support fisheries management, including habitat protection and restoration, management of water use and supply, pollution reduction and waste management and natural and manmade hazard prevention.\(^\text{137}\)

82. The Intergovernmental Oceanographic Commission of UNESCO and partners are supporting the development, with coastal States, of strategies for assessing, managing, recovering, and sustaining marine living resources in large marine ecosystems.\(^\text{138}\)

2. **Promoting sustainable fisheries and aquaculture**

83. A wide range of activities and initiatives is being undertaken to promote sustainability in the capture fisheries and aquaculture sectors. Increasing emphasis has been placed on incorporating integrated and ecosystems approaches in the management of fisheries and aquaculture operations.\(^\text{139}\)

84. Despite these efforts, however, the international community has thus far been largely unsuccessful in reversing the trend of overfishing and habitat degradation.\(^\text{140}\) In many parts of the world, economic growth in fisheries and aquaculture has only been accomplished through unsustainable exploitation of marine resources.\(^\text{141}\)

85. At the United Nations Conference on Sustainable Development, States committed themselves to ensuring the exploitation of marine biological resources at rates which maintain or restore populations of harvested stocks to at least levels that can produce the maximum sustainable yield by 2015. States have also been called upon by the General Assembly to take a number of actions to achieve sustainable fisheries, including to urgently reduce the fishing capacity of the world’s fishing fleets to levels commensurate with the sustainability of fish, to eliminate subsidies that contribute to overfishing and overcapacity and illegal, unreported and unregulated fishing and to strengthen fisheries management capacities and institutions.\(^\text{142}\) The Strategic Plan for Biodiversity 2011-2020 and especially Aichi Biodiversity Target 6, also aims to ensure that, by 2020, all fish and invertebrate stocks and aquatic plants are managed and harvested sustainably, legally and applying ecosystem-based approaches.\(^\text{143}\)

86. IAEA underlined the relevance of its isotopic and nuclear data to management decisions in areas such as fisheries closures/reopenings, choice of aquaculture species and the geographical seating of aquaculture facilities, and also potentially to risk assessments of contaminants in seafood.\(^\text{144}\) The International Coral Reef Initiative is working to improve awareness and understanding of the importance of fish aggregations for food security.\(^\text{145}\)

\(^\text{139}\) See http://gfcs-climate.org/content/regional-consultation-gfcs-small-island-developing-states-pacific.

\(^\text{140}\) Contribution of the North Pacific Anadromous Fish Commission; the next International Symposium on Pacific Salmon and Steelhead Production in a Changing Climate is scheduled for May 2015.

\(^\text{131}\) Contributions of the European Union and the Parliamentary Assembly of the Mediterranean.

\(^\text{132}\) Contribution of the Partnerships in Environmental Management for the Seas of East Asia.

\(^\text{133}\) Ibid.

\(^\text{134}\) Contribution of U NIDO.

\(^\text{135}\) Contribution of the Partnerships in Environmental Management for the Seas of East Asia and FAO. With regard to adapting to, and mitigating, the impacts of ocean acidification, see A/68/71 and A/68/159.

\(^\text{136}\) Contribution of the secretariat of the Convention on Biological Diversity.

\(^\text{137}\) Contribution of the Partnerships in Environmental Management for the Seas of East Asia.

\(^\text{138}\) Contribution of the Intergovernmental Oceanographic Commission of UNESCO.

\(^\text{139}\) Contribution of the Parliamentary Assembly of the Mediterranean.

\(^\text{140}\) Contribution of FAO.

\(^\text{141}\) Ibid.

\(^\text{142}\) General Assembly resolution 68/71, paras. 86 and 91.

\(^\text{143}\) Contribution of the secretariat of the Convention on Biological Diversity.

\(^\text{144}\) Contribution of IAEA.

