Oceans Law and Policy

Document Supplement

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Fall 2017
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CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE,  
GENEVA, 29 APRIL 1958  
15 UST 1606; TIAS 5639; 516 UNTS 205

The States Parties to this Convention  
Have agreed as follows:

PART I

TERRITORIAL SEA

SECTION I. GENERAL

Article 1

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

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

SECTION II. LIMITS OF THE TERRITORIAL SEA

Article 3

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

Article 4

1. In localities where the coast line 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. The drawing of such 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.
3. 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.

4. Where the method of straight baselines is applicable under the provisions of 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 a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. 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 article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

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 7

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

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked 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 marks 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 areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four 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 twenty-four miles, a straight baseline of twenty-four 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 shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

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. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 10

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

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

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 12

1. 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 provisions of this paragraph shall 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 with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

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-tide line of its banks.

SECTION III. RIGHT OF INNOCENT PASSAGE

SUB-SECTION A. RULES APPLICABLE TO ALL SHIPS

Article 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. 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 by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.
5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16

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, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst 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. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Article 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

SUB-SECTION B. RULES APPLICABLE TO MERCHANT SHIPS

Article 18

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. The charges shall be levied without discrimination.

**Article 19**

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 connexion 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; or

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

   (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

   (d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

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 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority 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 how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. 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 connexion 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 20**

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. The provisions of the previous paragraph are 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.

SUB-SECTION C. RULES APPLICABLE TO GOVERNMENT SHIPS OTHER THAN WARSHIPS

Article 21

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Article 22

1. The rules contained in sub-section A and in article 18 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

SUBSECTION D. RULE APPLICABLE TO WARSHIPS

Article 23

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

PART II

CONTIGUOUS ZONE

Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:
(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. 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 contiguous zone 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 the two States is measured.

PART III

FINAL ARTICLES

Article 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 26

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 27

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 28

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.
Article 29

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 30

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 31

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, or accordance with articles 26, 27 and 28;

(b) Of the date on which this Convention will come into force, in accordance with article 29:

(c) Of requests for revision in accordance with article 30.

Article 32

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.

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

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.
CONVENTION ON THE CONTINENTAL SHELF
GENEVA, 29 APRIL 1958
15 UST 471; TIAS 5578; 499 UNTS 311

The States Parties to this Convention

Have agreed as follows:

Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

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 of this article 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, or make a claim to the continental shelf, 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 these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superadjacent waters as high seas, or that of the aerospace above those waters.
Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraph 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, 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 of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to
participate or to be represented in the research, and that in any event the results shall be published.

**Article 6**

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

**Article 7**

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth above the subsoil.

**Article 8**

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

**Article 9**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
Article 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by each State of its instrument of ratification or accession.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;
(b) Of the date on which this Convention will go into force, in accordance with article 12;

(c) Of requests for revision in accordance with article 13;

(d) Of reservations to this Convention, in accordance with article 12.

Article 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

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

DONE AT GENEVA, this twenty-ninth day of April one thousand nine hundred and fifty-eight.
CONVENTION ON THE HIGH SEAS
GENEVA, 29 APRIL 1958
13 UST 2312; TIAS 5200; 450 UNTS 82

The States Parties to this Convention,

Desiring to codify the rules of international law relating to the high seas,

Recognizing that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,

Have agreed as follows:

Article 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

(1) Freedom of navigation;

(2) Freedom of fishing;

(3) Freedom to lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international convention accord:
(a) To the State having no seacoast, on a basis of reciprocity, free transit through their territory; and

(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

Article 4

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article 5

1. Each State shall fix the conditions for the grant for 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; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 6

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, 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 7

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization.

Article 8

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

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 9

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 10

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

   (a) The use of signals, the maintenance of communications and the prevention of collisions;

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

   (c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 11

1. In the event of a collision or of 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 persons 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 order by any authorities other than those of the flag state.

Article 12

1. Every State shall require the master of a ship sailing under 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, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

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

Article 13

Every State shall adopt 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 14

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 15

Piracy consists of any of the following acts:
(1) Any illegal acts of violence, 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:

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

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

(2) 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;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 16

The acts of piracy, as defined in article 15, 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.

Article 17

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 15. 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 18

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 19

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 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 20

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 21

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

Article 22

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That the ship engaged in the slave trade; or

(c) That, 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 sub-paragraphs (a), (b) and (c) above, 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 suspicious 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 justified.

Article 23

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have a good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial 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 24 of the Convention on the Territorial Sea and the Contiguous Zone, 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 ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. 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 are within the limits of the territorial sea, or as the case may be within the contiguous zone. 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.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraph 1 to 3 of this article shall apply *mutatis mutandis*;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or 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 on the high seas 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.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purpose of an enquiry 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 high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas 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 24*

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.
Article 25

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures 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 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 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a 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 29

Every State shall take the necessary legislative measures 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.

Article 30

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 31

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 32

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 33

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 31. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 34

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State or its instrument of ratification or accession.

Article 35

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made

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at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 36

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 31:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 31, 32 and 33;

(b) Of the date on which this Convention will come into force, in accordance with article 34;

(c) Of requests for revision in accordance with article 35.

Article 37

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 31.

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

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.
CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS
GENEVA, 29 APRIL 1958
17 UST 138; TIAS 5969; 559 UNTS 285

The State Parties to this Convention,

Considering that the development of modern techniques for the modern exploitation of the living resources of the sea, increasing man's ability to meet the need of the world's expanding population for food, has exposed some of these resources to the danger of being over-exploited.

Considering also that the nature of the problems involved in the conservation of the living resources of the high seas is such that there is a clear necessity that they be solved, whenever possible, on the basis of international co-operation through the concerted action of all the States concerned,

have agreed as follows:

Article 1

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this Convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 2

As employed in this Convention, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

Article 3

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected.
Article 4

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If the States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 5

1. If, subsequent to the adoption of the measures referred to in articles 3 and 4, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and, in any case, to any State specified by the State initiating the measure.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 6

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for purposes of conservation of the living resources of the high seas in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which
are opposed to those which have been adopted by the coastal State, but may enter into
negotiations with the coastal State with a view to prescribing by agreement the measures
necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement with respect to conservation
measures within twelve months, any of the parties may initiate the procedure contemplated by
article 9.

Article 7

1. Having regard to the provisions of paragraph 1 of article 6, any coastal State may,
with a view to the maintenance of the productivity of the living resources of the sea, adopt
unilateral measures of conservation appropriate to any stock of fish or other marine resources
in any area of the high seas adjacent to its territorial sea, provided that negotiations to that
effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall
be valid as to other States only if the following requirements are fulfilled:

(a) That there is a need for urgent application of conservation measures in the light
of the existing knowledge of the fishery;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate in form or in fact against foreign
fishermen.

3. These measures shall remain in force pending the settlement, in accordance with
the relevant provisions of this Convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties
may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the
measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in article 12 of the
Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of
different States are involved.

Article 8

1. Any State which, even if its nationals are not engaged in fishing in an area of the
high seas not adjacent to its coast, has a special interest in the conservation of the living
resources of the high seas in that area, may request the State or States whose nationals are
engaged in fishing there to take the necessary measures of conservation under articles 3 and 4
respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 9.

Article 9

1. Any dispute which may arise between States under articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request or settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

3. Any State party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing parties regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.
Article 10

1. The special commission shall, in disputes arising under article 7, apply the criteria listed in paragraph 2 of that article. In disputes under articles 4, 5, 6 and 8 the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) Common to the determination of disputes arising under articles 4, 5 and 6 are the requirements:

(i) That scientific findings demonstrate the necessity of conservation measures;

(ii) That the specific measures are based on scientific findings and are practicable; and

(iii) That the measures do not discriminate, in form or in fact, against fishermen of other States.

(b) Applicable to the determination of disputes arising under article 8 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 7, the measures shall only be suspended when it is apparent to the commission on the basis of prima facie evidence that the need for the urgent application of such measures does not exist.

Article 11

The decisions of the special commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions. If the decisions are accompanied by any recommendations, they shall receive the greatest possible consideration.

Article 12

1. If the factual basis of the award of the special commission is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.
2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the procedure contemplated by article 9 provided that at least two years have elapsed from the original award.

Article 13

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. In this article, the expression "fisheries conducted by means of equipment embedded in the floor of the sea" means those fisheries using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently or, if removed, restored each season on the same site.

Article 14

In articles 1, 3, 4, 5, 6 and 8, the term "nationals" means fishing boats or craft of any size having the nationality of the State concerned, according to the law of that State, irrespective of the nationality of the members of their crews.

Article 15

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 16

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 17

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 15. The instruments of accession shall be deposited with the Secretary-General of the United Nations.
Article 18

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 6, 7, 9, 10, 11 and 12.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 20

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 21

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 15:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 15, 16 and 17;

(b) Of the date on which this Convention will come into force, in accordance with article 18;

(c) Of requests for revision in accordance with article 20;

(d) Of reservations to this Convention, in accordance with article 19.
Article 22

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 15.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.
Optional Protocol of Signature Concerning
the Compulsory Settlement of Disputes

The States parties to this Protocol and to any one or more of the
Conventions on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea held at Geneva from 24 February to 27 April 1958,

Expressing their wish to resort, in all matters concerning them in
respect of any dispute arising out of the interpretation or application of any
article of any Convention on the Law of the Sea of 29 April 1958, to the
compulsory jurisdiction of the International Court of Justice, unless some
other form of settlement is provided in the Convention or has been agreed
upon by the parties within a reasonable period,

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of any
Convention on the Law of the Sea shall lie within the compulsory
jurisdiction of the International Court of Justice, and may accordingly be
brought before the Court by an application made by any party to the dispute
being a party to this Protocol.

Article II

This undertaking relates to all the provision of any Convention on the
Law of the Sea except, in the Convention on Fishing and Conservation of
the Living Resources of the High Seas, articles 4, 5, 6, 7 and 8, to which
articles 9, 10, 11 and 12 of that Convention remain applicable.

Article III

The parties may agree, within a period of two months after one party
has notified its opinion to the other that a dispute exists, to resort not to the
International Court of Justice but to an arbitral tribunal. After the expiry of
the said period, either party to this Protocol may bring the dispute before
the Court by an application.

Article IV

1. Within the same period of two months, the parties to this Protocol
may agree to adopt a conciliation procedure before resorting to the
International Court of Justice.

2. The conciliation commission shall make its recommendations within
five months after its appointment. If its recommendations are not accepted
by the parties to the dispute within two months after they have been
delivered, either party may bring the dispute before the Court by an application.

Article V

This Protocol shall remain open for signature by all States who become parties to any Convention on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea and is subject to ratification, where necessary, according to the constitutional requirements of the signatory States.

Article VI

The Secretary-General of the United Nations shall inform all States who become parties to any convention on the law of the sea of signatories to this Protocol and of the deposit of instruments of ratification in accordance with article V.

Article VII

The original of this Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Protocol.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.
27. Emphasize the need for the United Nations to exert continuous efforts for the strengthening of international peace and security and requests the Secretary-General to submit a report to the General Assembly at its twenty-sixth session on steps taken in pursuance of the present Declaration.

1932nd plenary meeting, 16 December 1970.

2749 (XXV). Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Area Thereon, beyond the Limits of National Jurisdiction

The General Assembly,
Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2374 (XXIV) of 15 December 1969, concerning the area to which the title of the item refers,
Affirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined,
Recognizing that the existing legal regime of the high seas does not provide substantive rules for regulating the exploration of the aforesaid area and the exploitation of its resources,
Convinced that the area shall be reserved exclusively for peaceful purposes and that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole,
Believing it essential that an international régime applying to the area and its resources and including appropriate international machinery should be established as soon as possible,
Bearing in mind that the development and use of the area and its resources shall be undertaken in such a manner as to foster the healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities,

Solemnly declares that:

1. The sea-bed and ocean floor, and the 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.

2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

3. No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the principles of this Declaration.

4. All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established.

5. The area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination, in accordance with the international régime to be established.

6. States shall act in the area in accordance with the applicable principles and rules of international law, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

7. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

8. The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof from the arms race.

9. On the basis of the principles of this Declaration, an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The régime shall, inter alia, provide for the continuity and sustainable development and rational management of the area and its resources and for expanding opportunities in the use thereof, and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

10. States shall promote international co-operation in scientific research exclusively for peaceful purposes:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

(b) Through effective publication of research programmes and dissemination of the results of research through international channels;

(c) By co-operation in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

No such activity shall form the legal basis for any claims with respect to any part of the area or its resources.

11. With respect to activities in the area and acting in conformity with the international régime to be established, States shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules, standards and procedures for, inter alia:

(a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;

88 Resolution 2625 (XXV).
(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.

12. In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States, which may be affected by such activities. Consultations shall be maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of its resources with a view to avoiding infringement of such rights and interests.

13. Nothing herein shall affect:

(a) The legal status of the waters superjacent to the area or that of the air space above those waters;

(b) The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activity in the area, subject to the international régime to be established.

14. Every State shall have the responsibility to ensure that activities in the area, including those related to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international régime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established.

1933rd plenary meeting, 17 December 1970.

2750 (XXV). Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea

A

The General Assembly,

Reaffirming that the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and its resources are the common heritage of mankind,

Convinced that the exploration of the area and the exploitation of its resources should be carried out for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries,

Reaffirming that the development of the area and its resources must be undertaken in such a manner as to foster the healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities,

1. Requests the Secretary-General to co-operate with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system in order to:

(a) Identify the problems arising from the production of certain minerals from the area beyond the limits of national jurisdiction and examine the impact they will have on the economic well-being of the developing countries, in particular on prices of mineral exports on the world market;

(b) Study these problems in the light of the scale of possible exploitation of the sea-bed, taking into account the world demand for raw materials and the evolution of costs and prices;

(c) Propose effective solutions for dealing with these problems;

2. Requests the Secretary-General to submit his report thereon to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1971 and for making its recommendations, as appropriate, to foster the healthy development of the world economy and balanced growth of international trade and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities;

3. Requests the Secretary-General, in co-operation with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system, to keep this matter under constant review so as to submit supplementary information annually or whenever it is necessary and recommend additional measures in the light of economic, scientific and technological developments;

4. Calls upon the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to submit a report on this question to the General Assembly at its twenty-sixth session.

1933rd plenary meeting, 17 December 1970.

B

The General Assembly,

Recalling its resolutions 1028 (XI) of 20 February 1957 and 1105 (XI) of 21 February 1957 concerning the problems of land-locked countries,

Bearing in mind the replies to the inquiries made by the Secretary-General99 in accordance with paragraph 1 of resolution 2574 A (XXIV) of 15 December 1969, which indicate wide support for the idea of convening a conference relating to the law of the sea, at which the interests and needs of all States, whether land-locked or coastal, could be reconciled,

Noting that many of the present land-locked States Members of the United Nations did not participate in the previous United Nations conferences on the law of the sea;

Reaffirming that the area of the sea-bed and the ocean floor, and their subsoil, lying beyond the limits of national jurisdiction together with the resources thereof are the common heritage of mankind,

99 See A/7925 and Add.1-3.
The American Presidency Project

Harry S. Truman

Proclamation 2667: Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf.

September 28th, 1945

By the President of the United States of America a Proclamation:

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and [SEAL] of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:
DEAN ACHESON
Acting Secretary of State

The American Presidency Project

• Ronald Reagan

Proclamation 5030—Exclusive Economic Zone of the United States of America

March 10th, 1983

By the President of the United States of America
A Proclamation

Whereas the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

Whereas international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

Whereas the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

Now, Therefore, I, Ronald Reagan, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

In Witness Whereof, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

RONALD REAGAN

[Filed with the Office of the Federal Register, 10:20 a.m., March 11, 1983]

The American Presidency Project

• Ronald Reagan

Proclamation 5928—Territorial Sea of the United States

December 27th, 1988

By the President of the United States of America
A Proclamation

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

Now, Therefore, I, Ronald Reagan, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits. Nothing in this Proclamation:

(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or

(b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

In Witness Whereof, I have hereunto set my hand this twenty-seventh day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

RONALD REAGAN

[Filed with the Office of the Federal Register, 10:32 a.m., January 6, 1989]

The American Presidency Project

William J. Clinton
Proclamation 7219—Contiguous Zone of the United States
September 2nd, 1999

By the President of the United States of America
A Proclamation

International law recognizes that coastal nations may establish zones contiguous to their territorial seas, known as contiguous zones.

The contiguous zone of the United States is a zone contiguous to the territorial sea of the United States, in which the United States may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, and to punish infringement of the above laws and regulations committed within its territory or territorial sea.

Extension of the contiguous zone of the United States to the limits permitted by international law will advance the law enforcement and public health interests of the United States. Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 nautical miles of the baseline.

Now, Therefore, I, William J. Clinton, by the authority vested in me as President by the Constitution of the United States, and in accordance with international law, do hereby proclaim the extension of the contiguous zone of the United States of America, including the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, as follows:

The contiguous zone of the United States extends to 24 nautical miles from the baselines of the United States determined in accordance with international law, but in no case within the territorial sea of another nation.

In accordance with international law, reflected in the applicable provisions of the 1982 Convention on the Law of the Sea, within the contiguous zone of the United States the ships and aircraft of all countries enjoy the high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft, and submarine cables and pipelines, and compatible with the other provisions of international law reflected in the 1982 Convention on the Law of the Sea.

Nothing in this proclamation: (a) amends existing Federal or State law; (b) amends or otherwise alters the rights and duties of the United States or other nations in the Exclusive Economic Zone of the United States established by Proclamation 5030 of March 10, 1983; or (c) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

In Witness Whereof, I have hereunto set my hand this second day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[Filed with the Office of the Federal Register, 8:45 a.m., September 7, 1999]

UNited nations convention on the law of the sea, with annexes, and the agreement relating to the implementation of part XI of the united nations convention on the law of the sea, with annex

message

from

the president of the united states

transmitting

united nations convention on the law of the sea, with annexes, done at montego bay, december 10, 1982 (the "convention"), and the agreement relating to the implementation of part XI of the united nations convention on the law of the sea of 10 december 1982, with annex, adopted at new york, july 28, 1994 (the "agreement"), and signed by the united states, subject to ratification, on july 29, 1994

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

U.S. GOVERNMENT PRINTING OFFICE

83-499

WASHINGTON : 1994
LETTER OF TRANSMITTAL


To the Senate of the United States:


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

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

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

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

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

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

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

—Through its dispute settlement provisions, the Convention pro-
vides for mechanisms to enhance compliance by Parties with 
the Convention’s provisions.

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

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

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

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

WILLIAM J. CLINTON.
LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

The President,
The White House.


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

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

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

THE CONVENTION

The Convention provides a comprehensive framework with respect to uses of the oceans. It creates a structure for the governance and protection of all marine areas, including the airspace above and the seabed and subsoil below. After decades of dispute and negotiation, the Convention reflects consensus on the extent of
jurisdiction that States may exercise off their coasts and allocates rights and duties among States.

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

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

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

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

The Convention sets forth a comprehensive legal framework and basic obligations for protecting the marine environment from all sources of pollution, including pollution from vessels, from dumping, from seabed activities and from land-based activities. It creates a positive and unprecedented regime for marine environmental protection that will compel parties to come together to address issues of common and pressing concern. As such, the Convention is the
and allocates a maximum of resources over the Economic area of the coast. The area within the "straddling measures for mammals, reign rights, and resources, in the con- l mile from beyond that margin. It lays the outer limits of con- l States in the inter- of military areas under the guaran- and over- gos. It also the re limits of the margin, as an inter- of such re- deep seabed ablishment ed Authority ground the Agreement to and from all dump- It creates mental process issues is the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time.

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

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

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

THE AGREEMENT

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

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

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

The provisions of the Agreement overhaul the decision-making procedures of Part XI to accord the United States, and others with major economic interests at stake, adequate influence over future decisions on possible deep seabed mining. The Agreement guaran-
tees a seat for the United States on the critical executive body and requires a consensus of major contributors for financial decisions.

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

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

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

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

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

**STATUS OF THE CONVENTION AND THE AGREEMENT**

One hundred and fifty-two States signed the Convention during the two years it was open for signature. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention. The Convention will enter into force for these States on November 16, 1994, and thereafter for other States 30 days after deposit of their instruments of ratification or accession.
The United States joined 120 other States in voting for adoption of the Agreement on July 28, 1994; there were no negative votes and seven abstentions. As of September 8, 1994, 50 States and the European Community have signed the Agreement, of which 19 had previously ratified the Convention. Eighteen developed States have signed the Agreement, including the United States, all the members of the European Community, Japan, Canada and Australia, as well as major developing countries, such as Brazil, China and India.

RELATION TO THE 1958 GENEVA CONVENTIONS


DISPUTE SETTLEMENT

The Convention identifies four potential fora for binding dispute settlement:

—The International Tribunal for the Law of the Sea constituted under Annex VI;
—The International Court of Justice;
—An arbitral tribunal constituted in accordance with Annex VII;
and

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

A State, when adhering to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree. If a Party has failed to announce its choice of forum, it is deemed to have accepted arbitration in accordance with Annex VII.

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

The Government of the United States of America declares, in accordance with paragraph 1 of Article 287, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:
(A) a special arbitral tribunal constituted in accordance with
Annex VIII for the settlement of disputes concerning the inter-
pretation or application of the articles of the Convention relating
to (1) fisheries, (2) protection and preservation of the ma-
rine environment, (3) marine scientific research, and (4) navi-
gation, including pollution from vessels and by dumping, and
(B) an arbitral tribunal constituted in accordance with
Annex VII for the settlement of disputes not covered by the
declaration in (A) above.

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

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

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

RECOMMENDATION

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

The primary benefits of the Convention to the United States in-
clude the following:

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

• The Convention advances the interests of the United States as
a coastal State. It achieves this, *inter alia*, by providing for an EEZ
out to 200 nautical miles from shore and by securing our rights reg-
arding resources and artificial islands, installations and structures
for economic purposes over the full extent of the continental
shelf. These provisions fully comport with U.S. oil and gas leasing
practices, domestic management of coastal fishery resources, and
international fisheries agreements.
accordance with the inter-convention relation of the various EEZs. It is not out of binding for more enumerating maritime concerns, and disputes council is exercised all three of settlement, and that it does not act of Part XV with paragraphs.

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

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

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

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

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

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

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

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

Respectfully submitted,

WARREN CHRISTOPHER.
INTRODUCTION

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

This Commentary begins with a discussion of the maritime zones recognized by the Convention, emphasizing the rules regarding navigation and overflight in these areas. Next, the framework for the protection and preservation of the marine environment of these areas is examined. Thereafter, the Commentary reviews the regimes for dealing with the resources in these areas under the following headings:
living marine resources, including fishing;
nonliving resources, including those of the continental shelf
and the deep seabed beyond the limits of national jurisdiction;
and,
marine scientific research.
The various mechanisms for settling disputes regarding these provisions are next examined. Finally, the Commentary considers other provisions of the Convention, including those relating to maritime boundary delimitation, enclosed and semi-enclosed seas, landlocked and geographically disadvantaged States, and technology transfer, as well as the definitions and the general and final provisions of the Convention.

MARITIME ZONES

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

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

Internal waters are landward of the baselines along the coast. They include lakes, rivers and many bays.
Archipelagic waters are encircled by archipelagic baselines established by independent archipelagic States.
The territorial sea extends seaward from the baselines to a fixed distance. The Convention establishes 12 nautical miles as the maximum permissible breadth of the territorial sea. (One nautical mile equals 1,852 meters or 6,067 feet; all further references to miles in this Commentary are to nautical miles.)
The contiguous zone, exclusive economic zone (EEZ) and continental shelf all begin at the seaward limit of the territorial sea.
The contiguous zone may extend to a maximum distance of 24 miles from the baselines.
The EEZ may extend to a maximum distance of 200 miles from the baselines.
The continental shelf may extend to a distance of 200 miles from the baselines or, if the continental margin extends beyond that limit, to the outer edge of the continental margin as defined by the Convention. The regime of the continental shelf applies to the seabed and subsoil and does not affect the status of the superjacent waters or airspace.
The regime of the high seas applies seaward of the EEZ; significant parts of that regime, including freedom of navigation and overflight, also apply within the EEZ.
The seabed beyond national jurisdiction, called the Area in the Convention, comprises the seabed and subsoil beyond the seaward limit of the continental shelf.
3

INTERNAL WATERS

Article 8(1) defines internal waters as the waters on the landward side of the baseline from which the breadth of the territorial sea is measured. This definition carries forward the traditional definition of internal waters found in article 5 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, 15 UST 1606, TIAS No. 5639, 516 UNTS 205 (Territorial Sea Convention). The importance of baselines and the rules relating to them are discussed in the next section.
Article 14: The Territorial Sea - 12 miles.
TERRITORIAL SEA

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

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

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

CONTIGUOUS ZONE

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

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

EXCLUSIVE ECONOMIC ZONE (EEZ)

The establishment of the EEZ in the Convention represents a substantial change in the law of the sea. The underlying purpose...
of the EEZ regime is to balance the rights of coastal States, such as the United States, to resources (e.g., fisheries and offshore oil and gas) and to protect the environment off their coasts with the interests of all States in preserving other high seas rights and freedoms.

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

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

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

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

HIGH SEAS

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

Pursuant to article 76, the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. The coastal State alone exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. The natural resources of the continental shelf consist of the mineral and other non-living resources of the seabed and subsoil together with the living organisms belonging to sedentary species. Substantial deposits of oil and gas are located in the continental shelf off the coasts of the United States and other countries.

THE SEABED BEYOND NATIONAL JURISDICTION

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

AIRSPACE

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

BASELINES

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

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

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

Reefs

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

STRAIGHT BASELINES

Purpose

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

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

Areas of application

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

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

- in a locality where the coastline is deeply indented and cut into, there exist at least three deep indentations;
- the deep indentations are in close proximity to one another; and
- the depth of penetration of each deep indentation from the proposed straight baseline enclosing the indentation at its entrance to the sea is, as a rule, greater than half the length of that baseline segment.

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

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

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

- the most landward point of each island lies no more than 24 miles from the mainland coastline;
- each island to which a straight baseline is to be drawn is not more than 24 miles apart from the island from which the straight baseline is drawn; and
- the islands, as a whole, mask at least 50% of the mainland coastline in any given locality.

Criteria for drawing straight baseline segments

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

- not depart to any appreciable extent from the general direction of the coastline, by reference to general direction lines which in each locality shall not exceed 60 miles in length;
- not exceed 24 miles in length; and
- result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

Minor deviations

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

Economic interests

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

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

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

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

Effect on other States

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

Unstable coastlines

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

OTHER BASELINE RULES

Low-tide elevations

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

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

Harbor works

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

Mouths of rivers

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

BAYS AND OTHER FEATURES

JURIDICAL BAYS

A "juridical bay" is a bay meeting the criteria of article 10(2). Such a bay is a well-marked indentation on the coast whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation is not a juridical bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

For the purpose of measurement, article 10(3) provides that the indentation is that area lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation for satisfaction of the semicircle test.

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

HISTORIC BAYS

Article 10(6) exempts so-called historic bays from the rules described above. To meet the standard of customary international law for establishing a claim to a historic bay, a State must demonstrate
its open, effective, long-term, and continuous exercise of authority over the bay, coupled with acquiescence by foreign States in the exercise of that authority. An actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition. The United States has in the past claimed Delaware Bay and the Chesapeake Bay as historic. These bodies also satisfy the criteria for juridical bays reflected in the Convention.

CHARTS AND PUBLICATION

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

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

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

ISLANDS

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

ARTIFICIAL ISLANDS AND OFF-SHORE INSTALLATIONS

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

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

NAVIGATION AND OVERFLIGHT

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

(Parts II–V, VII)

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

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

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

- the rules for enclosing internal waters and archipelagic waters within baselines, and the prohibition on territorial sea claims beyond 12 miles from those baselines;
- the express protection for and accommodation of passage rights through internal waters, the territorial sea, and archipelagic waters, including transit passage of straits and archipelagic sea lanes passage, as well as innocent passage;
- the express protection for and accommodation of the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses beyond the territorial sea, including broad areas where there are substantial coastal State rights and jurisdiction, such as the EEZ and the continental shelf;
- the prohibition on regional arrangements in areas that restrict the exercise of these rights and freedoms by third States without their consent; and
- the right to enforce this balance through arbitration or adjudication.
Rights, freedoms and jurisdiction recognized and established by the Convention are subject to Part XII of the Convention on the Protection and Preservation of the Marine Environment, discussed below. This includes the duty of the flag State to ensure that its ships comply with international pollution control standards, and the rule of sovereign immunity set forth in article 236.

INTERNAL WATERS

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

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

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

When the establishment of a straight baseline * * * has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

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

TERRITORIAL SEA

Right of innocent passage

One of the fundamental tenets in the international law of the sea is that all ships enjoy the right of innocent passage through another State’s territorial sea. (Innocent passage does not include a right of overflight or submerged passage.) This principle finds expression in article 17, and is developed further throughout Section 3 of Part II of the Convention (articles 17-32). These precise and objective rules governing innocent passage represent a significant advance in development of law of the sea concepts.
The Convention defines "passage" (article 18) and "innocent passage" (article 19), and lists those activities considered to be non-innocent or "prejudicial to the peace, good order or security of the coastal State" (article 19(2)(a)-(l)).

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

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

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

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

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

Article 21(4) requires foreign ships exercising the right of innocent passage to comply with the laws and regulations enacted by the coastal State in conformity with the Convention, as well as all generally accepted international regulations relating to the prevention of collisions at sea. Subject to the provisions regarding ships entitled to sovereign immunity, this duty applies to all ships. However, the Convention provides no authority for a coastal State to condition the exercise of the right of innocent passage by any ships, including warships, on the giving of prior notification to or the receipt of prior permission from the coastal State.
Articles 21–24 add new and useful details regarding the rights and duties of coastal States and foreign ships. For purposes such as resource conservation, environmental protection, and navigational safety, a coastal State may establish certain restrictions upon the right of innocent passage of foreign vessels, as set out in article 21. This list is essentially new in the Convention and is exhaustive.

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

Article 21(2) imposes an additional limitation, that such laws and regulations shall not apply to the design, construction, manning, or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards established by the International Maritime Organization (IMO). This rule does not affect the right of the coastal State to establish and enforce its own requirements for port entry, or preclude cooperation between coastal States to enforce their respective port entry requirements. States may also agree to establish higher standards for their ships or for trade between them.

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

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

Temporary suspension of innocent passage

Article 25(3) provides that:

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

The prohibition against discrimination “in form or in fact” is designed to protect against acts which overtly discriminate in a manner that is prohibited by the article (discrimination “in form”) and
also against acts that, although not overtly discriminatory, have a
discriminatory effect (discrimination "in fact"). "Weapons exercises"
includes weapons testing.

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

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

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

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

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

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

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

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

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

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

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

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

Non-suspendable innocent passage applies to straits connecting a part of the high seas/EEZ and the territorial sea of a foreign State (article 46(1)(b)), and to straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a State bordering the strait and its mainland, if there exists seaward of the island a route through the high seas/EEZ of similar convenience with regard to navigation and hydrographic characteristics (article 38(1)).

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

Transit passage

Part III of the Convention protects long-standing navigation and overflight rights in international straits through the concept of transit passage. This is the regime governing the right of free navigation and overflight for ships and aircraft in transit in, over, and under straits used for international navigation. Recognition of such a right was a fundamental requirement for a successful Convention. With the extension by coastal States of their territorial seas to 12 miles, over 100 straits, which previously had high seas cor-
ridors, became overlapped by such territorial seas. Without provision for transit passage, navigation and overflight rights in those straits would have been compromised.

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

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

Innocent passage in international straits

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

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

International straits not completely overlapped by territorial seas

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

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

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

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

Legal status of waters forming international straits

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

Rights and duties of States bordering straits

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

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

Article 42 specifically authorizes States bordering straits to adopt nondiscriminatory laws and regulations relating to transit passage through straits in respect of the safety of navigation and regulation of maritime traffic as provided in article 41; the prevention, reduction and control of pollution by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait (i.e., the Protocol of 1976 relating to the International Convention for the Prevention of Pollution from Ships, 1973, with annexes (95th Cong., 1st Sess., Sen. Ex. E, 96th Cong., 1st Sess., Sen. Ex. C (MARPOL) and any applicable regional agreement); the prevention of fishing, including the stowage of fishing gear by fishing vessels; and the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits. Due publicity must be given to these laws and regulations, and foreign ships exercising the right of transit passage are required by article 42(4) to comply with them (subject to
the provisions of the Convention regarding ships entitled to sovereign immunity).

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

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

Article 39(1) defines the common duties both ships and aircraft have while exercising the right of transit passage. They include the duty to proceed without delay through or over the strait, to refrain from the threat or use of force against States bordering straits, to refrain from any activities other than those incident to their normal modes of continuous and expeditious transit (unless rendered necessary by force majeure or by distress), and to comply with other relevant provisions of Part III.

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

Aircraft in transit passage are required to observe the ICAO Rules of the Air (Annex 2 to the International Convention on Civil Aviation (61 Stat. 1180, TIAS No. 1591, 15 UNTS 295, Chicago Convention), as they apply to civil aircraft. Article 39(3)(a) states that State aircraft will normally comply with such safety measures and operate at all times with due regard for the safety of navigation, as required by article 9(d) of the Chicago Convention. Aircraft in transit passage are also required to maintain a continuous listening watch on the appropriate frequency.

ARCHIPELAGIC STATES (PART IV, ARTICLES 46–54)

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

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

group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and po-
litical entity, or which historically have been regarded as such.

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

Archipelagic baselines

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

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

Navigation and overflight in archipelagos

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

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

All ships and aircraft, including warships and military aircraft, enjoy the right of archipelagic sea lanes passage while transiting through, under, or over the waters of archipelagos and adjacent territorial seas via archipelagic sea lanes. Articles 53(4) and 53(12) mean that archipelagic sea lanes passage must be respected in all routes normally used for international navigation and overflight, whether or not sea lanes are actually designated under the Convention.
Article 53 permits an archipelagic State to designate sea lanes and air routes for the exercise of archipelagic sea lanes passage. Such archipelagic sea lanes "shall include all normal passage routes * * * and all normal navigational channels * * *h. Each sea lane is defined by a continuous line from the point of entry into the archipelago to the point of exit. Ships and aircraft in designated archipelagic sea lanes passage are required to remain within 25 miles from either side of the axis line and must approach no closer to the coastline than 10 percent of the distance between the nearest islands.

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

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

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

THE CONTIGUOUS ZONE (ARTICLE 33)

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

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

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

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

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

(a) **sovereign rights** for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) **jurisdiction** as provided for in the relevant provisions of the Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures (i.e., article 60);

(ii) marine scientific research (i.e., Part XIII);

(iii) the protection and preservation of the marine environment (i.e., Part XII, particularly article 220);

(c) other rights and duties provided for in the Convention.

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

Pursuant to Article 56, in the EEZ all States enjoy the high seas freedoms of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the seas related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and which are compatible with the other provisions of the Convention. Articles 88 to 115, which (apart from the fuller enumeration of freedoms in article 87) set forth the entire regime of the high seas on matters other than fisheries, apply to the EEZ in so far as they are not incompatible with Part V. These rights are the same as the rights recognized by international law for all States on the high seas.

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

The concept of "due regard" in the Convention balances the obligations of both the coastal State and other States within the EEZ. Article 56(2) provides that coastal States "shall have due regard to the rights and duties of other States" in the EEZ. Article 58(3) places similar requirements on other States in exercising their rights, and in performing their duties, in the EEZ. Although it is
not specific, article 59 provides a basis for resolving disputes over any rights and duties not allocated by articles 56, 58 and other provisions of the Convention. The conflict “should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.”

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

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

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

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

While no State has claimed an EEZ extending beyond 200 miles from coastal baselines, several of the States which have declared EEZs claim rights to regulate activities within the EEZ well beyond those authorized in the Convention. For example, Iran claims the right to prohibit all foreign military activities within its EEZ. The United States does not recognize such claims, which are not within the competence of coastal States under the Convention. Accession to the Convention will significantly enhance the ability of the United States to deal with such excessive claims, and to prevent their proliferation, on the basis of the balance of interests reflected in the Convention.
HIGH SEAS (PART VII, ARTICLES 86-115)

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

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

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

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

Peaceful purposes (article 88) is discussed below in connection with article 301, on peaceful uses of the seas, in the section on general provisions.
Nationality, status, and duties of ships (articles 91–96)

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

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

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

Sovereign immunity (articles 29–32, 95–96, 236)

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

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

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

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

Concerning government ships operated for non-commercial purposes, these would include auxiliaries, which are vessels, other than warships, that are owned or operated by the armed forces. Like warships, they are immune from arrest and search, whether
in port or at sea, and exempt from foreign taxes and enforcement of foreign laws and regulations; further, the flag State exercises exclusive control over all passengers and crew onboard.

Articles 95–96 address these issues with respect to the high seas regime. Article 95 provides that warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State. Article 96 provides that ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Finally, article 236 makes clear that the provisions of Part XII do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State must ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with the Convention.

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

Article 97 restates existing international law relating to this subject.

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


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

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

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

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

**PIRACY (ARTICLES 100–107)**

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

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

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

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

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

Congress has further exercised this power, including with respect to certain acts not regarded as piracy under international law, by enacting 18 U.S.C. §§ 1651–61 (piracy), 49 U.S.C. §§ 1472(i)–(n) (aircraft piracy), 33 U.S.C. §§ 381–84 (regulations for suppression piracy), and 18 U.S.C. § 1854 (privateering). These statutes provide a firm basis for implementing the relevant provisions of the Convention and other applicable international law.

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

Article 108 of the Convention provides a valuable additional tool in support of the war on illicit drugs. This article requires all States to cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions. This article also permits any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic to request the cooperation of other States to suppress such traffic.

This principle finds expression in other international law, including in the Single Convention on Narcotic Drugs, 1961, 18 UST 1407, TIAS No. 6298, 520 UNTS 204. Article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Sen. Treaty Doc. 101–4, also mandates a consensual regime for the boarding of foreign flag vessels suspected of drug trafficking at sea. The United States has entered into a number of bilateral maritime counter-narcotics agreements, for example with the United Kingdom (33 UST 4224, TIAS No. 10296,
SUPPRESSION OF UNAUTHORIZED BROADCASTING (ARTICLE 109)


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

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

HOT PURSUIT (ARTICLE 111)

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

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


Submarine cables include telegraph, telephone, and high-voltage power cables, which are essential to modern communications. In light of the extraordinary costs and increasing importance to the world economy of undersea telecommunications cables, particularly
the new fiber-optic cables, it is significant that the Convention strengthens the protections for the owners and operators of these cables in the event of breakage.