\(^\text{145}\) Contribution of the International Coral Reef Initiative.
87. The European Union reported that its Common Fisheries Policy aimed to ensure that fisheries were environmentally, economically and socially sustainable in accordance with principles of good governance, including decision-making based on best available scientific advice and the precautionary principle and broad stakeholder involvement. New rules that took effect on 1 January 2014 implement the commitment undertaken at the United Nations Conference on Sustainable Development and contain measures to reduce unwanted catches and gradually eliminate discards, including through an obligation to land catches. The policy also foresees designating areas that are biologically sensitive as protected areas. The new external dimension of the reformed Common Fisheries Policy also strengthens its commitment to addressing fishing overcapacity at a global level. 146

88. FAO highlighted that low impact and fuel efficient technologies and practices were being developed to address the energy consumption and environmental impacts of existing fishing technologies and practices. 147

89. Regional fisheries management organizations reported on measures to improve the conservation and management of fish stocks and to contribute, directly or indirectly, to global food security. 148 For example, the secretariat of the Convention on the Conservation of Antarctic Marine Living Resources has contributed to global food security through management responses based on precaution and an ecosystems approach, including catch limits, by-catch mitigation practices, temporal and spatial closures, prohibited fishing gears and sustained efforts over more than 15 years to combat illegal, unreported and unregulated fishing. 149

90. FAO has continued to develop its programme to support implementation of the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of FAO, including through its global series of regional capacity-development workshops. 150

91. With regard to small-scale fisheries, FAO is currently facilitating the development of voluntary guidelines for securing sustainable small-scale fisheries that extend beyond the traditional realm of fisheries management and address crucial socioeconomic issues. The guidelines seek to enhance the contribution of small-scale fisheries to poverty alleviation, food and nutrition security and economic growth. 151

92. The Sub-Committee on Aquaculture of the Committee on Fisheries of FAO is addressing a wide range of issues relating to the role of aquaculture in global food security and improving its sustainability. 152 FAO is developing the Global Aquaculture Advancement Programme aimed at assisting States and civil society in making future aquaculture growth sustainable. 153

93. The International Council for the Exploration of the Sea has made aquaculture an area of strategic importance; its newly established working group on aquaculture will develop science and advice for aquaculture sustainability, addressing issues such as sea lice, post and predator management, climate change and impacts on wild species and fisheries. 154

94. Recent attention has also focused on the development of ecolabelling and certification programmes to strengthen sustainability measures for aquaculture through market-based incentives. 155 In this regard, FAO is currently undertaking work to assess the conformity of aquaculture certification schemes with aquaculture certification guidelines. 156

95. FAO has also recently published a new technical paper that summarizes some of the issues facing aquaculture employment governance in a number of countries, current best practices and suggestions for improvements. 157

96. The Common Fisheries Policy of the European Union gives a prominent role to the development of environmentally, socially and economically sustainable aquaculture and aims to promote aquaculture through an open method of coordination. 158

3. Capacity-building and technology transfer

97. The importance of human, institutional and systemic capacity for the sustainable management of the marine environment and marine resources cannot be overemphasized and is essential to unlocking the benefits of seafood for global food security. 159

98. In General Assembly resolutions on oceans and the law of the sea and sustainable fisheries and in "The future we want", 160 States have reiterated the importance of human resource development, exchange of experiences and expertise, knowledge transfer, technical assistance, and the need to strengthen technical and scientific cooperation. Regional meetings held in preparation for the Third International Conference on Small Island Developing States have also highlighted the importance of strengthening national statistical and information systems, analytical capabilities for decision-making, and monitoring and evaluation systems for sustainable development. 161

146 Contribution of the European Union.
147 Contribution of FAO; P. Surronen and others, note 83 above, pp. 135-146.
148 Contribution of the secretariat of the Convention on the Conservation of Antarctic Marine Living Resources, the International Commission for the Conservation of Atlantic Tunas, the North Atlantic Salmon Conservation Organization, the North East Atlantic Fisheries Commission and the North Pacific Anadromous Fish Commission.
150 Contribution of FAO.
151 Ibid.
154 See, for example, the schemes proposed by the Aquaculture Stewardship Council (www.asc-aqua.org).
157 Contribution of the European Union.
158 See A/57/87, paras. 571-639; A/57/80, part B, paras. 52-59. On the role of fisheries in sustainable development, see A/60/63, paras. 168-231 and A/60/99.
159 Resolutions 66/70 and 68/71.
Presented below are some initiatives and activities on capacity-building and transfer of technology that were highlighted in the contributions to the present report.

99. The secretariat of the Convention on Biological Diversity highlighted the 2010 Sustainable Ocean Initiative, which builds partnerships and enhances capacity, including in global food security, through the achievement of the Aichi Biodiversity Targets.

100. The FAO SmartFish Programme is increasing capacities for the sustainable exploitation of fisheries resources with the goal of improving fisheries policies and legal and regulatory frameworks and the quality of information systems.