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

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

(Part XII, articles 192–237)

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

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

DEFINITIONS (ARTICLE 1)

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

GENERAL OBLIGATIONS (ARTICLES 192–196)

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

GLOBAL AND REGIONAL COOPERATION (ARTICLES 197–201)

Section 2 provides for global and regional cooperation for the protection and preservation of the marine environment. Cooperation includes, inter alia, development of rules, standards, and recommended practices and procedures for the protection and preservation of the marine environment (article 197), notification of im-
minent or actual damage to other States likely to be affected (article 198), development of contingency plans to respond to pollution incidents (article 199), promotion of research and exchange of information (article 200), and establishment of appropriate scientific criteria for rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment (article 201). (Article 242 adds provisions for international cooperation in research for environmental purposes.)

TECHNICAL ASSISTANCE (ARTICLES 202–203)

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

MONITORING AND ENVIRONMENTAL ASSESSMENT (ARTICLES 204–206)

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

Article 206 relates to the environmental assessment of certain activities on the marine environment. When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205. (The requirements for assessment of potential environmental impacts of deep seabed mining activity are discussed below in connection with the deep seabed mining provisions of the Convention and the 1994 Agreement generally.)

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

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

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

Below is a discussion of the status of the development of international standards, national legislation, and other international activity relating to the sources of pollution identified in section 5, not-
ing where the United States has already implemented these arti-
cles.

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

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

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

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

The United States already has national legislation addressing
land-based sources of marine pollution; this legislation takes into
account the recommendations of the Montreal Guidelines described
above. U.S. laws include the Clean Water Act, 33 U.S.C. §§1251–
1387, which specifically addresses marine water quality, and other
statutes (such as the Solid Waste Disposal Act, 42 U.S.C. §§6901–
6992, the Comprehensive Environmental Response, Compensation,
and Liability Act, 42 U.S.C. §§9601–9675, and the Federal Insecti-
cide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136–136y) which
regulate the release of pollutants and other materials into the envi-
ronment. See also the Refuse Act, 33 U.S.C. §407 et seq., and the
Pollution from sea-bed activities subject to national jurisdiction (article 208)

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


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

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

Pollution by dumping (article 210)

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

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

Pollution from vessels (article 211)

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

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

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

Paragraph 2 obligates States to adopt measures relating to vessels flying their flag or of their registry. Such laws and regulations must at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference (e.g., MARPOL).

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

Paragraph 4 recognizes the authority of coastal States, in the exercise of their sovereignty within their territorial sea, to establish requirements relating to pollution from foreign vessels in their territorial sea, including vessels exercising the right of innocent passage. This authority is balanced by the proviso in paragraph 4 that such laws and regulations shall, in accordance with Part II, section
3, not hamper innocent passage of foreign vessels. However, passage is not innocent if the vessel engages in "any act of willful and serious pollution contrary to this Convention" (article 19(2(h)).

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

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


Pollution from or through the atmosphere (article 212)

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

ENFORCEMENT (ARTICLES 213–222)

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

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

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

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

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

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

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

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

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

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

Under Article 220(2), where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during
its passage therein, violated laws and regulations of the coastal State adopted in accordance with the Convention, the coastal State may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including the detention of the vessel.

Under Article 220(3), where there are clear grounds for believing that a vessel navigating in the EEZ or the territorial sea of a State has, in the EEZ, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels, or laws and regulations of the coastal State conforming and giving effect to such rules and standards, the coastal State may require the vessel to provide information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

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

Where a violation referred to in article 220(3) results in a substantial discharge causing or threatening significant pollution of the marine environment, article 220(5) authorizes the coastal State to undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

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

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

SAFEGUARDS (ARTICLES 223–233)

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

Under article 226, States may not delay a foreign vessel "longer than is essential" for the purposes of the investigations provided for in articles 216, 218, and 220. Moreover, any physical inspection of a foreign vessel is limited to an examination of such certificates, records or other documents as the vessel is required to carry. Any further physical examination may be undertaken only after such an examination and only when: (i) there are clear grounds for believing that the condition of the vessel or its equipment does not cor-
respond substantially with the particulars of those documents; (ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or (iii) the vessel is not carrying valid certificates and records. While the Convention imposes different procedural restrictions on physical inspections than U.S. law, it is anticipated that one or more of the exceptions for allowing further physical examination will be met in cases where there are “clear grounds” to believe a violation has occurred.

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

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

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

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

ICE-COVERED AREAS (ARTICLE 234)

Section 8 authorizes coastal States to adopt and enforce laws and regulations relating to marine pollution from vessels in ice-covered areas within the limits of the EEZ, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to, or irreversible disturbance of, the ecological balance.
Pursuant to this article, a State may enact and enforce non-discriminatory laws and regulations to protect such ice-covered areas that are within 200 miles of its baselines established in accordance with the Convention. Such laws and regulations must have due regard to navigation and the protection and preservation of the marine environment, based on the best available scientific evidence, and must be otherwise consistent with other relevant provisions of the Convention and international law, including the exemption for vessels entitled to sovereign immunity under article 236.

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

RESPONSIBILITY AND LIABILITY (ARTICLE 235)

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

SOVEREIGN IMMUNITY (ARTICLE 236)

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

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

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

Section 11 (article 237(1)) provides that the provisions in Part XII are without prejudice to the specific obligations assumed by States under agreements previously concluded which relate to the protection and preservation of the marine environment and to
agreement which may be concluded in furtherance of the general principles set forth in the Convention. Article 237(2) provides that specific obligations assumed by States under other agreements should be carried out in a manner consistent with the general principles and objectives of this Convention. The United States does not anticipate any change in its implementation of other agreements, since it currently implements such agreements consistent with the principles and objectives of the Convention.

LIVING MARINE RESOURCES

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

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

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

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

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

TERRITORIAL SEA AND EEZ

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

The Convention also provides that the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing living resources within its EEZ, including the right to utilize fully the total allowable catch of all such resources
(articles 56, 61, 62). With these rights come general responsibilities for the coastal State, including the duty:

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

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

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

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

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

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

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

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

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

While the MFCMA does not separately address the issue of associated or dependent species, it gives sufficiently broad authority to regional fishery management councils to permit them to protect non-target species to the extent required by article 61(3), and argu-
ably requires the councils to do so by providing that, to the extent practicable, interrelated species shall be managed as a "unit" (16 U.S.C. § 1531(a)(3)). The Endangered Species Act (16 U.S.C. § 1531 et seq.) would independently protect those non-target species that were endangered or threatened throughout a significant portion of their range.

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

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

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

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

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

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

Particular categories of species. Articles 65 through 68 of the Convention set forth additional provisions relating to particular categories of living resources that do not remain solely within areas under the fishery management authority of a single coastal State. U.S. law, and the international agreements to which the United States is party, as well as the 1992 United Nations moratorium on
high seas driftnet fishing, are fully consistent with these provisions.

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

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

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

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


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

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

Article 66(3)(a) prohibits fishing for anadromous stocks on the high seas beyond the EEZ except when such a prohibition would “result in economic dislocation” for a State other than a State of origin. On its face, this provision makes unlawful any new high seas salmon fisheries or the expansion of current ones. In fact, at the time the Convention was concluded, only Japan maintained a
high seas salmon fishery. Since the entry into force of the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, on February 16, 1993, that fishery has been prohibited as well. The 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean, TIAS No. 10789, also prohibits high seas fishing for salmon in that region. Thus, the combined effect of the LOS Convention and these two treaties precludes any fishery for U.S.-origin salmon, or any other salmon, on the high seas, a major benefit to the United States.

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

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

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

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

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

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

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

**CONTINENTAL SHELF**

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

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

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

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

**HIGH SEAS**

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

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

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

other treaty obligations of the State concerned;
the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63(2) and articles 64–67; and

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

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


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

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

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


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

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


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

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

Existing U.S. law implements all pertinent U.S. obligations flowing from the general provisions of articles 116–120 of the Convention and the additional treaties to which the United States is party. The MFCMA also calls upon the Secretary of State to negotiate any additional treaties and other international agreements that may be
necessary or appropriate in the fulfillment of U.S. obligations under the Convention to cooperate in the conservation and management of living resources of the high seas (16 U.S.C. § 1822).

“STRADDLING” STOCKS AND HIGHLY MIGRATORY SPECIES

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

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

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

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

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

While disputes over straddling stocks in other parts of the world remain, Article 63(2) provided the basis on which the United States was able to resolve a conflict over the primary straddling stock fishery of concern to it, namely the fishery for the Aleutian Basin stock of Alaskan pollack. This pollock stock is a valuable straddling stock that occurs in the EEZs of both the United States and the Russian Federation, as well as in the high seas area of the Bering
Sea, commonly known as the Donut Hole. Overfishing for pollock in the Donut Hole by other States led to a collapse of the stock in the late 1980s. Relying on article 63(2), the United States and the Russian Federation persuaded the fishing States in question to conclude the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, which, once it enters into force, will establish an effective conservation and management regime for pollock in the Donut Hole, consistent with U.S. interests in that stock as a coastal State.

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

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

2. The provisions of paragraph 1 apply in addition to the other provisions of [Part V of the Convention].

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

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

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

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

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

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

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

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

United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. As noted above, articles 63(2) and 64 establish, for "straddling" stocks and HMS, respectively, general obligations for coastal States and other States whose nationals fish for
these stocks to cooperate in conservation and management. Within the framework of these general obligations, the international community has concluded numerous treaties and other agreements to regulate fisheries for “straddling” stocks and HMS.

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

DISPUTE SETTLEMENT

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

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

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

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

THE CONTINENTAL SHELF

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

Part VI of the Convention, together with other related provisions on the continental shelf, secures for the coastal State exclusive control over the exploration and exploitation of the natural resources, including oil and gas, of the sea-bed and its subsoil within 200
miles of the coastal baselines and to the outer edge of the geological continental margin where the margin extends beyond 200 miles.

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

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

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

THE CONCEPT OF THE CONTINENTAL SHELF

From a geological perspective, the continental shelf is only one part of the submerged prolongation of land territory offshore. It is the inner-most of three geomorphological areas—the continental slope and the continental rise are the other two—defined by changes in the angle at which the seabed drops off toward the deep ocean floor. The shelf, slope and rise, taken together, are geologically known as the continental margin (see Figure 2). Worldwide, there is wide variation in the breadths of these areas.
Figure 2: Profile of the Continental Margin (article 74(3))
National claims to the continental shelf in modern times date from President Truman's 1945 Proclamation on the Continental Shelf, by which the United States asserted exclusive sovereign rights over the resources of the continental shelf off its coasts. The Truman Proclamation specifically stated that waters above the continental shelf were to remain high seas and that freedom of navigation and overflight were not to be affected (Presidential Proclamation No. 2667, Sept. 28, 1945, 3 CFR 67 (1943–48 Comp.)).

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

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

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

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

DEFINITION OF THE CONTINENTAL SHELF

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

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

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

The effect is to give coastal States whose physical continental margins extend less than 200 miles from the coast sovereign rights over the natural resources of the seabed and subsoil up to the 200 mile limit. This is of particular importance in those parts of the United States with a narrow continental margin, such as areas off
the Pacific coast, Hawaii, the Commonwealths of Puerto Rico and of the Northern Mariana Islands, and most other islands comprising U.S. territories and possessions.

RIGHTS AND DUTIES

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

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

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

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

Definition

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

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

The second alternative is to fix the outer limits of the margin by points that are not more than 60 miles from the foot of the continental slope.
These alternative methods are subject to specific qualifications to ensure that their application does not produce unintended results.

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

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

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

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

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

**Delineation**

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

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

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

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

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

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

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

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

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

Revenue sharing (article 82)

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

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

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

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

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

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

This Statement of Understanding bears upon the interpretation and application of the Convention, but is not part of the Conven-
tion as adopted by the Conference and submitted for the advice and consent of the Senate.

DOMESTIC LEGISLATION


DEEP SEABED MINING

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


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

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

- it established a structure for administering the seabed mining regime that did not accord industrialized States influence in the regime commensurate with their interests;
- it incorporated economic principles inconsistent with free market philosophy; and
- its specific provisions created numerous problems from an economic and commercial policy perspective that would have impeded access by the United States and other industrialized countries to the resources of the deep seabed beyond national jurisdiction.

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

The waning of the Cold War and the increasing tendency by nations in Eastern Europe and the developing world to embrace market principles gave further impetus to the effort to reform Part XI. These factors led the States that had historically supported Part XI to accept the need for reform. Finally, the 6th ratification of the Convention on November 16, 1993, made it apparent that a failure to reform Part XI before the entry into force of the Convention on November 16, 1994, could jeopardize the future of the entire Convention and seriously impede future efforts to exploit mineral resources beyond national jurisdiction.

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

THE SEABED MINING REGIME

Scope of the regime

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

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

Common heritage of mankind

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

This principle has its roots in political and legal opinion dating back to the earliest days of the Republic. President John Adams stated that "the oceans and its treasures are the common property of all men". With respect to the seabed in particular, President Lyndon Johnson declared that "we must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings." The United States joined in the adoption, by consensus, of the United Nations General Assembly Resolution 2749 (XXV)(1970), which set forth this principle. The Deep Seabed Hard
Mineral Resources Act of 1980 (30 U.S.C. § 1401 et seq.) (DSHMRA) incorporated this principle into U.S. law. For reasons of national security, the United States has also supported this principle to ensure that the deep seabed is not subject to national appropriation, which could lead to confrontation or impede the mobility or operations of U.S. armed forces. Article 137, like the DSHMRA, advances these interests by providing that no State shall claim or exercise sovereignty over any part of the Area or its resources or recognize such claims by others.

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

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

**ADMINISTRATION OF THE REGIME**

*International Seabed Authority*

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

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

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

*Assembly*

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

Because of the size of the Assembly, and because its composition and voting rules do not necessarily ensure adequate protection for
all relevant interests, the Convention and the Agreement provide that the important decision-making functions of the Assembly are exercised concurrently with, or are based on the recommendations of, the Council or the Finance Committee, or both.

Council

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

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

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

Legal and Technical Commission

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

Economic Planning Commission

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

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

THE FUNCTIONAL—EVOLUTIONARY APPROACH

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

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

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

ACQUISITION OF MINING RIGHTS

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

Prospecting

Article 2 of Annex III to the Convention does not require prior approval for prospecting. However, prospectors must submit a written undertaking to comply with the Convention. Prospecting, which
may be conducted simultaneously by more than one prospector, does not confer any rights with respect to the resources.

*Exploration and exploitation*

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

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

*Protection of the marine environment*

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

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

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

*Application fees*

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

*Approval of applications*

The Authority shall review and approve plans of work on a first-come first-served basis. Special decision-making procedures apply to the approval of plans of work. Under article 165(2), the Legal and Technical Commission shall review applications and make recommendations to the Council on the approval of plans of work. The Commission is required to base its recommendations on whether the applicant meets the financial and technical qualifications mentioned above, whether its proposed plan of work otherwise meets the rules and regulations adopted by the Council, and whether the applicant has included States Parties. The applicant submits a written plan of work that upon approval will take the form of a contract between the applicant and the Authority.
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If the Legal and Technical Commission recommends approval of a plan of work, Section 3(1) of the Annex to the Agreement requires the Council to approve the plan of work within 60 days, unless the Council decides otherwise by a two-thirds majority of its members, including a majority of the members present and voting in each of its chambers. The effects of this provision are to require the Council to act in a timely manner and to allow two members of either the consumer or investor chambers of the Council to ensure that
such a plan of work is approved. If the Commission recommends against approval of an application, the Council can nevertheless approve the application based on its normal decision-making procedures for issues of substance.

_Security of tenure—priority of right_

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

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

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

Applications by pioneer investors

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

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

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

Reserved areas

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

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

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

Compliance

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

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

DECISION-MAKING

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

U.S. seat

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

Decisions by the Council

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

This chambered voting arrangement will ensure that the United States and two other consumers, or three investors or producers acting in concert, can block substantive decisions in the Council. The only exceptions to this rule are for four substantive decisions that, under article 161(3)(d) of the Convention, must be made by consensus. Thus, consensus is required for any decision to provide protection to developing States that are land-based producers of minerals from adverse effects from seabed mining; any decision to recommend to the Assembly rules and regulations on the sharing of financial benefits from seabed mining (revenue sharing); any decision to adopt and apply provisionally rules, regulations and procedures implementing the seabed mining regime or amendments thereto; and any decision to adopt amendments to the seabed mining regime. The requirement that these issues be made by consensus in effect gives the United States a veto with respect to them.
Developing States argued that the six-member developing country category in the Council should also be treated as a chamber for voting purposes. The United States and other industrialized States opposed this on the grounds that developing States in the Council already were assured of sufficient numbers to protect their interests. Sections 3(9) and 3(15)(d) of the Annex to the Agreement represent a compromise on this issue. Those provisions combine the six-member developing State category with the developing States elected on the basis of ensuring overall equitable geographic distribution to serve as a chamber for voting purposes. This would allow eleven developing States acting in concert to block a decision, compared to the thirteen votes needed to block an overall two-thirds majority in the Council.

Composition of the Council

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

Rulemaking

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

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

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

Section 1(15) of the Annex to the Agreement sets forth two means by which the process of preparing the necessary rules can be initiated. Paragraph 15(a) provides that the Council can initiate the process when it determines that commercial exploitation is im-
minent or at the request of a State whose national intends to apply for approval of a plan of work for exploitation. Paragraph 15(b) requires the Council to complete its work on the rules within two years of receiving such a request. Paragraph 15(c) provides that, if such work is not completed within this timeframe and an application for approval of a plan of work for exploitation is pending, the Council must consider and provisionally approve the proposed plan of work based on the Convention and any rules adopted provisionally, as well as the principle of non-discrimination.

**Review conference**

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

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

**ECONOMIC AND COMMERCIAL POLICY CONCERNS**

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

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

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

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

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

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

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

Economic assistance

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

Article 151(10) of the Convention empowers the Authority to establish a "system of compensation or take other measures of economic adjustment assistance" with the objective of assisting "developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused" by deep seabed mining.
Section 7 of the Annex to the Agreement contemplates that this provision will be implemented through the establishment of an economic assistance fund. However, such a fund may only be established when the revenues of the Authority exceed those necessary to cover its administrative expenses (i.e., when revenues from mining are sufficient to avoid the need for assessed contributions from members for administrative expenses and a surplus exists). Only revenues from mining and voluntary contributions may be used to finance the fund. The United States veto in the Finance Committee and its influence in the Council are adequate to insure that such a fund is not established or operated in a manner contrary to U.S. interests.

Financial terms of contracts

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

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

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

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

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

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

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

The Enterprise

Background. Article 170 of the Convention establishes an operating arm of the Authority called the Enterprise. Article 155(2)(a) provides that the Enterprise, as well as other commercial enterprises, may apply to the Authority for mining rights.

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

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

The Agreement retains the Enterprise but renders it harmless by addressing the specific problems and ensuring that the Enterprise could only become operational following a decision by the Council,
and only if the Council concludes that the operations of the Enterprise would conform to sound commercial principles.

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

Solutions. Responding to these concerns, section 2(2) of the Annex to the Agreement provides that the Enterprise will conduct its first operations through joint ventures with other commercial enterprises. Section 2(3) eliminates the obligation for States Parties to finance its operations. Section 2(4) subjects the Enterprise to the same obligations as other miners and modifies article 158(3) of the Convention to ensure that any plan of work submitted by the Enterprise must be in the form of a contract like that of any other miner and thus be subject to the requirements applicable to any other contractor. Finally, section 5 of the Annex to the Agreement removes the compulsory technology transfer provisions.

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

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

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

Budget of the Authority

Article 173 of the Convention provides that the administrative budget of the Authority will be met by assessed contributions made by States Parties to the Convention until the time that other funds
(i.e., revenues from mining or voluntary contributions) are adequate to meet the administrative expenses of the Authority. Section 1(14) of the Annex to the Agreement modifies these provisions by requiring that, until the Agreement enters into force, the administrative expenses of the Authority will be met through the budget of the United Nations.

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

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

PRIVILEGES AND IMMUNITIES

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

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

THE AGREEMENT AND ITS RELATIONSHIP TO THE CONVENTION

The Agreement revises, in a legally binding manner, the objectionable provisions of Part XI. As discussed above, these revisions satisfactorily address the objections raised by the United States and other industrialized countries to Part XI.
The Agreement contains two parts, a main body and an Annex. All of the substantive revisions to Part XI appear in the Annex, while the main body of the Agreement establishes the legal relationship between the Convention and the Agreement, provides options by which States may consent to be bound by the Agreement, and sets forth the terms of entry into force of the Agreement and of its provisional application, and addresses certain subsidiary issues.

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

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

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

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

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

The simplified procedure satisfies both objectives in a logically sound manner. Under customary international law, as reflected in Article 12(1)(a) of the Vienna Convention on the Law of Treaties (92nd Congress; 1st Session, Senate Executive "L"), "the consent of a State to be bound by a treaty is expressed by signature of its representative when * * * the treaty provides that signature should have that effect." In the case of the Agreement, Article 4(3)(c) and Article 5 provide that, for any State that has ratified or acceded to the Convention, signature of the Agreement will bind the signatory State to the Agreement twelve months after the Agreement's adoption, unless that State notifies the Depositary otherwise.
One distinct advantage of the simplified procedure is that it allows a large number of States that have already ratified or acceded to the Convention easily to become party to the Agreement as well, thereby reducing the possibility that some States will remain party only to the Convention.

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

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

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

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

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

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

Provisional application of the Agreement is consistent with international and U.S. law. Article 25 of the Vienna Convention on the Law of Treaties provides for the provisional application of agreements pending their entry into force. Substantial State practice has developed in this regard; a growing list of international agreements have been provisionally applied.
The United States has provisionally applied numerous agreements, including several international commodity agreements and other treaties pending their entry into force for the United States. Articles 8 through 10 of the Agreement address subsidiary issues relating to the application of the Agreement.

UNITED STATES DEEP SEALED MINING LEGISLATION

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

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

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

- recognition of U.S. support for the principle that the deep seabed mineral resources are the common heritage of mankind (30 U.S.C. § 1401(a)(7));
- a disclaimer of sovereignty over areas or resources of the deep seabed (30 U.S.C. § 1402(a));
- recognition of the likelihood of payments to an international organization with respect to hard mineral resources (30 U.S.C. § 1402(a)(15));
- provision of measures for protection of the marine environment, including an environmental impact statement and monitoring (e.g. 30 U.S.C. § 1419(a) and (f)); and
- establishment of a regime based on a first-in-time priority of right, on objective, non-discriminatory criteria and regulations, and on security of tenure through granting of exclusive rights for a fixed time period and with limitations on the ability to modify authorization obligations.

In addition to these basic elements, Subchapter II of the DSHMRA sets forth criteria that would need to be met for an international regime to be acceptable to the United States, namely, assured and non-discriminatory access for U.S. citizens, under reasonable terms and conditions, to deep seabed resources, and assured continuity in mining activities undertaken by U.S. citizens prior to entry into force of the agreement under terms, conditions, and restrictions that do not impose significant new economic burdens that have the effect of preventing continuation of operations on a viable economic basis (30 U.S.C. § 1401(1)). The DSHMRA also recognizes that a treaty must be judged by the totality of its provisions (30 U.S.C. § 1441(2)).
As described above, the Agreement clearly revises Part XI in a manner that satisfies these criteria. Of particular importance in this context are the elimination of production controls, mandatory technology transfer by operators, the annual U.S. $1,000,000 fee during exploration and the onerous economic rent provisions of Part XI; the provision to U.S. entities of non-discriminatory access to deep seabed mineral resources on terms no less favorable than those provided for registered pioneer investors; the limitations on contract modifications; the restraints imposed on the operation of the Enterprise; and the revisions to the decision-making provisions of Part XI that will allow the United States to protect its interests and those of U.S. citizens.

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

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

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

MARINE SCIENTIFIC RESEARCH

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

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

Part XIII confirms the rights of coastal States to require consent for marine scientific research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to
ensure that the consent authority is exercised in predictable and reasonable fashion so as to promote maximum access for research activities.

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

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

GENERAL PROVISIONS (SECTION 1, ARTICLES 238–241)

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

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

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

INTERNATIONAL COOPERATION (SECTION 2, ARTICLES 242–244)

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

Article 244 further obligates States and competent international organizations to make available by publication and dissemination
through appropriate channels information on proposed major research programs, as well as knowledge resulting from marine scientific research. To this end, States and competent international organizations are called upon to promote actively the flow of data and information resulting from marine scientific research. Likewise, the capabilities of developing countries to carry out marine scientific research are to be promoted.

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

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

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

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

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

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

The consent of a coastal State for a research project may be granted either explicitly or implicitly. Article 248 requires States or organizations sponsoring projects to provide to the coastal State, at least six months in advance of the expected starting date of the research activities, a full description of the project. The research activities may be initiated six months after the request for consent, unless the coastal State, within four months, has informed the State or organization sponsoring the research that it is denying
consent for one of the reasons set forth in article 246 or that it requires more information about the project. If the coastal State fails to respond to the request for consent within four months following notification, consent may be presumed to have been granted (article 252). This provision should encourage timely responses from coastal States to requests for consent.

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

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

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

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

RESEARCH INSTALLATIONS AND EQUIPMENT (SECTION 4, ARTICLES 256–262)

The conditions applicable to marine scientific research set forth in the Convention apply equally to the deployment and use of installations and equipment to support such research (article 258). Such installations and equipment do not possess the status of islands, though safety zones of a reasonable breadth (not exceeding 500 meters) may be created around them, consistent with the Convention. They may not be deployed in such fashion as to constitute
an obstacle to established international shipping routes. They must bear identification markings indicating the State of registry or the international organization to which they belong, and have adequate internationally agreed warning signals (articles 259–262).

RESPONSIBILITY AND LIABILITY (SECTION 5, ARTICLE 263)

Pursuant to article 263(1), States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with the Convention. Pursuant to article 263(2), States and organizations shall be responsible and liable for any measures they take in contravention of the Convention in respect of research by other States, their natural or juridical persons or by competent international organizations and shall provide compensation for damage resulting from such measures. With respect to damage caused by pollution of the marine environment arising out of marine scientific research undertaken by or on the behalf of States and competent international organizations, such States or organizations shall be liable pursuant to article 235 (discussed above in connection with Part XII of the Convention.)

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

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

DISPUTE SETTLEMENT

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

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

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

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

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

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

GENERAL PROVISIONS (ARTICLES 279–285)

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

COMPULSORY, BINDING DISPUTE SETTLEMENT (ARTICLES 286–296)

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

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

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

The International Court of Justice;

An arbitral tribunal constituted in accordance with Annex VII; and

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

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

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

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

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

(A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environ-
ment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping; and

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

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

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

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

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

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

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

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

Limitations

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

A coastal State has acted in contravention of the provisions of the Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;
A State, in exercising such rights and freedoms, has violated
the Convention or certain laws and regulations adopted by a
coastal State; and
A coastal State has violated specified rules and standards for
the protection of the marine environment.
Disputes concerning marine scientific research fall within the
scope of compulsory, binding dispute settlement under section 2,
with two exceptions (article 297(2)). The first exception involves the
exercise by the coastal State of its explicit right or discretion to
withhold consent (e.g., with respect to research directly related to
resources or involving drilling). The second pertains to the coastal
State's decision to exercise its right to suspend or cancel a research
project for non-compliance with certain required conditions. There
is provision, however, for disputes falling within such exceptions to
be addressed through compulsory, non-binding conciliation under
Annex V, section 2.
Under article 297(3), fisheries disputes are subject to compulsory,
binding dispute settlement under section 2, except that a coastal
State need not submit to such settlement any dispute relating to
its sovereign rights with respect to the living resources in its EEZ,
or the exercise thereof, including, for example, its discretionary
powers for determining the allowable catch. However, such dispu-
tes may, under certain conditions, be referred to compulsory,
non-binding conciliation under Annex V, section 2. Conciliation
may be invoked if it is alleged that a coastal State has:
Manifestly failed to comply with its obligations to ensure
through proper conservation and management measures that the
maintenance of the living resources in the exclusive eco-
nomic zone is not seriously endangered;
Arbitrarily refused to determine, at the request of another
State, the allowable catch and its capacity to harvest living
resources with respect to stocks which that other State is inter-
ested in fishing; or
Arbitrarily refused to allocate to any State, under articles 62,
69 and 70 and under terms and conditions established by the
coastal State consistent with this Convention, the whole or
part of the surplus it has declared to exist.

Optional exceptions
Article 298 provides for a State to opt out of one or more of the
dispute settlement procedures in section 2 with respect to one or
more enumerated categories of disputes. These include:
Maritime boundary disputes (to which compulsory, non-bind-
ing conciliation may apply under certain conditions);
Disputes concerning military activities and certain law en-
forcement activities; and
Disputes in respect of which the UN Security Council is ex-
ercising the functions assigned to it by the United Nations
Charter.
As stated in the Secretary of State's report to the President, it
is recommended that the United States invoke all three of these ex-
ceptions and, thus, that the United States make the following decla-
ration:
The Government of the United States of America declares, in accordance with paragraph 1 of article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

PARTICULAR REGIME FOR DEEP SEABED MINING

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

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

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

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

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

ARBITRATION UNDER ANNEX VII

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

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

An arbitral panel generally consists of five members. Each party to the dispute appoints one member; the other three members are appointed by agreement between the parties.
Annex VII provides a mechanism for appointments, should the parties be unable to agree on members; in general, the President of the International Tribunal for the Law of the Sea makes the necessary appointments.

The arbitral tribunal determines its own procedure.

Decisions of the tribunal are to be by majority vote.

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

SPECIAL ARBITRATION UNDER ANNEX VIII

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

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

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

The provisions for arbitration under Annex VII shall otherwise apply.

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

OTHER MATTERS

MARITIME BOUNDARY DELIMITATION

(Articles 15–16, 74–75, 83–84)

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

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

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

Pending agreement on delimitation of the EEZ or the continental shelf, the States concerned are to make every effort to enter into provisional arrangements of a practical nature and, during this
transitional period, not to jeopardize or hamper the reaching of the final agreement (articles 74(3) and 83(3)). Such arrangements are without prejudice to the final delimitation of the EEZ or the continental shelf (article 74(3)).

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

Implications for U.S. Maritime Boundaries

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

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

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

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

In addition to the President's constitutional authority in this area, Congress has authorized the Secretary of State to negotiate with foreign States to establish the boundaries of the EEZ of the United States in relation to any such State (16 U.S.C. § 1822(d)) and called upon the President to establish procedures for settling any out-
standing international boundary disputes regarding the outer continental shelf (43 U.S.C. § 1333(a)(2)(B)).

ENCLOSED OR SEMI-ENCLOSED SEAS

(Part IX, articles 122–123)

The Convention defines an enclosed or semi-enclosed sea as a "gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States" (article 122).

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

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

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

(Part X, Articles 124–132)

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

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

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

Worldwide, there are now 42 land-locked States:


Asia (12): Afghanistan, Armenia, Azerbaijan, Bhutan, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Nepal, Tajikistan, Turkmenistan, Uzbekistan.
Europe (13): Andorra, Austria, Belarus, Czech Republic, Holy See, Hungary, Liechtenstein, Luxembourg, F.Y.R.O.M.¹, Moldova, San Marino, Slovakia, Switzerland.

South America (2): Bolivia, Paraguay.

OTHER RIGHTS OF LAND-LOCKED STATES AND GEOGRAPHICALLY DISADVANTAGED STATES

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

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

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

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

DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY

(Part XIV, Articles 266–278)

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

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

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

¹Former Yugoslav Republic of Macedonia.
nological knowledge and facilitation of access to data and information; the development of appropriate marine technology, as well as of the infrastructure to facilitate transfer of marine technology; and the development of human resources through training and education of developing country nationals. In that regard, the IMO has established the World Maritime University in Malmo, Sweden, and the International Maritime Law Institute in Malta.

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

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

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

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

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

(Part I, Article 1)

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

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

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

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

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

GENERAL PROVISIONS

(Part XVI, Articles 300–304)

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

GOOD FAITH AND ABUSE OF RIGHTS (ARTICLE 300)

This article restates existing customary law. The requirement of good faith reflects article 2(2) of the United Nations Charter and the fundamental rule pacta sunt servanda, reflected in article 26 of the Vienna Convention on the Law of Treaties.
Article 301 reaffirms that all States Parties, whether coastal or flag States, in exercising their rights and performing their duties under the Convention with respect to all parts of the sea, must comply with their duty under article 2(4) of the United Nations Charter to refrain from the threat or use of force against the territorial integrity or political independence of any States.

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

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

**DISCLOSURE OF INFORMATION (ARTICLE 302)**

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

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


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

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

Article 303(3) clarifies that the Convention is not intended to affect the rights of identifiable owners, admiralty law, and the laws
and practices concerning cultural exchanges. Article 303 is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature (article 303(4)). For example, in 1989, the United States and France entered into an agreement for the protection and study of the wreck of the CSS Alabama, sunk by USS Kearsarge on June 19, 1864, in waters now forming part of the French territorial sea (TIAS No. 11687).

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

RESPONSIBILITY AND LIABILITY FOR DAMAGE (ARTICLE 304)

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

FINAL PROVISIONS
(Part XVII, Articles 305–320)

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

SIGNATURE (ARTICLE 305)

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

RATIFICATION AND ACCESSION (ARTICLES 306 AND 307)

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

ENTRY INTO FORCE (ARTICLE 308)

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

Thereafter, the Convention will enter into force for a State ratifying or acceding to it 30 days following deposit of its instrument of ratification or accession.
RESERVATIONS, EXCEPTIONS, DECLARATIONS AND STATEMENTS
(ARTICLES 309 AND 310)

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

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

RELATION TO OTHER INTERNATIONAL AGREEMENTS (ARTICLE 311)

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

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

AMENDMENT (ARTICLES 312–316)

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

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

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

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

With respect to amendments relating to activities in the Area (i.e., deep seabed mining), amendments to the deep seabed mining regime can only be adopted upon the approval of the Council and Assembly of the Authority. The Council, on which the United States is guaranteed a seat in perpetuity (provided we are party), can only adopt such amendments by consensus (article 161(8)(d)).
Because the seabed mining regime creates an institutional structure that can operate only the basis of one set of rules applicable to all, amendments to this regime enter into force for all States Parties one year after three fourths of the States Parties ratify. As noted above, the Agreement abolishes the Review Conference.

DENUNCIATION (WITHDRAWAL) (ARTICLE 317)

A State Party may denounce the Convention on one year's notice. Article 317 also addresses certain consequences of denunciation.

STATUS OF ANNEXES (ARTICLE 318)

The Annexes form an integral part of the Convention.

DEPOSITARY (ARTICLE 319)

The Secretary-General of the United Nations is the depositary and is assigned the normal functions of a Depositary, as well as those consequential to particular provisions in the Convention.

AUTHENTIC TEXTS (ARTICLE 320)

The texts in the six official languages of the United Nations are equally authentic.
Statute of the International Court of Justice

(1945)

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

   b. international custom, as evidence of a general practice accepted as law;

   c. the general principles of law recognized by civilized nations;

   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.
VIENNA CONVENTION
ON THE LAW OF TREATIES

(Document A/CONF.39/27)

Article 18
Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Section 2. Reservations

Article 19
Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
(a) the reservation is prohibited by the treaty;
(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 30
Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:
   (a) as between States parties to both treaties the same rule applies as in paragraph 3;
   (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to Article 41, or to any question of the termination or suspension of the operation of a treaty under Article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.
SECTION 3. INTERPRETATION OF TREATIES

Article 31
General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
   (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
   (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:
   (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
   (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
   (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32
Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
   (a) leaves the meaning ambiguous or obscure; or
   (b) leads to a result which is manifestly absurd or unreasonable.

SECTION 4. TREATIES AND THIRD STATES

Article 34
General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 35
Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36
Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 38
Rules in a treaty becoming binding on third States through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.
JOINT STATEMENT
BY THE UNITED STATES OF AMERICA
AND THE UNION OF SOVIET SOCIALIST REPUBLICS

Since 1986, representatives of the United States of America and the Union of Soviet Socialist Republics have been conducting friendly and constructive discussions of certain international legal aspects of traditional uses of the oceans, in particular, navigation.

The Governments are guided by the provisions of the 1982 United Nations Convention on the Law of the Sea, which, with

*[Reproduced from the text provided by the U.S. Department of State. Other agreements from the meeting at Jackson Hole between the U.S. Secretary of State and the Soviet Foreign Minister appear at 28 I.L.M. 1424, 1429, 1434, 1436 and 1438 (1989).]*
respect to traditional uses of the oceans, generally constitute international law and practice and balance fairly the interests of all States. They recognize the need to encourage all States to harmonize their internal laws, regulations and practices with those provisions.

The Governments consider it useful to issue the attached Uniform Interpretation of the Rules of International Law Governing Innocent Passage. Both Governments have agreed to take the necessary steps to conform their internal laws, regulations and practices with this understanding of the rules.

FOR THE UNITED STATES OF AMERICA: FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:

Jackson Hole, Wyoming September 23, 1989

UNIFORM INTERPRETATION OF RULES OF INTERNATIONAL LAW GOVERNING INNOCENT PASSAGE

2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of those activities is in innocent passage.

4. A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.

5. Ships exercising the right of innocent passage shall comply with all laws and regulations of the coastal State adopted in conformity with relevant rules of international law as reflected in Articles 21, 22, 23 and 25 of the Convention of 1982. These include the laws and regulations requiring ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may prescribe where needed to protect safety of navigation. In areas where no such sea lanes or traffic
separation schemes have been prescribed, ships nevertheless enjoy the right of innocent passage.

6. Such laws and regulations of the coastal State may not have the practical effect of denying or impairing the exercise of the right of innocent passage as set forth in Article 24 of the Convention of 1982.

7. If a warship engages in conduct which violates such laws or regulations or renders its passage not innocent and does not take corrective action upon request, the coastal State may require it to leave the territorial sea, as set forth in Article 30 of the Convention of 1982. In such case the warship shall do so immediately.