101. The United Nations University Fisheries Training Programme aims to strengthen institutional capacity to support the sustainable use of living aquatic resources in developing countries, with a focus on Africa and small island developing States. The Western and Central Pacific Fisheries Commission has developed a project on capacity-building in fisheries statistics, regulations and enforcement for small island developing States. The need to build capacity in small island developing States for negotiating trade and partnership agreements and navigating the complex requirements for accessing certain funds has also been identified.

102. The European Union provides financial and technical support for the sustainable development of the fisheries sector of partner countries through fisheries partnership agreements. Regional programmes of the European Union in Africa, the Indian Ocean and the Pacific Ocean have focused on strategic governance issues, including control, surveillance and the fight against illegal, unreported and unregulated fishing.

103. The World Bank’s tsunami livelihood recovery project has trained fishing families along the coast of Somalia in new fishing techniques and creating better storage and refrigeration systems.

B. The future role of seafood in global food security: challenges and opportunities

104. If seafood is to continue to play a critical role in food security and nutrition and in providing for the livelihoods of millions of people, greater efforts are needed at all levels. On the broadest level, fisheries and aquaculture need to be promoted in a way that improves food security and is economically viable, while at the same time conserves marine biodiversity and ecosystems and does not impair the natural ecological processes that support food production systems.

105. While there is a comprehensive international legislative and policy framework in place for sustainable fisheries and aquaculture (see paras. 69-71 above), effective implementation remains a challenge. Incentives and adequate resources are needed to adapt and implement this framework to secure political commitment and governance reform, including by building effective institutions that lead to the adoption of integrated and ecosystem approaches to fisheries and aquaculture with fair and responsible tenure systems.

106. The need to build capacity in small island developing States for negotiating trade and partnership agreements and navigating the complex requirements for accessing certain funds has also been identified.

1. Management approaches to human activities that affect the productivity of marine ecosystems and the safety of seafood

107. The level of contribution of seafood to food security depends principally on maintaining healthy, productive and resilient ecosystems, on the sustainable management of capture fisheries and aquaculture, and on minimizing wasteful practices during harvesting, processing, transportation and, eventually, access for consumption. Each of these elements, however, requires appropriate levels of human, institutional and systemic capacity. In this regard, food security is directly affected by lack of capacity in every aspect of the seafood supply chain. Ongoing transfer of technologies with respect to equipment and practices used for monitoring, assessment, pollution control and clean-up, as well as for finding, harvesting, handling, processing and distributing seafood are also critical.

108. If seafood is to continue to play a critical role in food security and nutrition and in providing for the livelihoods of millions of people, greater efforts are needed at all levels. On the broadest level, fisheries and aquaculture need to be promoted in a way that improves food security and is economically viable, while at the same time conserves marine biodiversity and ecosystems and does not impair the natural ecological processes that support food production systems.

109. Cross-sectoral cooperation and coordination in integrated and ecosystem approaches. In light of the interaction between the impacts of various activities and phenomena in the oceans and their cumulative effect on the health, productivity and resilience of marine ecosystems, the development of cross-sectoral cooperation and coordination in policy development, management and science would be a necessary step in the further implementation of integrated and ecosystem approaches in support of the role of seafood in global food security.

110. The General Assembly has repeatedly emphasized the need to consider ocean space as a whole through an integrated, interdisciplinary and intersectoral approach and to improve cooperation and coordination at all levels to support and supplement the efforts of States in the implementation and observance of the United Nations Convention on the Law of the Sea, and the integrated management and sustainable development of the oceans and seas. It has also recognized the need to further integrate ecosystem approaches into fisheries conservation and management and,
more generally, the importance of applying ecosystem approaches to the management of human activities in the ocean. 174

111. These approaches are particularly important as the impacts of increased CO₂ emissions compound the effects of other causes of ecosystem degradation. There is, however, no one-size-fits-all approach and such tools need to be tailored to the specific ecological, social and economic circumstances of a particular area. 175

112. Integrated and ecosystem approaches can minimize the impacts of exploitation of marine living resources on associated ecosystems and habitats, thereby preserving their long-term viability, as well as minimizing the impact of other stressors on fisheries and aquaculture operations. 176 However, increased efforts are needed in the development of long-term management plans for fisheries and aquaculture that take into account the marine ecosystem, optimal fishing capacity and integrated frameworks of cooperation and governance. 177 FAO noted that most regional fisheries bodies are struggling to fulfill their mandates, and need greater recognition and support from the international community. 178 The North Pacific Anadromous Fish Commission suggested that a combined database on vessels engaged in illegal, unreported and unregulated fishing could supply information on a global scale, appropriate to the degree to which intelligence exchange is required to combat such activities. In that regard, capacity-building and enabling mechanisms to support cooperation and consultation on issues related to conservation and management of marine living resources are needed. 179