8. Without prejudice to the exercise of rights of coastal and flag States, all differences which may arise regarding a particular case of passage of ships through the territorial sea shall be settled through diplomatic channels or other agreed means.
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
AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA
OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND
MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY
MIGRATORY FISH STOCKS

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the
Law of the Sea of 10 December 1982,

Determined to ensure the long-term conservation and sustainable use of
straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and
coastal States of the conservation and management measures adopted for such
stocks,

Seeking to address in particular the problems identified in chapter 17,
programme area C, of Agenda 21 adopted by the United Nations Conference on
Environment and Development, namely, that the management of high seas fisheries
is inadequate in many areas and that some resources are overutilized; noting
that there are problems of unregulated fishing, over-capitalization, excessive
fleet size, vessel reflagging to escape controls, insufficiently selective gear,
unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine environment,
preserve biodiversity, maintain the integrity of marine ecosystems and minimize
the risk of long-term or irreversible effects of fishing operations,

Recognizing the need for specific assistance, including financial,
scientific and technological assistance, in order that developing States can
participate effectively in the conservation, management and sustainable use of
straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant
provisions of the Convention would best serve these purposes and contribute to
the maintenance of international peace and security,

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

Have agreed as follows:
PART I

GENERAL PROVISIONS

Article 1

Use of terms and scope

1. For the purposes of this Agreement:


   (b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

   (c) "fish" includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

   (d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

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

   (b) This Agreement applies mutatis mutandis:

   (i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and

   (ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent "States Parties" refers to those entities.

3. This Agreement applies mutatis mutandis to other fishing entities whose vessels fish on the high seas.
Article 2

Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3

Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply mutatis mutandis the general principles enumerated in article 5.

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

Article 4

Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.
PART II
CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5

General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;
(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6

Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

   (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

   (b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

   (c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

   (d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.
5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7
Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving
compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.
7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8

Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.
4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9

Subregional and regional fisheries management organizations and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:

(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are
aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

**Article 10**

**Functions of subregional and regional fisheries management organizations and arrangements**

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

(d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;

(e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;

(f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

(g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;

(h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;

(j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;

(k) promote the peaceful settlement of disputes in accordance with Part VIII;

(l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
(m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11

New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

(a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;

(b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;

(c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;

(d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12

Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.

2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have
timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13

Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14

Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

   (a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

   (b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfill the requirements of subregional or regional fisheries management organizations or arrangements; and

   (c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

   (a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

   (b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and
dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15

Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16

Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.
PART IV

NON-MEMBERS AND NON-PARTICIPANTS

Article 17

Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.
PART V
DUTIES OF THE FLAG STATE

Article 18

Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations:

(i) 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 transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, \textit{inter alia}:

(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

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

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

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

COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement by the flag State

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

   (a) enforce such measures irrespective of where violations occur;

   (b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

   (c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

   (d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

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

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.
Article 20

International cooperation in enforcement

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

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

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

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

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

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 131 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.
Article 21

Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

/...
(a) fulfil, without delay, its obligations under article 19 to investigate
and, if evidence so warrants, take enforcement action with respect to the
vessel, in which case it shall promptly inform the inspecting State of the
results of the investigation and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an
alleged violation, the inspecting State shall, without delay, communicate the
results of that investigation to the flag State. The flag State shall, if
evidence so warrants, fulfil its obligations to take enforcement action with
respect to the vessel. Alternatively, the flag State may authorize the
inspecting State to take such enforcement action as the flag State may specify
with respect to the vessel, consistent with the rights and obligations of the
flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for
believing that a vessel has committed a serious violation, and the flag State
has either failed to respond or failed to take action as required under
paragraphs 6 or 7, the inspectors may remain on board and secure evidence and
may require the master to assist in further investigation including, where
appropriate, by bringing the vessel without delay to the nearest appropriate
port, or to such other port as may be specified in procedures established in
accordance with paragraph 2. The inspecting State shall immediately inform the
flag State of the name of the port to which the vessel is to proceed. The
inspecting State and the flag State and, as appropriate, the port State shall
take all necessary steps to ensure the well-being of the crew regardless of
their nationality.

9. The inspecting State shall inform the flag State and the relevant
organization or the participants in the relevant arrangement of the results of
any further investigation.

10. The inspecting State shall require its inspectors to observe generally
accepted international regulations, procedures and practices relating to the
safety of the vessel and the crew, minimize interference with fishing operations
and, to the extent practicable, avoid action which would adversely affect the
quality of the catch on board. The inspecting State shall ensure that boarding
and inspection is not conducted in a manner that would constitute harassment of
any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the
flag State in accordance with article 18, paragraph 3 (a);

(b) failing to maintain accurate records of catch and catch-related data,
as required by the relevant subregional or regional fisheries management
organization or arrangement, or serious misreporting of catch, contrary to the
catch reporting requirements of such organization or arrangement;
(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

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

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.
16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

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

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

Article 22

Basic procedures for boarding and inspection pursuant to article 21

1. The inspecting State shall ensure that its duly authorized inspectors:

   (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;

   (b) initiate notice to the flag State at the time of the boarding and inspection;

   (c) do not interfere with the master’s ability to communicate with the authorities of the flag State during the boarding and inspection;

   (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;

   (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and

   (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

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

(a) accept and facilitate prompt and safe boarding by the inspectors;

(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;

(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;

(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;

(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and

(f) facilitate safe disembarkation by the inspectors.

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

**Article 23**

**Measures taken by a port State**

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

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

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

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

REQUIREMENTS OF DEVELOPING STATES

Article 24

Recognition of the special requirements of developing States

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

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

   (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

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

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

Article 25

Forms of cooperation with developing States

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

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

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

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

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

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

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

**Article 26**

**Special assistance in the implementation of this Agreement**

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

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

**PART VIII**

**PEACEFUL SETTLEMENT OF DISPUTES**

**Article 27**

**Obligation to settle disputes by peaceful means**

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
Article 28

Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29

Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30

Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and
arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31

Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32

Limitations on applicability of procedures for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.
PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

Good faith and abuse of rights

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

Part XI

RESPONSIBILITY AND LIABILITY

Article 35

Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII

REVIEW CONFERENCE

Article 36

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view /...
to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII

FINAL PROVISIONS

Article 37

Signature

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

Article 38

Ratification

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39

Accession

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

Article 40

Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.
2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

Provisional application

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

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

Article 42

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 43

Declarations and statements

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

Article 44

Relation to other agreements

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

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

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

Article 45

Amendment

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

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

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

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

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

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.
7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and

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

Article 46

Denunciation

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

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

Article 47

Participation by international organizations

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

(a) article 2, first sentence; and

(b) article 3, paragraph 1.

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

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

(i) that it has competence over all the matters governed by this Agreement;
(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

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

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

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

Article 48

Annexes

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

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49

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-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

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

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

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

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

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

Article 3

Basic fishery data

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

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

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

(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

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

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

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

(a) composition of the catch according to length, weight and sex;
(b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and

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

Article 4

Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

   (a) vessel identification, flag and port of registry;

   (b) vessel type;

   (c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and

   (d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

   (a) navigation and position fixing aids;

   (b) communication equipment and international radio call sign; and

   (c) crew size.

Article 5

Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.
Article 6

Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

(a) position verification through vessel monitoring systems;

(b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;

(c) vessel trip, landing and transshipment reports; and

(d) port sampling.

Article 7

Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.
ANNEX II

GUIDELINES FOR THE APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.
United States to Chair Review of UN Fish Stocks Agreement

Deputy Assistant Secretary of State for Oceans and Fisheries, Ambassador David A. Balton, will chair an important review of the UN Fish Stocks Agreement at the United Nations next week. The Agreement sets strong standards for the conservation and management of valuable fish stocks that cross between ocean areas under the jurisdiction of individual nations and the high seas.

The United States will join other Parties and stakeholders at the United Nations in New York from May 22-26, 2006, to formally review the 1995 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, also known as the UN Fish Stocks Agreement.

The Review Conference will take place in the context of a wide range of recent developments in the field of international fisheries. The meeting presents an opportunity to address growing concerns about the status of fisheries worldwide, including overfishing, illegal fishing and the adverse effects of certain fishing practices on ocean ecosystems.

The conference is the first opportunity to formally review the Agreement since it entered into force in 2001. Meeting participants will assess the adequacy of the Agreement in conserving and managing the relevant stocks, as well as examine ways to strengthen the implementation of the Agreement’s provisions. The topics to be considered include: Conservation and Management of Stocks; Mechanisms for International Cooperation; Monitoring, Control, and Surveillance; and Developing States Parties and Non-parties.

The U.S. delegation will include officials from the Department of State, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard, as well as representatives from the U.S. fishing industry, regional fisheries councils, environmental organizations and academia.

The Agreement entered into force in 2001 and currently has 57 Parties. The United States was the third nation to ratify this vital treaty and has played a leading role in its implementation.

For more additional information, visit: http://www.un.org/Depts/los/index.htm

2006/513

Released on May 18, 2006
Review Conference on 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
New York, 22-26 May 2006

Report of the Review Conference on the Agreement for the
Implementation of the Provisions of the United Nations
relating to the Conservation and Management of Straddling
Fish Stocks and Highly Migratory Fish Stocks

Prepared by the President of the Conference

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I. Introduction

1. Pursuant to article 36 of 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,¹ and in accordance with paragraph 16 of General Assembly resolution 59/25, the Secretary-General convened a review conference on the Agreement four years after its entry into force. The Review Conference was held in New York from 22 to 26 May 2006.

2. The Review Conference was mandated to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of those stocks (article 36, paras. 1 and 2).

3. Pursuant to paragraph 6 of General Assembly resolution 56/13, States parties to the Agreement have held, since 2002, annual informal consultations for the purposes, inter alia, of considering the regional, subregional and global implementation of the Agreement, making any appropriate recommendations to the General Assembly on the scope and content of the annual report of the Secretary-General relating to the Agreement, and preparing for the Review Conference.

4. Pursuant to paragraph 23 of General Assembly resolution 60/31, the fifth round of informal consultations of States parties to the Agreement, held in New York from 20 to 24 March 2006, served as the preparatory meeting for the Review Conference. The preparatory meeting addressed procedural and organizational matters as well as substantive issues related to the Review Conference, including (a) consideration of a report prepared by the Secretariat in cooperation with the Food and Agriculture Organization of the United Nations (FAO), in accordance with paragraph 17 of General Assembly resolution 59/25, to assist the Review Conference in the implementation of its mandate under paragraph 2 of article 36 of the Agreement (A/CONF.210/2006/1); and (b) the preparation of recommendations to the Review Conference on the provisional agenda (A/CONF.210/2006/3), organization of work (A/CONF.210/2006/4), provisional rules of procedure (A/CONF.210/2006/6) and elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). The report prepared by the Secretariat contained detailed information from parties on measures taken to implement the Agreement, from non-parties on measures adopted that reflect the principles in the Agreement, and from regional fisheries management organizations on how relevant provisions of the Agreement have been incorporated into conservation and management measures.

5. In accordance with article 36 of the Agreement, the Secretary-General addressed invitations to participate in the Review Conference to all States parties to the Agreement and those States and entities which are entitled to become parties, as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

II. Procedural matters

A. Opening of the Review Conference

6. The Director of the Division for Ocean Affairs and the Law of the Sea, Vladimir Golitsyn, opened the Review Conference on behalf of the Secretary-General.

B. Election of the President

7. The Conference elected David Balton, Deputy Assistant Secretary of State for Oceans and Fisheries, United States of America, as President of the Conference by acclamation.

C. Opening statements

8. In his opening statement, the President noted that the Conference was not taking place in isolation, and highlighted developments since the entry into force of the Agreement. He noted the opportunity offered by the Conference to develop proposals for strengthening the implementation of the Agreement. To that end, a wealth of information had been provided by several States and organizations. Highlighting the finding of FAO that approximately 30 per cent of stocks of highly migratory tuna and tuna-like species and nearly two thirds of straddling and high-seas fish stocks were overexploited or depleted, the President expressed the hope that the Conference would generate ideas and commitments on practical steps to implement the Agreement in ways that would better fulfil its objectives and address the status of those resources.

9. The President recalled that the Conference was mandated to review and assess the adequacy of the provisions of the Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions, but not to amend the Agreement. He stressed that the Conference would proceed in an open and inclusive manner, with all participants having a reasonable chance to contribute.

10. The Director of the Division made a statement on behalf of Nicolas Michel, Under-Secretary-General for Legal Affairs, the Legal Counsel. He stated that the Agreement was considered to be the most important legally binding global instrument for the conservation and management of fishery resources since the adoption of the United Nations Convention on the Law of the Sea in 1982. The Agreement elaborated on the provisions of the Convention, in particular those related to the strengthening of flag States' duties in respect of their vessels fishing on the high seas and the role of subregional and regional fisheries management organizations and arrangements. The Agreement, which also took into account the

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2 See documents A/CONF.210/2006/7, A/CONF.210/2006/8, A/CONF.210/2006/9 and A/CONF.210/2006/10. Information provided by intergovernmental organizations, including FAO and regional fisheries management organizations, prior to the meeting was posted on the website of the Division (www.un.org/Depts/iis/convention_agreements/review_conf_InputsIGOs.htm). Several States and organizations also circulated information during the meeting.
requirements of developing States, introduced port State controls to promote compliance with high-seas fisheries conservation and management measures, and new approaches to fisheries management such as the precautionary and ecosystem approaches. The Legal Counsel stressed that, as a result of the Agreement, the management of high-seas fisheries had been increasingly based on the principles of long-term sustainability of fishery resources, that several States had adopted national laws and regulations addressing conservation of stocks, flag State responsibilities and port State control, and that cooperation for setting up new regional fisheries management arrangements to manage high-seas areas or species not covered by existing arrangements had intensified. In addition, an assistance fund had been established by the General Assembly under Part VII of the Agreement to assist developing countries that are parties to the Agreement.

11. The Legal Counsel noted, however, that several fisheries were still subject to unsustainable fishing practices, including overfishing and illegal, unreported and unregulated fishing, and to the use of unselective fishing gear and techniques resulting in excessive by-catch and discards and adverse impacts on marine ecosystems. More could thus be done to ensure that the Agreement was effectively implemented, including increasing the number of parties to the Agreement and addressing the obstacles that had prevented some States from becoming parties.

D. Rules of procedure

12. Stressing that the Review Conference should focus on matters of substance, the President urged delegates not to dwell on the rules of procedure, which had been debated at length during the fifth round of informal consultations of States parties to the Agreement. He reiterated that the Conference would be inclusive, and expressed the hope and expectation that the Conference would adopt its final report on the basis of general agreement. A vote would only be taken if all efforts at achieving consensus failed.

13. Several non-parties expressed their strong reservations concerning certain provisions of the provisional rules of procedure (A/CONF.210/2006/6), noting that, in view of the objectives of the Conference as well as the letter and spirit of the Agreement, States parties to the Agreement, non-parties and other entities referred to in article 36 of the Agreement should participate in the Conference with equal rights. They also emphasized that only with broad participation and wide support for the outcome would the Conference be able to further promote the effective implementation of the Agreement.

14. One State non-party expressed dissatisfaction with the manner in which the rules of procedure had been discussed at the fifth round of informal consultations, noting that few rules had actually been discussed and that certain rules affecting issues of substance had not been debated. The delegation proposed substituting "States parties" with "participating States" in several rules. Another State non-party, with the support of some other non-parties, proposed that the Conference not formally adopt the rules of procedure, using them on a provisional basis instead, and focus on the adoption of decisions on substantive issues by consensus among all participating States.

15. Several States parties to the Agreement stressed the need to refrain from reopening discussions on this issue and recalled statements of confidence by the
President and several States, at the closing session of the fifth round of Informal Consultations of States parties to the Agreement, that there would not be any need to resort to voting during the Review Conference, because inclusive participation in a spirit of cooperation and understanding would prevail instead.

16. Upon a request for advice by the President as to which rules governed the adoption of the provisional rules of procedure by the Conference, a representative of the Office of the Legal Counsel indicated that, should participating States fail to reach consensus, the Conference should adopt the provisional rules of procedure on the basis of the rules of the convening authority, which, in this case, was the Agreement, more specifically its article 36. He stated that States parties were to interpret that article and determine the manner in which the rules should be adopted.

17. One delegation stressed the need to strike a balance between the practical aspects of the issue, including the need to secure broad participation for the effective implementation of the Agreement, and its legal aspects as outlined by the representative of the Office of the Legal Counsel.

18. The President proposed that the rules of procedure remain provisional and be used as such during the Conference, with the understanding that the Conference would proceed to the formal adoption of the provisional rules of procedure if and when necessary. The Conference agreed with the President’s proposal.

E. Adoption of the agenda


F. Election of officers other than the President

20. In accordance with rule 10 of the provisional rules of procedure and giving due consideration to geographic representation, the President invited nominations for five Vice-Presidents from States parties to the Agreement and two Vice-Presidents from non-parties, who, together with the President, would constitute the Bureau of the Review Conference, pursuant to rule 15 of the provisional rules of procedure.

21. The Conference elected Marcos Lourenço de Almeida (Brazil), Sainivalatī S. Navotī (Fiji), Famoundou Magassouba (Guinea), Dmitry Gonchar (Russian Federation) and Fernando Curció Ruigómez (Spain) as Vice-Presidents from among States parties. Andrés Couvé (Chile) and Liu Zheng (China) were elected as Vice-Presidents from among States non-parties.

G. Organization of work

22. The President introduced the proposed organization of work as contained in document A/CONF.210/2006/4, which was adopted by the Conference.

23. The Conference established a Drafting Committee pursuant to rule 10, paragraph 2, of the provisional rules of procedure, chaired by Mr. Curcio (Spain), a member of the Bureau.
24. The President indicated that the Drafting Committee was entrusted with identifying and consolidating areas of general agreement following plenary discussions on the review and assessment and on proposals for strengthening the effectiveness of the Agreement. The work would proceed on the basis of discussions on each cluster of issues as outlined in the organization of work. The results of the work of the Drafting Committee would then be submitted to the plenary for approval.

25. The Drafting Committee convened ten times to negotiate elements to be incorporated in the final report of the Review Conference, relating to the conservation and management of stocks, mechanisms for international cooperation and non-members, monitoring, control and surveillance and enforcement, developing States and non-parties and future reviews of the Agreement.

H. Credentials of representatives to the Review Conference

26. In accordance with rule 8 of the provisional rules of procedure, on 23 May 2006, the Review Conference appointed a Credentials Committee of nine members from representatives of the following States parties to the Agreement: Germany, India, Mauritius, Norway, Saint Lucia, South Africa, Sri Lanka, Ukraine, and Uruguay.

27. The Credentials Committee held two meetings, on 24 and 26 May 2006. It elected Mr. Amarawansa Hettiarachichi (Sri Lanka) as Chairperson and Mr. Patrick Jacobs (South Africa) as Vice-Chairperson. The Committee examined and accepted the credentials of representatives to the Review Conference from 97 participating States and the European Community.


I. Presentation of the report of the fifth round of informal consultations of States parties to the Agreement

29. The Conference took note of the report of the fifth round of informal consultations of States parties to the Agreement introduced by the President. The report had been prepared by the chairman of the informal consultations with the support of the Secretariat.

J. Consideration of the report on the status of the assistance fund

30. The representative of FAO presented the financial report on the status of the assistance fund established under Part VII of the Agreement (A/CONF.210/2006/2). He noted that contributions to the fund had been received from the United States of America, Iceland and Norway. The first instalment of the contribution from Canada had also been received. The total of contributions to date amounted to $417,000. Two requests for travel assistance to attend the Review Conference had been presented.

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received in January 2006, and 10 requests for travel assistance had been received in total. One request had been received from the South East Atlantic Fisheries Organization (SEAF0), on behalf of two States, to allow their participation in the annual meetings of SEAF0. To date, $65,000 had been used from the assistance fund. The representative of FAO advised that applications for travel assistance must be made at least one month in advance of the intended travel so as to ensure timely administrative processing of the request.