113. Progress could also be made in the development of market instruments, such as eco-labeling certification schemes, to inform the purchasing decisions of consumers and the procurement policies of retailers, including the relatively new practice of issuing government-sponsored national eco-labels. 180

114. Management approaches will also need to take into account the impact of climate change on the role of seafood in global food security. There needs to be a strengthening of linkages between science and policy. Greater efforts are also needed in the development of specific adaptation and mitigation measures for fisheries and aquaculture that improve the resilience of marine ecosystems, respond to opportunities for and threats to food and livelihood security due to climate change, and help the fisheries and aquaculture sector reduce greenhouse gas emissions and support the sector’s natural carbon sequestration and storage capabilities. 181 For example, in the Pacific, specific measures are being taken to support food security while also adapting to, and mitigating the impacts of, increased CO₂ emissions, including managing and restoring vegetation to reduce transfer of sediments and nutrients to coasts and prevent damage to coral reefs, mangroves and sea-grasses supporting coastal fisheries; protecting coral reefs supplying recruits to fish populations on “downstream” reefs to help stocks recover after coral bleaching or cyclones; and promoting mangrove replanting programmes to enhance habitat for coastal fisheries and capture carbon. 182

115. Cooperation among States in addressing other human activities that adversely affect the productivity of marine ecosystems and the safety of seafood is also very important. Many measures have been adopted to address various pressures (see sect. IV.B above), but implementation needs to be strengthened, including through capacity-building.

116. Community-based management. The involvement of coastal communities and resource users in planning and management 183 is also a critical element of successful ecosystem approaches, given the role that humans have within marine ecosystems. Indigenous and local communities often possess traditional knowledge, innovations and practices that have global importance for conservation and sustainable use of marine biodiversity and resources. 184

117. Initiatives and activities in co-management and/or community-driven marine management that recognize community rights to resources and provide for sustainable uses that benefit community livelihoods and well-being are likely to increase community ownership of conservation and management initiatives, and thus their sustainability in the long term, and thereby contribute to future food security at the local level. 185 Capacity-building is required to support general awareness raising within fishing communities. 186

2. Potential roles of small-scale fisheries and aquaculture in global food security

118. Small-scale fisheries. Despite their importance, many small-scale fishing communities continue to be marginalized and their contribution to food security and nutrition, poverty eradication, equitable development and sustainable resource utilization has not been fully realized. 187 Particular attention must be paid to the capacity of small-scale fisheries and marginalized groups, including women fish workers and indigenous peoples, as seafood is a significant component of their food security. 188

119. Adopting a community-based approach to development (see paras. 116 and 117 above) could be one way to create an enabling environment to reduce current vulnerabilities and allow the small-scale fisheries sector to unfold its full potential.

120. Given the importance of small-scale producers for national food security, greater efforts are needed to protect the tenure rights of small-scale producers. In this regard, the 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of...
the Committee on World Food Security have the overarching goal of achieving food security for all and supporting the progressive realization of the right to adequate food in the context of national food security. They represent an unprecedented global consensus on principles and practices for governing access to and tenure security of rights to land, fisheries and forests. 190

121. Artisanal fisheries also suffer from high post-harvest losses because of low investment, low-level technology, variability in supply and contamination, especially during rainy periods. Coordinated international efforts to provide training and infrastructural investment for improved fish handling and processing may assist in addressing spoilage and contamination concerns. 190

122. Aquaculture. The potential contribution of aquaculture to food security cannot be fully realized without consistent, responsible policies and goals, effective institutional arrangements and regulatory frameworks and improved cooperation among stakeholders at national, regional and interregional levels. 193 Despite having achieved good progress in terms of expansion, intensification and diversification, aquaculture has not grown evenly around the world (see para. 44 above). 192

123. The aquaculture sector is relatively underdeveloped in terms of human and technical resources. Marked intraregional and interregional and country variations continue in a number of areas, such as production levels, species composition, farming systems and producer profile, which have given rise to key issues and challenges that need to be proactively addressed in order to achieve the aquaculture sector's goal of sustainable and equitable development. 193