31. The Conference took note of the report presented by FAO on the status of the assistance fund.

III. Substantive matters

A. General statements

32. Several delegations highlighted the importance of the Agreement, improvements in its implementation and the growing number of States parties to the Agreement. A number of non-parties announced their intention to become States parties in the near term. Some delegations stressed the fact that the Agreement had only entered into force recently and needed to mature as countries incorporated its provisions into national laws and policies; highlighted the importance of the review process; and called for full implementation of existing international fishery-related instruments rather than creating new ones or amending existing ones.

33. Many delegations emphasized the importance of obtaining universal participation in the Agreement to ensure its effectiveness, and stated that the Review Conference should be a catalyst to promote broader ratification. Several delegations highlighted that one of the objectives of the Review Conference was to address the challenges faced by some non-parties.

34. A group of nine Latin American and Caribbean States presented a declaration (A/CONF.210/2006/12) in which they underlined the issues that had prevented them from becoming parties to the Agreement. These included issues related to the boarding and inspection procedures provided for in articles 21 (Subregional and regional cooperation in enforcement) and 22 (Basic procedures for boarding and inspection pursuant to article 21), and the need to ensure that the provisions of the Agreement were not interpreted or applied contrary to the rights, obligations and interests of coastal States as provided for under the Convention. The declaration also stated that the review process should be conducted in accordance with article 4 of the Agreement, on the relationship between the Agreement and the Convention, and that articles 5 (General principles), 6 (Application of the precautionary approach) and 7 (Compatibility of conservation and management measures) should be interpreted and applied in the context of and in a manner consistent with the Convention. In that respect, the application of article 7 should not compel coastal States to adopt any measures within areas under their national jurisdiction or to take any action that would affect their sovereign rights in such areas. The declaration further emphasized that fishing on the high seas should be in conformity with articles 63, 64, 116 and other provisions of Part VII of the Convention. It also

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4 Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico and Peru.
proposed that the outcome of the Review Conference include those remarks as interpretative principles.

35. A number of delegations called for the adoption of technical annexes to the Agreement in order to address such issues as high-seas bottom trawling and compensation for damages resulting from boarding and inspection carried out contrary to international law.

36. One observer stressed the need to maintain the integrity of the regime provided for in the Agreement and to avoid adopting measures that were weaker than its current provisions, in particular with regard to enforcement and the compatibility of measures.

37. Other observers highlighted the interests of artisanal fishers and the sustainability of their fishing methods, and the need to transform regional fisheries management organizations into regional ecosystem management organizations, for which international management guidelines and time-bound goals would be applicable.

B. **Review and assessment of the adequacy of the provisions of the Agreement and means of strengthening the substance and methods of their implementation**

38. The President requested delegations to organize their interventions on the effectiveness of the Agreement around the three framework questions stipulated in the organization of work: (a) In which areas is implementation of the Agreement proceeding generally well? (b) In which areas is implementation of the Agreement at an early stage or has there been little progress in implementation? and (c) What means could be proposed to strengthen the substance and methods of implementation of the Agreement? He noted that the document also identified four separate clusters of issues as the basis for discussions on this agenda item:

   (a) Conservation and management of stocks;
   (b) Mechanisms for international cooperation and non-members;
   (c) Monitoring, control and surveillance, and compliance and enforcement;
   (d) Developing States and non-parties.

39. On the basis of discussions on these clusters in plenary, as summarized in sections 1 to 5 below, the Drafting Committee prepared draft elements for the text of the outcome of the Review Conference (see annex).

1. **Consideration of elements relating to the conservation and management of stocks**

40. The President invited delegations to express their views on the issues relating to the conservation and management of stocks as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5).

41. Several delegations highlighted the progress achieved in the sustainable management of different species since the adoption of the Agreement, underlining the importance of the Agreement in ensuring the long-term sustainability of fisheries
resources and thus the need for its improved implementation. Several delegations stressed that ensuring the sustainability of fish as a resource was of utmost priority owing to the fact that their societies' culture, health, economies and development were dependent upon the proper conservation and management of shared fish stocks.

42. With regard to the effect of the Agreement on non-parties, many participants observed that the standards of conservation and management set forth in the Agreement had been widely disseminated and implemented at the global, regional and national levels. It was also pointed out that the Agreement had influenced fishing operations in the high seas by States and had inspired regional fisheries management organizations to incorporate the standards of the Agreement into their regulations.

(a) Adoption of measures

43. Several delegations acknowledged the importance of adopting measures to implement the precautionary and ecosystem approaches, and stressed that the lack of scientific information should not prevent the adoption of necessary measures. Some were of the view that the mandate and capacity of regional fisheries management organizations should be expanded beyond target species, from a single to a multi-species approach, in order to incorporate ecosystem considerations into their management decisions. One delegation stated that criteria should be developed to assist management bodies in taking decisions that reflect these approaches. It also pointed out that if the objectives of the Agreement were to be realized, the precautionary approach should be applied widely, both within and beyond areas of national jurisdiction.

44. The importance of science for conservation and management decisions was stressed. However, it was pointed out that even in cases where there was scientific advice, States and RFMOs had taken decisions that did not always take it into account. Furthermore, where measures had been adopted, compliance with those measures by members and non-members of regional fisheries management organizations had been problematic.

45. Several States, both parties and non-parties, described the measures they had adopted to implement the Agreement, both measures through national legislation and regional fisheries management organizations. Those measures included the establishment of total allowable catches for tuna in the exclusive economic zone; measures to manage fishing capacity and effort; national observer programmes and programmes for boarding and inspection; efforts to implement the ecosystem approach; measures for the licensing and authorization of vessels; the setting up of monitoring systems and research centres, and measures for port States, in particular, to combat illegal, unreported and unregulated fishing. Developments in the Caribbean region were described, with a special emphasis on the difficulties related to the lack of resources. Despite those difficulties, a number of States in the region had taken steps to implement the Agreement. In particular, landing sites had been designated to gather official data for reporting purposes, and registration and licensing systems for vessels had been improved. Reporting to regional fisheries management organizations had increased, together with the use of vessel monitoring systems at the regional level.
46. A number of developing States, including small islands developing States, underlined the need for more focused assistance in the development of conservation and management measures. It was also noted that increased assistance would encourage further ratifications. A number of non-parties indicated that although they had not yet joined the Agreement, they had adopted measures to implement its conservation and management provisions. One non-party reported that it had implemented in practice the provisions concerning the conservation and management of stocks through regional fisheries management organizations and had developed aquaculture as an alternative to fishing. Timely interim measures to guarantee the conservation of stocks on the high seas were called for.

47. A number of delegations noted that coastal States and States whose nationals fish for straddling fish stocks and highly migratory fish stocks have an obligation to cooperate to agree upon compatible measures for the conservation of such stocks both within and beyond the areas of national jurisdiction. Some non-parties stated that all States had the duty to respect the principle of compatibility enunciated in article 7 of the Agreement, in order to ensure that measures adopted by distant-water fishing nations were compatible with those adopted by coastal States in areas under their national jurisdiction. In particular, measures for managing fisheries on the high seas should respect the rights of coastal States, as provided for in the Convention. It was stressed that the rights of landlocked States should also be taken into account.

48. In addition, observers from a number of regional fisheries management organizations described the conservation and management measures their organizations have adopted to implement the Agreement. The following were identified as significant challenges faced in implementing the Agreement: adoption of measures based on the precautionary approach; ensuring that decision-making was based on the best available science; agreeing on transparent deliberations; effectively monitoring and enforcing agreed measures; and establishing effective reporting systems. One regional organization pointed out that although the measures that it had adopted in relation to some stocks had been successful, measures for other stocks had not prevented overfishing.

(b) Overfishing and capacity management

49. It was stated that there was a need to regulate capacity commensurate with the resources available. This would also help in addressing the issue of illegal, unreported and unregulated fishing. States which had adopted measures to reduce capacity urged other States to do the same. One delegation proposed that organizations responsible for straddling fish stocks develop plans that would reduce levels of fishing capacity by 2012, and that those responsible for highly migratory fish stocks should, by 2007, adopt a plan for global capacity management. Several delegations underlined that the Review Conference should not aim at establishing an overall policy for capacity management, as that was the task of FAO. It was also noted that regional fisheries management organizations had a particularly important role in efforts to ensure proper management of high-seas stocks and adopt effective solutions that would also address the issue of capacity. They were invited to cooperate among themselves by exchanging experiences and best practices regarding regional measures for capacity management. Japan informed the Conference that it would host a joint meeting of the five regional fisheries management organizations regulating tuna fisheries in January 2007 to review their
cooperation. That meeting was identified as a forum to further discuss the issues of overfishing and capacity management.

50. A number of developing countries stressed that any measure to reduce capacity within regional fisheries management organizations must not be detrimental to States where fisheries were still being developed, as that would perpetuate the situation of inequality in favour of traditional fishing countries.

51. Other delegations emphasized the importance of eliminating fisheries subsidies by developed States in order to reduce overcapacity, and indicated that the Review Conference should call on States to implement the international plan of action for reducing fishing capacity.

52. One regional fisheries management organization indicated that, as there were too many vessels operating in its convention area, it had adopted a plan for regional management of fishing capacity. The plan set a target for capacity and provided that only vessels registered with the organization were authorized to fish in the region. New vessels could enter the organization's register only when vessels of equal size were removed. The plan had restrained the growth of the fleet, but had not met the goal of reduction.

53. A non-governmental organization stated that commitment to eliminating overcapacity already existed, and it should be acted on, including through a scrapping programme.

(c) Effects of fishing on the marine environment

54. Many participants stated that the protection of sensitive marine ecosystems, including key habitats, was of paramount concern, and suggested that States and regional fisheries management organizations be encouraged to establish scientific criteria for the management of marine protected areas for fisheries purposes. A delegation stressed that, according to articles 5 (General principles) and 6 (Application of the precautionary approach) of the Agreement, States were obligated to promote the protection of ecosystems. Those articles should also be reflected in the mandates and practices of regional fisheries management organizations.

55. A number of delegations noted that articles 5 and 6 of the Agreement were already being implemented to some degree. For example, one State had declared its exclusive economic zone a whale sanctuary. However, more should be done, including on the application of an ecosystem approach. A State Party proposed the development of a technical annex to the Agreement which would provide guidelines for the application of ecosystem approaches to the conservation and management of straddling fish stocks and highly migratory fish stocks. Other delegations underlined the need for a global approach for the implementation of the ecosystem approach.

56. Fishing practices that might impact sensitive environments, such as bottom trawling, were highlighted by some delegations as an issue of particular concern. One delegation stated that the issue had been dealt with by the General Assembly and should not be the focus of the Review Conference. Another delegation highlighted the need for precautionary action to address unregulated bottom trawling and proposed, for areas not covered by any regional fisheries management organization, an interim prohibition on bottom trawling until such an organization was established and effective conservation and management measures were adopted.
For areas within the competence of existing regional organizations, it was proposed that those organizations be allowed some time to institute effective conservation and management measures on their own. A moratorium on bottom trawling in the high seas was supported by another delegation.

57. One delegation noted that the Secretary-General’s report (A/CONF.210/2006/15) did not contain any references to measures taken by regional fisheries management organizations to protect marine biodiversity, and suggested that those organizations consider measures such as area closures.

58. As for waste, discards and catch by abandoned gear, one delegation noted that measures to address such practices could improve the status of fish stocks and should be welcomed by the Review Conference as a contribution to the implementation of the Agreement.

59. One observer pointed out that, in accordance with the recommendations of the World Summit on Sustainable Development, networks of marine protected areas should be established, for example by setting aside pilot areas. Another observer stressed that the destructiveness of some fishing practices needed to be addressed, including, in some cases, by prohibiting them. He proposed that the Conference take concrete measures with regard to the implementation of ecosystem management. An observer further proposed that users of high-seas resources demonstrate that their activities did not harm the environment, for example by undertaking environmental impact assessments. Furthermore, new and exploratory fisheries should be prohibited until their effect on the environment has been assessed. It was stated that high-seas bottom trawling was a clear example of the failure to adopt measures required by articles 5, 6 and 7 of the Agreement. A moratorium on high-seas bottom trawling was thus considered essential until concrete and effective measures were in place to conserve vulnerable deep-sea ecosystems.

(d) Fisheries not regulated by a regional fisheries management organization

60. The central role of regional fisheries management organizations in the implementation of the Agreement was noted by most delegations. The establishment of the Western and Central Pacific Fisheries Commission (WCPFC), SEAF0 and the Southern Indian Ocean Fisheries Arrangement, and the ongoing efforts to establish new arrangements, for example in the South Pacific and in the Northwest Pacific, were welcomed. Furthermore, the need to strengthen and modernize the mandates of existing organizations, in particular to address geographic and species coverage, was noted. Several delegations highlighted the need to strengthen international cooperation and institutions that worked on a regional basis and to increase the coverage of the regional fisheries management organizations to encompass not only the conservation and management of high-seas fisheries resources but also the interactions between fisheries and the environment as a whole.

61. The Republic of Korea informed the Conference that, with Japan and the Russian Federation, it was participating in a regional initiative to establish a new regional fisheries management organization in the Northwest Pacific to regulate bottom trawl fishing, including through the development of interim measures for the management of bottom trawling and for the conservation of vulnerable marine ecosystems, and stated that the three States had agreed to cooperate in the compilation, analysis and exchange of data on bottom trawling in the region.
62. One delegation stated that it did not favour the creation of new regional fisheries management organizations due to the financial burden imposed on their members. However, as the Southwest Atlantic Ocean was not covered by a regional fisheries management organization, there was a will to discuss the creation of one for that area. It was also stated that the establishment of new regional organizations should not be detrimental to States where fisheries were at the early stages of their development.

63. Another delegation recommended the establishment of a regional fisheries management organization to cover the North Pacific Ocean and stated that, in the meantime, there was a need to adopt interim measures to protect that area from destructive fishing practices.

64. Some delegations stated that the general principles of the Agreement should be applied to discrete fish stocks in the high seas. One delegation stated that it would support the idea of FAO developing technical guidelines, in consultation with other relevant intergovernmental organizations, for conserving and managing high-seas discrete stocks. The guidelines should incorporate provisions from the Agreement and from other instruments regarding the precautionary approach, biological vulnerabilities and data collection. Another delegation stated that, as regional fisheries management organizations were competent to manage high-seas stocks within their geographical coverage, their work could be facilitated by having FAO conduct a technical study to identify discrete stocks around the world with a view to developing guidelines for the application of the Agreement's principles to discrete stocks.

65. One observer noted that several regional fisheries management organizations whose existence pre-dated the Agreement had yet to bring their mandates into line with its provisions. The observer supported efforts to modernize regional arrangements to address gaps in regional fisheries governance, including for discrete stocks in the high seas. Another observer stated that it was not clear what the benefit of establishing FAO guidelines for management of high-seas discrete fish stocks would be. The Review Conference should instead agree to apply the provisions of the Agreement to all stocks.

(e) Data collection and sharing

66. Several delegations stated that the collection and sharing of data was a key element, both for the adoption of conservation and management measures and in terms of transparency of management. Countries should, therefore, provide full and comprehensive data to FAO and all members of regional fisheries management organizations should provide accurate and timely data on their activities to ensure a solid scientific basis for management measures. At the same time, it was noted that the lack of capacity in developing countries to collect data had to be addressed.

67. One delegation stated that, as the quality of the information available affected stock assessments, incomplete data increased the need for precaution. It was further stated that, as all regional fisheries management organizations had adopted data collection and reporting measures to conform with the Agreement's minimum requirements, it would be valuable to call on the secretariat of each regional organization to conduct an annual audit of data submitted by members for accuracy, timeliness and completeness. It was also suggested that regional organizations could require their members to ensure that they were meeting compulsory reporting
requirements. Those members failing to do so would be required to prepare plans of action to rectify the situation or face sanctions.

68. One delegation stated that monitoring was important but posed particular challenges, especially at the national level, where effective legislative action had to be taken to set up efficient monitoring systems and research centres. In order to ensure adequate data on fish stocks, permanent surveillance was necessary, which required substantive resources that were not always available to developing countries. Regional and subregional cooperation could assist in that regard, through the establishment of joint research missions.

69. One regional fisheries management organization reported that it was undertaking data collection and sharing through creative arrangements in cooperation with other organizations. Existing data gaps were associated with inadequate data submissions, including from developing members, and also with respect to illegal, unreported and unregulated fishing. Another regional organization reported that it had one of the most comprehensive data sets on highly migratory fish stocks, and it had provided such data to Governments and relevant organizations. It had published advice regarding some tuna species, including the status of the stocks of tuna and consideration of the effects of fishing on the marine ecosystem.

2. Consideration of elements relating to mechanisms for international cooperation and non-members

70. The President invited statements on issues relating to mechanisms for international cooperation and non-members as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5).

71. One delegation noted that, besides regional fisheries management organizations, there were other mechanisms for international cooperation, for example in the context of the International Agreement on the Conservation of Albatrosses and Petrels and action taken by some States to address the issue of noise pollution. The importance of considering wider contexts for cooperation in the conservation of oceans was underlined as an essential element in the implementation of the Agreement. Another delegation highlighted bilateral cooperation as an important mechanism for international cooperation. A non-party noted that, as required under article 118 of the Convention, international cooperation should occur even where no regional organizations existed, in order to ensure conservation and sustainable use of fisheries resources both in the high seas and in areas under the jurisdiction of coastal States.

(a) Integrity of regional regimes

72. Many delegations reiterated that regional fisheries management organizations were at the centre of the implementation of the conservation and sustainable management measures contained in the Agreement. It was noted that the effectiveness of the Agreement depended on the effectiveness, coverage and membership of regional organizations, as well as the degree of cooperation among them. As a consequence, action should be taken to fill gaps in coverage by regional organizations, both in terms of geographic and species coverage. Those
organizations should also modernize their mandates, increase participation of interested States and establish accountability mechanisms.

73. The importance of achieving harmonization of measures to ensure consistency was also highlighted. To that end, several delegations recommended increased cooperation among regional fisheries management organizations. One delegation stated that cooperation was also needed among international agencies that provided the policy foundation, advice and tools that were part of, or affected, fisheries governance.

74. Japan informed the Conference that the joint meeting of the five regional fisheries management organizations regulating tuna fisheries, to be held in January 2007, was expected to adopt an action plan to coordinate their conservation and management of tuna, including through making measures consistent across the organizations. One delegation suggested the consideration of a similar initiative for regional organizations involved in managing straddling fish stocks.

75. One observer noted that regional fisheries management organizations played an effective functional role and should provide the best available information on the number of States and vessels engaged in unregulated fishing and other relevant statistics to serve as a basis for measuring progress.

(b) Fishing activity by non-members

76. Several delegations stressed the duty to cooperate in the conservation and management of straddling fish stocks and highly migratory fish stocks. Many delegations emphasized that members of regional fisheries management organizations should continue to encourage non-member States and entities fishing in areas under the competence of those organizations to participate in their activities by immediately joining or agreeing to apply the conservation and management measures established by them. Non-members of regional fisheries management organizations could cooperate either by making a formal commitment to apply their decisions or by seeking cooperating status with those organizations. The status of cooperating non-member should be contingent on the applicant's record of compliance with the organization's measures, its contribution to the organization, including the provision of data, and its efforts to become a member within a reasonable time frame, where possible. Non-cooperating States should abstain from fishing in the Convention area. One delegation stated that the lack of cooperation on the part of non-members undermined cooperation mechanisms and each regional organization should address the issue on the basis of international law.

77. Several delegations stressed that an open and participatory approach within regional fisheries management organizations was an important element of the obligation to cooperate under the Agreement, in order to allow all States and fisheries entities to effectively participate in the work of the regional organizations. States and fisheries entities should not be prevented from taking part in the activities of regional organizations for political or legal reasons.

78. A number of delegations emphasized that there remained cases where States were unwilling to join regional fisheries management organizations or to apply conservation and management measures in respect of their vessels, owing to the lack of incentives for them to join such organizations. Some delegations suggested that
the allocation of quotas would constitute an incentive for non-members to participate in the work of regional fisheries management organizations.

79. Several delegations drew attention to the importance of commercial or market measures as tools to encourage States to join regional fisheries management organizations. Examples of how market measures had already been used to this end were presented. Several delegations highlighted the importance of adopting market measures in compliance with international law, in particular with World Trade Organization instruments.

80. Several delegations noted that a number of developing States lacked the means to join regional fisheries management organizations and to implement their conservation measures. Sharing technical knowledge and expertise, the provision of assistance and the enhancement of enforcement capabilities were important means of encouraging their participation in regional organizations. It was emphasized that the financial implications of participating in regional fisheries management organizations and the uneven allocation of fishing rights between developing and developed States discouraged some developing States from joining. Some delegations expressed dissatisfaction with allocations based on historical catches, as they favoured States with well-established industrial-size fleets and hampered the development of States with emerging fisheries. One delegation underlined that this situation was not in conformity with articles 116 (Right to fish on the high seas) and 119 (Conservation of the living resources of the high seas) of the Convention or with article 25 (Forms of cooperation with developing States) of the Agreement. The International Commission for the Conservation of Atlantic Tunas (ICCAT) was mentioned as an example of a regional fisheries management organization that had incorporated factors beyond historical catches in its allocation system.

81. Several delegations stated that it was essential to deter illegal, unreported and unregulated fishing, as it undermined the work of regional fisheries management organizations. The issue of flags of convenience, including the phenomenon of re-flagging, and the need to clarify the concept of the “genuine link” were considered to be important by a number of delegations. Several delegations supported the use of positive and negative vessel lists, provided that such lists were used in a transparent and consistent manner. One delegation recommended that regional fisheries management organizations use full catch documentation systems in addition to measures already taken to deter illegal, unreported and unregulated fishing.

82. Other delegations encouraged the use by regional fisheries management organizations of vessel registers and other measures to exclude fishing activities by vessels non-members of the organizations. It was also emphasized that cooperation was needed both among organizations and among States, for example through the International Monitoring, Control and Surveillance Network. The need to adopt port States measures, including the need to agree on a definition of “ports of convenience”, was also underlined.

83. Most representatives of regional fisheries management organizations recognized that fishing by non-members occurred for a number of reasons. The representative of one organization cited the example of those States which, because of the low level of their catch, could not become members. Some of those States nevertheless took into account conservation and management measures established by the organization, and reported their catch. The organization had also granted
fishing rights to some entities with the status of cooperating non-members. That status was reviewed every year and cooperating non-members were required to conform to management measures adopted by members.

84. One observer noted that some regional fisheries management organizations had made progress towards instituting mechanisms for apprehending contravening vessels under flags of non-members States. In relation to illegal, unreported and unregulated fishing, it was pointed out that since it was a global problem stemming mostly from the existence of flags of non-compliance, only a global mechanism could be appropriate. The development of a new implementing agreement to deal with illegal, unreported and unregulated fishing, based on the precautionary principle, ecosystem-based management approaches and prior environmental impact assessments, was recommended.

(c) Functioning of regional fisheries management organizations

85. It was widely agreed that the improvement of regional organizations' functioning and alignment of their conventions and adopted measures with the Agreement's standards should be a priority. In particular, with respect to decision-making procedures, several delegations observed that the "opting-out" procedure undermined the organizations' credibility, effectiveness and conservation measures. One delegation recommended that the Conference urge regional fisheries management organizations to ensure that "post opting-out" behaviour be constrained by (a) rules preventing opting-out parties from undermining conservation; (b) clear processes for dispute resolution; and (c) a precautionary regime applicable in the interim. Another delegation stated that opting-out members could be made to provide a written explanation for their reasons to opt out and specify the alternative measures they intended to implement. Attention was also drawn to the fact that some organizations do not allow opt-outs.

86. Several delegations proposed that the Conference indicate how regional organizations could be modernized, taking into account the progress made in recent fisheries instruments such as the Agreement. A number of delegations welcomed measures taken by specific regional organizations to modernize their mandates, and recommended that the Conference call upon all regional organizations to undertake a similar process, as a matter of the highest urgency. Several States parties also noted that interim measures could be adopted to implement modern fisheries policies, while new or updated conventions and agreements were undergoing the process leading to their entry into force.

87. It was further underlined that in the process of modernization, priorities should include the implementation of precautionary and ecosystem-based approaches to fisheries management, decision-making that facilitates long-term conservation and sustainable use of fish stocks, processes to ensure the implementation of decisions, the establishment of effective monitoring, control and surveillance regimes and the improvement of linkages between governing bodies and scientific advisory bodies. Furthermore, they suggested that States should work within regional fisheries management organizations to establish or strengthen monitoring, control and surveillance regimes, including through joint inspections, dissemination of information, providing for regular compliance review mechanisms and developing observer programmes to collect data, monitor compliance, and report on infringements. It was further suggested that the Review Conference should address
the issue of sanctions, for example by developing criteria for sanctions, keeping in mind that sanctions were a sovereign issue.

88. Several delegations called for a process to review the performance of regional fisheries management organizations. One delegation pointed out that reviews could be carried out on the basis of different approaches, either through a self-assessment or through an external review process. A suggestion that regional organizations could initiate periodic performance assessments was supported by many delegations. One delegation called for annual reviews of the organizations' performance. Organizations that already had regular performance reviews, including the North East Atlantic Fisheries Commission and ICCAT, were highlighted as examples for others to follow. It was stated that transparency and independence were critical factors in such reviews. One delegation added that the Review Conference could provide specific guidance for such reviews, which should include independent validation and external evaluation on the basis of a set of criteria to be agreed upon, in order to ensure transparency and accountability. One delegation indicated that it would ask RFMOs of which it was a member to conclude initial self-assessments no later than July 2007. The recommendations of the High Seas Task Force, which included the development of a model for regional fisheries management organizations, were considered a useful initiative that, in the view of some delegations, could be used as a benchmark by all regional organizations. Those organizations should report the results of their assessments and any actions taken to remedy deficiencies to FAO or to future meetings of the Review Conference.

89. In addition, adequate and timely resources were considered essential for regional fisheries management organizations and a number of delegations noted that the organizations could only be as effective as States allowed them to be. The low levels of participation in some regional organizations was problematic, as it did not allow these organizations to achieve their objectives.

90. It was also noted that some regional fisheries management organizations have instituted cooperative mechanisms, which needed to be strengthened and expanded. For example, the Fishery Resources Monitoring System (FIRMS) was described as a partnership between regional fisheries management organizations and FAO to provide high-quality information on the status and trends of fisheries on a uniform basis. FIRMS was also in the process of establishing a global reporting system that could provide useful input for policy decisions.

91. One delegation noted that although advances in providing for transparency in the work and decisions of regional fisheries management organizations had been made in recent years, opportunities for participation by intergovernmental or non-governmental organizations remained limited or unduly burdensome in some cases, as some regional organizations maintained restrictive application procedures. The delegation was of the view that participation of intergovernmental and non-governmental organizations would inject important expertise into the work of regional fisheries management organizations. It thus suggested that all regional fisheries management organizations should make a concerted effort to provide for meaningful participation of intergovernmental and non-governmental organizations in all their meetings.
(d) Participatory rights

92. One delegation stated that it was encouraged by the level of participation in regional fisheries management organizations. Several delegations encouraged the participation of all interested States in regional fisheries management organizations as a way to ensure international cooperation. Such participation could take place in various ways: by becoming a member; by formally committing to applying the measures adopted by the organization; or by becoming a cooperating non-member. It was further stated that, in order to participate in a regional organization, States had to demonstrate a real interest in the fishery coupled with effective control over their ships.

93. Several delegations underlined that while articles 10(b) and 11 of the Agreement provided the framework for participatory rights, further work might be needed to develop more detailed criteria for participatory rights. A number of delegations pointed out that particular attention should be paid to the effective participation in the work of regional fisheries management organizations by States with limited capacity. Some delegations emphasized that presently participatory rights were based on historical catches and needed to be improved in order to ensure a more equitable distribution of the resources. That applied in particular to developing countries, which had participated minimally in fishing activities in the past, but should now be granted equitable participatory rights.

94. Several delegations proposed the granting of fishing rights to developing States by diminishing their own quotas. It was made clear, though, that this proposal should be implemented in good faith and not used to grant fishing rights to vessels from other States, which would not have otherwise been granted fishing allocations by their original flag States. However, decisions on the allocation of fishing opportunities should mainly be based on scientific advice and should not be guided solely by economic concerns. Thus, the early development of precautionary measures, both for catch and effort limits as well as sustainable fishing capacity levels, along with allocation criteria that took into account the rights and aspirations of developing countries, was critical. A number of delegations also stated that it was important to enhance transparency and predictability regarding regional organizations' regulations relating to allocations.

95. A number of delegations noted that overfishing was due, at least in part, to the inability of regional fisheries management organizations to agree on the allocation of quotas. One delegation suggested that case studies might be useful to that end. Some delegations indicated that greater attention should be paid to incentives as a means to encourage a greater degree of participation in and compliance with the work of regional fisheries management organizations. In that regard, participatory rights represented a form of incentive to cooperate.

3. Consideration of elements relating to monitoring, control and surveillance and compliance and enforcement

96. The President invited delegations to express their views on issues relating to monitoring, control and surveillance and compliance and enforcement, as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). He drew the attention of the Conference to the fact that even if sound measures were adopted for the conservation and management of straddling and highly migratory fish stocks, sustainable fisheries
could not be achieved without compliance with those measures. Highlighting developments in this area since the adoption of the Agreement, he called upon delegations to identify what additional actions could be undertaken to address, in particular, illegal, unreported and unregulated fishing, both within areas under national jurisdiction and on the high seas, by non-members as well as members of regional fisheries management organizations.

97. Delegations considered monitoring, control, surveillance and enforcement as critical to achieving the objective of sustainability of fish stocks enshrined in the Agreement. A number of delegations noted that the integrity of the regional fisheries management regimes depended on effective compliance with the organizations’ decisions, including through cooperation and adequate flag States control. Some delegations stressed that all monitoring, control and surveillance activities and enforcement should be carried out in accordance with international law, in particular the Convention. One delegation underlined the integrated nature of monitoring, control and surveillance and compliance and enforcement mechanisms, which required a strong integration of flag State, coastal State, port State and market State responsibilities for measures to be successful. The same delegation stressed the need to develop incentives to encourage compliant behaviour.

98. Many delegations highlighted illegal, unreported and unregulated fishing as an issue that required urgent attention. They stressed the need for the international community to strengthen regulatory measures, extend the coverage of regional fisheries management organizations and improve enforcement capabilities to fight illicit activities.

99. Several delegations outlined the measures that they had adopted in the field of monitoring, control and surveillance and compliance and enforcement mechanisms to implement relevant provisions of the Agreement, individually, on a bilateral basis, or through regional fisheries management organizations. Several delegations indicated that although they were not parties to the Agreement, their domestic legislation included measures that addressed compliance and enforcement and reflected the provisions of the Agreement or the FAO Compliance Agreement and the FAO Model Scheme on Port State Measures. Observers from a number of regional fisheries management organizations reported on the measures adopted by their respective organizations.

(a) Implementation of flag State duties

100. Many delegations stressed the important role of flag States for the effective implementation of the Agreement. They drew attention to the threat posed, both to fisheries and, in terms of loss of revenue, to developing coastal States, by lack of will or capacity of flag States to properly ensure compliance by vessels flying their flag with the obligations imposed upon them by the Agreement and other relevant international instruments. It was emphasized that flag States must also ensure compliance with subregional, regional and global conservation measures. One delegation suggested that flag States that were unable to comply with their obligations should not be allowed to be flag States. Another delegation stressed that all States have the right to fish on the high seas pursuant to the Convention, but that that right was conditional upon compliance by their nationals with measures for the conservation of living resources in the high seas adopted through bilateral or multilateral cooperation, including through regional fisheries management
organizations. It expressed deep concern over the absence of cooperation with coastal States to address illegal activities of vessels operating on the high seas in areas adjacent to the exclusive economic zone of coastal States and not covered by a regional fisheries management organization.

101. Other delegations reiterated the need to better define the obligations of flag States and the "genuine link", including by addressing the problems raised by the use of flags of convenience. Attention was drawn to the guidelines of the High Seas Task Force on flag State performance with respect to high-seas fishing vessels. It was suggested that more detailed guidelines on flag State performance could be based on the requirements for flag State responsibilities set out in the FAO International Plan of Action on illegal, unreported and unregulated fishing, and that an assessment of the legislation of States be done to determine whether they have enacted provisions requiring vessels flying their flag not to operate with respect to areas or fisheries governed by regional fisheries management organizations of which such States are not members. One delegation suggested that access agreements could include obligations for flag States to cooperate with coastal States with regard to monitoring, control and surveillance.

102. One delegation urged a wider application of the mechanism, provided for in the Agreement, that allows States members of a regional fisheries management organization to board and inspect fishing vessels that operate in areas under the competence of that organization. Several States parties noted that the boarding and inspection provisions in the Agreement were a central part of the Agreement and reflected a careful balance between the interests of the coastal State and distant water fishing nations. One delegation suggested that regional fisheries management organizations should ensure that they have a sufficient inspection and boarding regime, and that safeguards be developed against the abuse of rights. One delegation stated that the concurrent operations of legitimate and illegitimate vessels made it difficult for authorities to distinguish between those two types of operations and thus to board and inspect vessels in conformity with international law. Several delegations drew attention to the availability of effective alternative mechanisms to the boarding and inspection procedures provided for in the Agreement. They stressed that boarding and inspection could result in the use of force, might be carried out contrary to international law, and therefore should only be used with the consent of flag States. They called for support within regional fisheries management organizations for the development of such alternative mechanisms. Some delegations noted that safeguards were already contained in the Agreement to address concerns regarding boarding and inspection.

103. A number of delegations pointed out that the issue of flag State implementation did not arise only in connection with fishing vessels, but also with support vessels utilized for trans-shipment and refuelling operations. The need to regulate the activities of support vessels within the area of competence of regional fisheries management organizations was underlined. One delegation drew attention to the need for States to also regulate the activities of their nationals and companies incorporated under their jurisdiction as an important complement to flag State and port State jurisdiction. In this connection, the case of some regional fisheries management organizations that prohibit their members from flagging or engaging in fishing operations with vessels that have been included in illegal, unreported and unregulated lists was highlighted. It was suggested that States should prohibit their nationals from engaging in activities with such vessels. A number of delegations
also suggested that States could adopt measures against the illegal activities of beneficial owners of the vessels flying their flag.

(b) Investigation, penalization for violations

104. A number of delegations informed the Conference that, for the purpose of monitoring fishing activities carried out by all licensed fishing vessels, vessel monitoring systems had been used, the data of which were often cross-checked with those gathered through physical inspection. One delegation proposed that all vessels capable of fishing on the high seas be required to carry a vessel monitoring system no later than 2008. Several delegations called for dual function to be given to observer schemes as an effective tool through which scientific data could be collected and compliance ensured. The introduction of mandatory satellite-based vessel monitoring systems on all vessels fishing within a regional fisheries management organization's area was identified as an effective step in implementing monitoring, control and surveillance.

105. Several delegations drew attention to the fact that sanctions needed to be significant, not just a cost of operation, in order to act as effective deterrents to non-compliance. For that purpose the need to develop guidelines for sanctions was underlined, with the recognition that the application of sanctions remained a sovereign issue. Judicial cooperation and periodic evaluation of sanctions were also highlighted as appropriate means for improved investigation and sanctioning. It was further noted that flag States possessed the primary jurisdiction to impose sanctions effectively. One delegation stated that, in cases where flag States were unwilling to take action or failed to implement their duties, inspecting States could take action to sanction illegal activities. Another delegation suggested that the use of compulsory indication of origin of fish and fish products could play an important role in deterring illegal activities, including by restricting the marketing of products obtained in violation of conservation and management measures.

106. One observer noted that the unique nature of high seas fisheries, including their remoteness, required enhanced regulatory regimes and mechanisms that went beyond the traditional approaches in place for other areas and for other maritime activities. Sanctions could also be deployed against service industries, such as insurance and finance, which enabled illegal fishing practices to occur.

(c) Use of port State measures

107. Delegations emphasized that the role of port States in inspecting incoming fishing vessels to ensure that they were not in violation of international conservation and management measures was a critical aspect for the successful implementation of the Agreement. One delegation noted that profits from illegal, unreported and unregulated fishing depend on the possibility of access to markets through landing in ports. Several delegations stressed the need to develop measures to monitor marketed fish to ensure that no fish caught in contravention of conservation and management measures was sold. Regional fisheries management organizations were urged to adopt systems to monitor landings of fish, as well as inspections and regulation of trans-shipments, including through agreed upon import and trade prohibition schemes consistent with international law, such as the electronic catch documentation scheme adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).
108. Many delegations called for more extensive and coordinated efforts to adopt and implement port States measures, in compliance with article 23 of the Agreement. Support was expressed for the development of an electronic database of port State measures. A number of delegations called for the development of international standards and guidelines to prevent the emergence of “ports of convenience” resulting from the existence of weaker regimes in some port States. Support was expressed for a global legally binding instrument on port State measures as a necessary step against “ports of convenience”. In that connection, the FAO Model Scheme on Port State Measures was considered as the international minimum standard for port State control and a necessary reference for the development of a global instrument. One delegation stated that standards for port State measures should be agreed in the context of regional fisheries management organizations. Another delegation cautioned against the development of a global instrument that would reflect a uniform approach, noting that such instruments usually entailed agreement on the minimal common denominator and that securing adherence to such instruments was often challenging. One delegation stressed that the United Nations Convention on the Law of the Sea, in particular article 11, provided for the sovereignty of port States over their port terminals, which entailed full discretion of that State, including the possibility of restricting the use of its ports by foreign vessels engaged in activities incompatible with domestic measures.

109. The observer from FAO outlined developments regarding the FAO Model Scheme, including its endorsement by the General Assembly and several regional fisheries management organizations as the basis for development of port State measures at the regional and national levels. He also highlighted capacity-building programmes undertaken to reinforce States’ abilities to combat illegal, unreported and unregulated fishing and implement effective port State measures. Several regional fisheries management organizations informed the Review Conference of some of their measures and initiatives related to port State measures, particularly with a view to combating illegal, unreported and unregulated fishing. One regional organization reported that it required port State members to report to its secretariat the results of all inspections carried out on foreign vessels.

110. The observer from a non-governmental organization called upon the Review Conference to adopt a specific action plan which would include binding port State measures; interim measures, in particular against illegal, unreported and unregulated fishing of cod; and the adoption of new funding for States which lack capacity.