124. In terms of increasing production, meeting the future demand for food from aquaculture will depend in part on the availability of quality feed in requisite quantities. Considering the past trends and current predictions, the sustainability of the aquaculture sector will probably be closely linked with the sustained supply of terrestrial animal and plant proteins, oils and carbohydrates for aquafeeds, as opposed to fishmeal and fish-oil resources. 194

125. Further efforts are also needed in strengthening international cooperation for sustainable aquaculture development. Major aquaculture development constraining factors currently include access to vital resources and technology, enhancement of capacities and institutional development, access to financial resources, especially to small farmers, climate change impacts, food safety and biosecurity risks. 193

3. Potential innovations in seafood production

126. Throughout human history, scientific discoveries and technological innovations have repeatedly revolutionized food production methods and yields. In the seafood context, recent advances in aquaculture have enabled a dramatic growth in yields from aquaculture farms. However, the rapid growth has, in some cases, resulted in environmental damage to the very ecosystems which support aquaculture and affected the sustainability of such growth. Potential innovations in seafood production, of which three examples are provided below, may provide opportunities for enhancing the role of seafood in global food security, but may involve considerable challenges. A precautionary approach is therefore needed.

127. Algae. In considering the future role of seafood in global food security, the role and potential profitability of algae cannot be overlooked. As noted in paragraph 47 above, carrageenan seaweed farming is a profitable activity with great potential especially for coastal communities with abundant labour. 196

128. An extrapolation from current brown kelp production in China estimated that less than 1 per cent of ocean area would be required to produce 6 billion tons of algal biomass, notably without land or freshwater, and in some locations without fertilizers. 196

129. Biofuel production from algae, 197 which can indirectly benefit food security by freeing up land currently used for biofuel production, also continues to be of interest. 198

130. Biotechnology. The development of genetically modified, or transgenic, fish has been heralded as a part of the solution to meeting global food security, particularly in the light of declining fish stocks. 199 The process involves modifications intended to increase growth rate, provide better resistance to bacterial diseases, improve nutrient use and increase tolerance to colder temperatures of fish, as well as the possibility of using transgenic fish in the biocontrol of invasive species. 200 The first transgenic animal for human consumption, a fast-growing salmon, is undergoing regulatory processes in a number of countries, with Canada approving the production of salmon eggs for commercial purposes. 201

131. However, concerns have been raised with regard to ecological risks, 202 for example, the threat to wild fish populations that would result from the escape of transgenic fish into the environment. Even when tight controls on fish stocks are maintained, the possibility of human error and the effects of natural disasters have
4. Mainstreaming seafood in global, regional and national measures on food security

136. Fisheries and aquaculture sectors are often overlooked in the development of food security strategies at national and international levels. In considering the future role of seafood in global food security, greater awareness is needed of the importance of incorporating or mainstreaming the fisheries and aquaculture sectors in these policy discussions. Current policy integration appears most prominent only at the inter-agency and intersectoral levels in oceans law and policy, for example in promoting integrated and ecosystem approaches, as described above. At a minimum, it would be beneficial to create synergies between traditional management tools in the fisheries and aquaculture sectors and socioeconomic strategies. Consideration could also be given to fully integrating the fisheries and aquaculture sectors into national climate change adaptation and food security policies and programmes.

137. At the United Nations Conference on Sustainable Development, States supported mainstreaming the consideration of the socioeconomic impacts and benefits of the conservation and sustainable use of biodiversity and its components, as well as ecosystems, into relevant programmes and policies at all levels, in accordance with national legislation, circumstances and priorities. Particular attention was drawn to the need to identify and mainstream strategies that further assist small island developing States in developing capacity to conserve, sustainably manage and realize the benefits of fisheries.

138. Mainstreaming seafood in global, regional and national measures on food security will contribute to policy coordination and discussions on trade-offs in the production of seafood and other foods. As described in section II.B above, different types of seafood from different sources can contribute to food security and have ways with varied levels of effectiveness. Each type and source of seafood may also be in competition with other types and sources of seafood or other foods, thereby creating the need for policy trade-offs which should be considered in developing policy frameworks or measures for any particular sector involved in global food security. For example, capture fisheries, algae farms and aquaculture may compete for ocean space in coastal areas. Large-scale fishing operations, which are more efficient and produce greater revenue, may be in competition with small-scale and artisanal fisheries, which create greater levels of employment and are more likely to provide food for local communities. Distant water fishing fleets may provide greater

202 See Muir, note 201 above.


205 Lovatelli et al. has understood as offshore “when it is located > 2 km or out of sight from the coast, in water depths > 50 m, with waves heights of 5 m or more, ocean swells, variable winds and strong ocean currents, in locations that are exposed (open sea, e.g. ≥ 180° open) and where there is a requirement for remote operations, automated feeding, and where remote monitoring of operating system may be required” (Lovatelli et al., note 199 above, p. 4).

206 Ibid.


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209 Ibid.

210 Ibid., annex 1, sect. 3.3.

211 Ibid., annex 1, sect. 4.2.

212 Ibid., annex 1, sect. 4.2.

213 Ibid., annex 1, sect. 4.2.

214 Contribution of FAO. For example, the Second International Conference on Nutrition, an inclusive intergovernmental meeting on nutrition jointly organized by FAO and the World Health Organization, in cooperation with the High-level Task Force on the Global Food Security Crisis, the International Fund for Agricultural Development, the International Food Policy Research Institute, UNESCO, UNICEF, the World Bank, WFP and the World Trade Organization, will be held at FAO headquarters in Rome from 19 to 21 November 2014 and will propose a flexible policy framework to address today’s major nutrition challenges and identify priorities for enhanced international cooperation on nutrition.

215 It has been estimated that the potential economic gain from restoring fish stocks and reducing fishing capacity to an optimal level is in the order of $50 billion per year (see World Bank and FAO, The Sunked Billions: The Economic Justification for Fisheries Reform).


217 General Assembly resolution 66/288, annex, para. 201.

218 Ibid., paras. 174 and 175.
revenue to developing States through fishing licences, but may also affect local communities who rely on local fishery resources.

139. The most appropriate course of action for resolving such trade-offs will need to be determined on a case-by-case basis, taking into account all relevant considerations. By integrating food security considerations into coastal and marine area management and planning, as well as by involving relevant stakeholders in decision-making, States could effectively explore policy options for maximizing the role of seafood and seafood industries in food security. For example, small fish discards or by-catch from fisheries which could be for human consumption could also be used to produce fishmeal destined for aquaculture.

V. Conclusions

140. Population growth in the face of the ongoing challenge of eradicating extreme poverty and hunger, as well as malnutrition, coupled with the effects of climate change, environmental degradation and other factors have given rise to concerns about global food security. Seafood plays a significant, but not yet fully recognized, role in global food security as a source of food and nutrients and as an input to food production, as well as a source of revenue. In particular, safe seafood can be a key source of protein, as well as other essential nutrients and micronutrients. Certain parts of the world, including many coastal communities in developing countries and small island developing States, are particularly reliant on seafood for food security, including nutritional aspects, livelihoods and economic well-being.

141. In terms of the future of seafood in global food security, it will be important for the international community to mainstream the role of seafood in policy discussions relating to food security at the global, regional and national levels. It will be equally important for the various sectors involved in the management of human activities that impact on oceans and their resources to consider specific measures within the broader context of food security. This, in turn, will assist policymakers in making informed decisions on how to ensure the continued contribution of seafood to food security, particularly with regard to its availability, access, utilization and stability. In this regard, decision-making processes would benefit from the informed participation of all relevant stakeholders, including coastal communities, small-scale and artisanal fishers and consumers. Co-management and/or community-driven marine management that recognize community rights to resources can be very effective in supporting seafood sustainability. Given the crucial role of women in coastal fishing communities, their capacity to engage in a productive manner in the fisheries and aquaculture sectors requires strengthening.

142. It is noted that communities living below the poverty level, in particular in developing countries, including small island developing States, face critical challenges in their efforts to ensure the availability of, access to and sustainability of seafood for food security. International cooperation and coordination is needed to assist States in addressing these challenges, including through capacity-building and transfer of technology.

143. The continued contribution of seafood to global food security will also depend on the ability of States to address, in an effective, efficient and timely manner, current pressures and challenges to seafood sustainability, including overexploitation and unsustainable practices in seafood exploitation, marine pollution, habitat destruction, climate change and ocean acidification. It is critical to maintain healthy, productive and resilient ecosystems to support the continued contribution of seafood to food security. Integrated and ecosystems approaches that consider the oceans as a whole are important tools to that end and to sustaining the role of seafood in global food security.

144. Finally, it is important for States to take advantage of opportunities to optimize the role of seafood in global food security, including through sustainable aquaculture and small-scale fisheries, as well as responsible technological innovation.
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
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
YEAR 2012

14 March 2012

List of cases:
No. 16

DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY
BETWEEN BANGLADESH AND MYANMAR IN THE BAY OF BENGAL

(BANGLADESH/MYANMAR)

JUDGMENT

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Present: President JESUS; Vice-President TÜRK; Judges MAROTTA RANGEL, YANKOV, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Judges ad hoc MENSAH, 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 Cleverly, 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' 52&quot; E</td>
</tr>
<tr>
<td>3.</td>
<td>20° 38' 53.5&quot; N</td>
<td>92° 22' 39.2&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° 25' 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 geodetic 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.

* * *

46. The Tribunal notes that Bangladesh and Myanmar are States Parties to
the Convention. Bangladesh ratified the Convention on 27 July 2001 and the
Convention entered into force for Bangladesh on 26 August 2001. Myanmar
ratified the Convention on 21 May 1996 and the Convention entered into force
for Myanmar on 20 June 1996.

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.

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.

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
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:

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<tr>
<th>Serial No.</th>
<th>Latitude</th>
<th>Longitude</th>
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<tbody>
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<td>1.</td>
<td>20° -42' -12.3” N</td>
<td>092° -22' -18” E</td>
</tr>
<tr>
<td>2.</td>
<td>20° -39’ -57” N</td>
<td>092° -21' -16” E</td>
</tr>
<tr>
<td>3.</td>
<td>20° -38’ -50” N</td>
<td>092° -22' -50” E</td>
</tr>
<tr>
<td>4.</td>
<td>20° -37’ -20” N</td>
<td>092° -24' -08” E</td>
</tr>
<tr>
<td>5.</td>
<td>20° -35’ -50” N</td>
<td>092° -25' -15” E</td>
</tr>
<tr>
<td>6.</td>
<td>20° -33’ -37” N</td>
<td>092° -26' -00” E</td>
</tr>
<tr>
<td>7.</td>
<td>20° -22’ -53” N</td>
<td>092° -24' -35” 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 southernmost 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) 
Commodore Maung Oo Lwin 
Leader of the Myanmar Delegation

(Signed) 
M.A.K. Mahmood 
Dated: April 1, 2008 
Leader of the Bangladesh Delegation 
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]ndeed, 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 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”.

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

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”. Bangladesh emphasises that what is contemplated is an agreement binding under international law, in other words a treaty, and whether their terms establish a maritime delimitation.

In support of its position that the 1974 Agreed Minutes reflect a binding agreement, Bangladesh claims that their terms are “clear and unambiguous” and “the text clearly identifies 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.

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 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”.

Myanmar responds that the expression “Agreed Minutes” is often employed in international relations “for the record of a meeting” and “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 Agreement was concluded between two sovereign States.

According to Myanmar, “[a] legally binding treaty between two sovereign States would hardly be expressed, in its title, to be between delegations”. According to the full title of the 1974 Agreed Minutes, “Agreed Minutes”, “[t]he 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 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”.

Terms of the “Agreed Minutes” and circumstances of their adoption

In paragraph 1 of these Minutes, “Agreed Minutes”, “[t]he 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 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. 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”.

81. According to Bangladesh:

82. Bangladesh points out that the 1974 Agreed Minutes were confirmed and re-adopted in 2008.

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. Bangladesh, for its part, considers that the 1974 Agreed Minutes were confirmed and re-adopted in 2008. According to Bangladesh:

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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”.

Registration

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 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).
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

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.

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.

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.

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

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.

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.

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.

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.

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.
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.

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”.

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.

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”.

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.

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.

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.

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.

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.

Delimitation line

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 β1 […] 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 Myanmar's territorial sea. 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.
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.

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 p. 198, para. 223).

Accord 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).

Measuring the coastal length by taking into account the coastline and its sinuosity, Myanmar finds that the first and fourth segments as parts of the relevant 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 […], [h]ere, 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:

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 (ß2) 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.

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.
Method of delimitation

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 the 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 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), the ICJ in that same case applied the bisector method only after finding it "impossible for the Court to identify base points or construct a provisional equidistance line [...]

221. Myanmar further observes that in the case concerning Continental Shelf (Libyan Arab Jamahiriya/Malta) the Court did not apply the equidistance method. The Court noted 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. 96).

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 "in the present case, no circumstance renders unbearable 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. 16).

223. Myanmar rejects the arguments advanced by Bangladesh that the equidistance line fails to account for the relevant circumstances in the case, notably the cut-off effect it produces and the concavity of Bangladesh's coast, and states that "in the event 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 reiterates 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 emphasizing 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.

227. 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. 38, 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 posting of a provisional line of equidistance and then examining it in the light of circumstances relevant to the particular case. 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 subjective determinations requires that the method used start with a measure of certainty that equidistance positively ensures subject to its subsequent correction if a reasoned approach is taken (Decision of 11 April 2006, RMA, Vol. XXVII, p. 147, 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, be divided into a preliminary stage consisting of the establishment of a provisional line of equidistance, with that line being subject to subsequent adjustment or shifting in the light of circumstances relevant to the particular case. The arbitral tribunal has been asked to determine whether the equidistance method is appropriate in the case at hand.

233. In the case concerning Maritime Delimitation in the Black Sea, the ICJ built on the development 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 applicable 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 this unfeasible in the particular case” (Maritime Delimitation in the Black Sea (Romania v. Ukraine), 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 is in effect an approximation of the equidistance method, the angle-bisector method 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)).
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.

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) Kyaukpandu (Sataparokia) Point, located on the landward/low water line most seaward near Kyaukpandu 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 mainland 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).
The Tribunal will first select the base points to be used for constructing the provisional equidistance line.

As noted in paragraph 242, Bangladesh did not identify any base points for the construction of a provisional equidistance line.

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.

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.

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.

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:

\[\text{[i]n […] the delimitation of the maritime areas involving two or more States, the Court should not base itself solely on the choice of base points made by one of those Parties. The Court must, when delimiting the continental shelf and the exclusive economic zones, select base points by reference to the physical geography of the relevant coasts (Maritime Delimitation in the Black Sea, Romania v. Ukraine, Judgment, I.C.J. Reports 2009, p. 61, at p. 108, para. 137).}\]

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.

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.
Relevant circumstances

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”.

Concavity and cut-off effect

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 “[t]he 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 enclosing 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:

- 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”.

[This is the effect, or the lack of effect, that was given to the following islands:
- 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;]
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.

Adjustment of the provisional equidistance line

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 Tribunal’s jurisdiction in 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 if the Tribunal were to decide that there could be a single maritime boundary beyond 200 nm, it 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.

345. Myanmar further submits that, as long as the outer limit of the shelf of the Commission on the Limits of the Continental Shelf (hereinafter "the Commission") is not established on the basis of the recommendations made by the Commission, the Tribunal has no jurisdiction to determine this line. Moreover, 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.

346. In support of its position, Myanmar cites the Arbitral Award in the Case concerning the Delimitation of Maritime Areas between Canada and France of October 10, 1992, which states: "[T]he Tribunal has no jurisdiction to delimit the continental shelf beyond 200 nm because the Commission has not yet made recommendations to the two countries regarding the continental shelf beyond 200 nm."

347. Myanmar asserts that in the case concerning Territorial 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 based on the recommendations of the Commission 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 it did not dispute 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 rights the extent of which is unknown. 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
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 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 [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, “[n]atural 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, “[n]atural 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.

429. Under article 76, paragraph 1, of the Convention, the continental shelf of a coastal State can extend either to the outer edge of the continental margin or to a distance of 200 nm, depending on where the outer edge is situated. While the term “natural prolongation” is mentioned in this paragraph, it is clear from its language that the notion of “the outer edge of the continental margin” is an essential element in determining the extent of the continental shelf.

430. Paragraphs 3 and 4 of article 76 of the Convention, further elaborate the notion of the outer edge of the continental margin. In particular, paragraph 4 of that article introduces specific formulae to enable the coastal State to establish precisely the outer edge of the continental margin. It reads as follows:

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 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 [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.
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.
Determinations 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.
449. 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

450. 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.

451. 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]?”

452. 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.

453. 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.

454. 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.

455. 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).

456. The Tribunal will accordingly proceed to re-examine the question of relevant circumstances in this particular context.

457. 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 superjacent 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 TÜRK; 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 TÜRK; 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 TÜRK; 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 TÜRK; 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, CHANDRA SEKHARA RAO, AKL, WOLFRUM, TREVES, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, BOGUET AIA, 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.

JUDGES:  Judges NELSON, CHANDRA SEKHARA RAO and COT, 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) L. D. M. N.  
(initialled) P. C. R.  
(initialled) J.-P. C.

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.