(d) International cooperation

111. Many delegations stressed that the Agreement represented a solid framework to foster regional and international cooperation for monitoring, control and surveillance activities. Despite notable improvements, the persistence of significant illegal, unreported and unregulated fishing indicated that further steps should be taken, in particular in the areas of vessel monitoring systems, observer programmes, port State measures and catch reporting and verification. Several delegations stressed the need for adequate control systems within regional fisheries management organizations. Greater coordination among regional organizations was called for, in particular to ensure the establishment of compatible monitoring, control and surveillance and compliance and enforcement measures such as vessel registers, centralized regional vessel monitoring systems and harmonization of sanctions and penalties. The establishment of a regional observer programme was also highlighted.
Several delegations recommended better collaborative actions to address trans-shipment, including through regional fisheries management organizations. Several other delegations called for a ban on trans-shipment at sea and stricter controls in ports.

112. A number of delegations described projects of international cooperation such as the voluntary monitoring, control and surveillance network, the strengthening and development of which was proposed, and the pilot project for monitoring, control and surveillance implemented through the Indian Ocean Commission. It was recognized that information on vessels believed to have engaged in illegal, unreported and unregulated fishing remained scattered. One delegation highlighted the benefits of joint inspection and the need to collect and share critical information in order to combat illegal, unreported and unregulated fishing, including through the development of a global database of information on reliability and fishing history of specific vessels. Another delegation proposed developing a global register of fishing vessels, including refrigerated transport and supply vessels, that would incorporate all information on beneficial ownership. Other suggestions included the establishment of a registry of vessels that would meet minimum standards for fishing on the high seas as well as a blacklist of vessels and their flags to avoid reflagging. The observer from one regional fisheries management organization reported on cooperative action with other regional organizations for the purpose of data collection and information exchange regarding illegal, unreported and unregulated fishing.

113. A number of delegations indicated that the costly nature of monitoring, control and surveillance operations required providing assistance to developing States and promoting international cooperation among all States concerned in the form of, inter alia, capacity-building, physical surveillance and the use of remote sensing. Several small island State delegations underlined the challenges that they faced in the implementation of effective monitoring, control and surveillance, given the proportionately large maritime areas under their jurisdiction and their geographic characteristics. That situation required the adoption of unique approaches to monitoring, control and surveillance which drew on region-wide resources in a coordinated and integrated manner through a regional strategy.

4. Consideration of elements relating to developing States and non-parties

114. The President invited statements on issues relating to developing States and non-parties as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). He invited further discussion on impediments to ratifications/accessions to the Agreement. He stressed the role of assistance to developing States in helping to fulfil the Agreement and encouraging further participation in the Agreement and adherence by non-parties. He noted that increased participation in the Agreement, including that of developing States, would benefit all States.

(a) Recognition of special requirements, provision of assistance and capacity-building

115. A number of delegations indicated that for many developing States, in particular small island developing States, fishing was central to economic survival, but in the absence of the capacity to derive full benefits from it, the exploitation of
resources was often carried out by foreign fishing fleets. The social component of fishing activities was also highlighted.

116. Many delegations recognized that human resources and financial constraints in developing States continued to be a major impediment to the effective implementation of the Agreement. Several delegations emphasized that the costs incurred and the know-how required for the implementation of the Agreement, especially in connection with developing national legislation, infrastructure, surveillance and monitoring mechanisms, training of personnel and strengthening of port controls, constituted an obstacle for developing States wishing to become parties and needed to be addressed through the provision of assistance. Several delegations stated that targeted delivery of assistance and capacity-building to developing States was critical to cooperative management. Other delegations indicated that assistance to developing States should focus more on the development of national policies for fisheries than on the provision of funds. It was underlined that lack of capacity, which prevented developing States from becoming parties to the agreement and members of relevant regional fisheries management organizations, could lead fishing vessels to register in those countries in order to circumvent the conservation and management measures adopted pursuant to the Agreement. One delegation suggested that information on the Agreement should be further circulated among developing States, for example on the occasion of the session of the FAO Committee on Fisheries.

117. A number of delegations outlined their bilateral assistance to developing countries for the conservation and management of fishery resources. One delegation called for a clearer definition of areas of support, particularly in relation to the recognition of the special needs of those countries to develop fisheries for food security at the community level. Developed States were invited to develop coherent strategies for the provision of assistance, and policy coherence was called for at the international level, among donors and developing States. It was noted that an opportunity for developing States to indicate their needs could be provided by future meetings of the Open-Ended Informal Consultative Process on Oceans and the Law of the Sea.

118. The importance of Part VII of the Agreement for capacity-building and human resources development in developing States was underlined by many delegations, who also indicated that its provisions and the assistance fund established by the General Assembly under Part VII, should be widely publicized. It was also stressed that further contributions should be made to the Fund. One delegation stated that there should be greater coordination and consultation between and among donors and developing States so as to rationalize the allocation of aid and avoid overlap. One delegation encouraged developing States to avail themselves of the Part VII assistance fund, especially for improved data collection. It was noted that Part VII of the Agreement should not be interpreted narrowly to apply only to assistance in implementing the Agreement, but should also apply to assistance for developing States’ participation in high-seas fisheries in general. It was noted that assistance through regional organizations such as CCAMLR and WCPFC, through financial institutions such as the Global Environment Facility, or through bilateral programmes could also prove very successful.

119. A number of delegations stated that market access for developing States should be addressed. In particular, one delegation called for the abolition of policies,
including those related to subsidies, that are detrimental to developing States' access to markets. Several delegations stressed the need to adjust stock allocations to fully integrate the participation of developing States. In that regard, a number of observers called for the full application of article 11 of the Agreement (New members or participants).

120. Several delegations stressed the need to help developing States to develop their fishing capacity. One observer proposed that artisanal and small-scale fisheries be granted preferential access to fish stocks, noting that such preferential treatment would be consistent with Millennium Development Goals 1 (Eradicate extreme poverty and hunger) and 7 (Ensure environmental sustainability).

121. A number of observers from regional fisheries management organizations outlined the assistance that they provided to developing States in the field of data collection. One of them indicated that it was also providing assistance to coastal developing countries in mitigating the effect of artisanal longline fleets on marine turtle populations, through awareness-raising of fishing communities and training of local observers and programme managers. It was stressed that those examples demonstrated that regional fisheries management organizations often have the necessary skills and contacts to assist with capacity-building.

122. One observer emphasized the need to build the capacity of developing States to implement flag State, port State and national control measures, with a view to addressing IUU fishing. The observer also stated that participation in regional fisheries management organizations should not depend on past fishing in order to ensure that developing States did not engage in unsustainable fishing to build a track record. Another observer urged the development of cooperative programmes for fisheries-related data collection, exchange and management, scientific research, use of appropriate fishing gear and techniques and adoption of fisheries compliance and enforcement measures.

(b) Increasing adherence to the Agreement

123. Many delegations stressed that wider participation in the Agreement was fundamental to ensuring the effectiveness of its regime, and welcomed the announcement by a number of delegations that they would shortly ratify the Agreement, pending the completion of domestic procedures.5

124. One delegation stated that meetings such as the Review Conference served to raise awareness among non-parties of the importance of accession to the Agreement, thus fostering wider ratification. Attention was also drawn to the fact that implementation of the Agreement could be strengthened through enhanced regional cooperation.

125. Several non-parties suggested that one of the objectives of the Review Conference was to facilitate universal ratification of the Agreement, which would make for the most effective implementation. There were operative as well as substantive barriers to adherence, including the provisions of the Agreement related

5 States which indicated their intention to become parties to the Agreement both at the fifth round of informal consultations of States parties to the Agreement and at the Review Conference included: Indonesia, Japan, Morocco, Mozambique, Palau, the Philippines and Sierra Leone. Austria, on behalf of the European Union, indicated that European Union member States that were not yet parties to the Agreement would become parties in the near future.
to the compatibility of conservation and management measures (article 7) and boarding and inspection (articles 21 and 22), as well as issues related to the rights and duties of port States and to allocation of resources. These delegations stressed that the Agreement should be interpreted and applied in a manner consistent with article 4 of the Convention. In relation to the issue of compatibility of conservation and management measures, they emphasized that the Agreement did not satisfactorily address the relationship between the norms adopted by the coastal State in areas under its jurisdiction and those adopted by flag States with regard to the high seas, and called for reiterating the pre-eminence of the rights, duties and interests of coastal States, in conformity with section 2 of Part VII of the Convention. Regarding non-flag State enforcement, which was considered very costly and difficult to carry out due to the vastness of the areas that needed to be monitored, it was noted that boarding could be dangerous to the safety of the crews and vessels. The risks that intrusive inspections might pose to legal fishing activities were underlined, as well as the need for due process to ensure the protection of the human rights of the captain and crew of fishing vessels and the prompt release of vessels in case of innocence. Effective alternative measures to boarding and inspection were suggested, such as vessel registers, vessel monitoring systems, trade documentation, certification schemes, permanent independent on-board observers and joint inspections. One delegation suggested that guidelines should be adopted for joint inspections.

126. A proposal was made by several non-parties to initiate a process of informal consultations to address the obstacles. The consultations could be used to consider alternative mechanisms to boarding and inspection and the possibility of negotiating a technical annex to the Agreement on compensation for damages and economic losses incurred by boarding and inspection conducted contrary to international law. Another delegation proposed that the Review Conference adopt a recommendation on articles 21 and 22 of the Agreement, which would endorse the application of the mechanism provided for under the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in the context of the Agreement.

127. In spite of the obstacles, non-parties stressed that they had continued their efforts for the conservation and management of fishery resources in accordance with the principles of the Agreement, including within regional fisheries management organizations.

128. Several States parties emphasized that the Agreement already represented a carefully achieved balance of the interests of coastal States and those of flag States. Non-parties had accepted that when the text of the Agreement was adopted in 1995, and it would not be appropriate to reopen a debate on the provisions of the Agreement. Non-parties should consider joining the Agreement and continuing the debate on issues of concern with other States parties. Issues relating to inspection and control mechanisms, in particular, could be addressed in the context of regional fisheries management organizations in order to find regional solutions acceptable to all members, on the basis of the flexible approach provided for in the Agreement. The dispute settlement mechanisms envisaged under the Agreement would provide an opportunity to address issues for which no settlement had been reached among parties.
5. **Further reviews**

129. Most delegations stressed the need to continue the review of the effectiveness of the Agreement. However there was a divergence of views on the frequency and format of such reviews. A number of delegations expressed support for informal meetings every two years, with every third meeting being held in a more formal setting. One delegation favoured a review by the informal meetings every six to eight years, noting that formal conferences diverted resources from implementation. Several delegations proposed a periodic five-year review of the Agreement in the context of formal meetings of States parties, while others expressed preference for a four-year review cycle. One observer suggested annual informal meetings and review conferences every four years, with consideration being given to meetings of two weeks' duration as participation in the Agreement increased.

IV. **Adoption of the final report of the Review Conference**

130. At the last plenary meeting, the President proposed that the Review Conference adopt the five documents before it, containing draft elements negotiated by the Drafting Committee for adoption by the Conference. These documents would be incorporated into what would become the final report of the Review Conference, which would include the adopted outcome of the Conference and a draft record of deliberations prepared by the President with the assistance of the Secretariat. The report would be made available on the Division’s website for three weeks to allow participants to provide suggestions and comments, including on the characterization of discussions. The President, in cooperation with the Bureau, would then review all suggestions and comments made by participants and decide which of those would be incorporated in the record of deliberations.

131. One delegation proposed an amendment to the document containing elements related to developing States and non-parties in order to reflect the text agreed by the Drafting Committee. In view of the limited time available to review the draft elements, another delegation proposed that the President and the Secretariat be entrusted with the responsibility of making any technical changes necessary, should the draft elements not properly reflect what had been agreed by the Drafting Committee.

132. The Conference adopted the five documents, as amended, with the understanding that the President, with the assistance of the Secretariat, would combine them into a single document and make any necessary technical changes.

V. **Other matters**

133. No delegation made any statement under this agenda item.

VI. **Suspension of the Review Conference**

134. The President proposed changing agenda item 13 from “Closure of the Conference” to “Suspension of the Conference”, following agreement on the resumption of the Conference at a date no later than 2011. The Conference approved the suggestion by the President.
135. In his final address to the Review Conference, the President highlighted a
difference between the debates that had taken place during the negotiations of the
Agreement and those that had taken place during the Review Conference. The
negotiations of the Agreement had devoted considerable attention to the rights and
duties of different groups of States, including flag States, coastal States and port
States. While those issues were still present and sensitive, a much greater proportion
of time, during the Review Conference, had been spent on finding ways to give full
effect to the Agreement. The President highlighted the substantive review and
assessment as well as the significant number of recommendations for strengthening
the implementation of the Agreement contained in the elements adopted by the
Conference, and expressed satisfaction with the decision to keep the Agreement
under review. The President noted that the Review Conference had called attention
to the value of the Agreement and also to the fact that more remained to be done.

136. The representative of Austria, on behalf of the European Union, stated that the
Conference had adopted a report that covered a wide range of issues, and had
succeeded in reviewing the effectiveness of the Agreement. He noted that the
Conference had shown the necessity of a continuation of the review process and
stressed that, as seen in the final report, States parties had seriously considered the
concerns of non-parties in order to pave the way for their adherence to the
Agreement. The representative of Ecuador congratulated all delegations for their
hard work.

137. The President declared the Conference suspended.
Annex

Outcome of the Review Conference

New York, 26 May 2006

Preamble


2. The Review Conference recalled that all provisions of the Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. Regional fisheries management organizations and arrangements were recognized as the primary mechanism for international cooperation in conserving and managing straddling fish stocks and highly migratory fish stocks. Many regional fisheries management organizations have incorporated provisions of the United Nations Fish Stocks Agreement in their constitutive agreements, or have adopted measures in practice to implement the Agreement. The Conference encouraged States, as appropriate, to recognize that the general principles of the Agreement should also apply to discrete fish stocks in the high seas.

3. The Review Conference acknowledged that the sustainable use of fish stocks is a significant source of food and livelihoods for large parts of the world’s population. At the same time, the Conference expressed concern over the significant adverse impacts that overfishing has had on the state of fish stocks and the ecological integrity of the world’s oceans. Accordingly, the Conference agreed that there is a compelling need for all States and regional fisheries management organizations to ensure the conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

I. Conservation and management of stocks

A. Review and assessment

4. The Review Conference reviewed current efforts related to the conservation and management of straddling fish stocks and highly migratory fish stocks, including the adoption of measures to ensure the long-term sustainability of such stocks and to address overfishing, overcapacity and the effects of fishing on the marine environment; cooperation to manage fisheries not regulated by a regional fisheries management organization; and the collection and sharing of data. Based on this review, the Conference made the following assessments.

5. The adoption and implementation of measures by a regional fisheries management organization for the long-term sustainability of straddling fish stocks and highly migratory fish stocks as well as efforts by States to address fisheries not regulated by a regional fisheries management organization are proceeding unevenly.
6. The Food and Agriculture Organization of the United Nations (FAO) has indicated that about 30 per cent of the stocks of highly migratory tuna and tuna-like species, more than 50 per cent of the highly migratory oceanic sharks and nearly two thirds of the straddling fish stocks and the stocks of other high-seas fishery resources are overexploited or depleted.

7. Several regional fisheries management organizations have improved the level of sophistication and effectiveness of the conservation and management measures adopted, including rebuilding plans for straddling fish stocks and highly migratory fish stocks. Nonetheless a number of challenges remain in achieving full implementation of the United Nations Fish Stocks Agreement so as to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks, particularly with respect to the application of the precautionary approach and ecosystem approaches to fisheries management.

8. States, both individually and through regional fisheries management organizations, have begun to apply the precautionary approach to fisheries management. While the application of the precautionary approach is widely accepted, the extent to which the precautionary approach is being implemented in practice varies widely.

9. Since the entry into force of the United Nations Fish Stocks Agreement, two new regional fisheries management organizations have been established (the Western and Central Pacific Fisheries Commission (WCPFC) and the South East Atlantic Fisheries Organization (SEAFO) while another regional fisheries management organization, the Inter-American Tropical Tuna Commission, has revised its convention to reflect and incorporate the provisions of the Agreement. Further, two regional fisheries management organizations are undertaking comprehensive reviews with respect to the provisions of the Agreement (the North East Atlantic Fisheries Commission and the Northwest Atlantic Fisheries Organization). However, additional work is needed to advance the implementation of the Agreement through regional fisheries management organizations.

10. A number of significant international fisheries remain outside the purview of a regional fisheries management organization. However, efforts to establish one regional arrangement, the Southern Indian Ocean Fisheries Arrangement, are nearing completion. And still other efforts are under way to develop new regional fisheries management organizations or arrangements (e.g., in the South Pacific region and in the North Pacific for non-highly migratory fish stocks).

11. Overcapacity and overfishing continue to undermine efforts to achieve the long-term sustainability of many straddling fish stocks and highly migratory fish stocks. While there has been some progress in addressing overcapacity at the national and regional levels, the current level of fishing capacity in many fisheries is still too high. Implementation of the FAO International Plan of Action for the Management of Fishing Capacity, for which a target date of 2005 was agreed to in the Plan of Implementation of the World Summit on Sustainable Development, is far from complete. Some subsidies continue to contribute to overcapacity and overfishing.

12. While many regional fisheries management organizations have adopted measures to minimize the catch of non-target and associated and dependent species,
the scope and effectiveness of these measures could be improved, particularly with respect to the species covered, compliance and data reporting.

13. Regional efforts to implement an ecosystem approach to fisheries management, beyond addressing non-target and associated and dependent species, have increased in recent years with a number of regional fisheries management organizations undertaking information and data gathering initiatives to assess the need for and scope of additional management measures or other initiatives. However, accelerated progress in this area is needed.

14. Data collection and sharing are a basic obligation of States and fundamental to the effectiveness of regional fisheries management organizations, yet ensuring timely and accurate data reporting, including reporting of catches, remains a serious challenge. Without comprehensive and accurate data gathering and reporting, both scientific and management processes are undermined.

15. Closed areas, marine protected areas and marine reserves can be effective tools for the conservation and management of some fish stocks and habitats of special concern. Some regional fisheries management organizations have utilized closed areas both to manage fisheries and to protect habitats and biodiversity.

16. Regional fisheries management organizations with competence to regulate straddling fish stocks have the necessary competence to conserve and manage high-seas discrete stocks. There is no obstacle for such regional fisheries management organizations to adopt management measures in respect of these stocks in accordance with the general principles set forth in the Agreement.

17. Although in accordance with the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement there is an obligation for coastal States and States fishing on the high seas to cooperate in the conservation and management of straddling fish stocks and highly migratory fish stocks, the provisions of the Agreement with respect to compatibility have not been fully applied in some areas of the oceans for some fisheries.

B. Proposed means of strengthening

18. As a result of the review and assessment, the Review Conference recommended that States individually and collectively through regional fisheries management organizations:

(a) Strengthen their commitment to adopt and fully implement conservation and management measures for straddling fish stocks and highly migratory fish stocks, including stocks that are currently unregulated, in accordance with the best available scientific information on the status of such stocks and the provisions of the Agreement with respect to the precautionary approach;

(b) Take measures to improve cooperation between flag States whose vessels fish on the high seas and coastal States so as to ensure the achievement of compatibility of measures for the high seas and for those areas under national jurisdiction with respect to straddling fish stocks and highly migratory fish stocks in accordance with article 7 of the Agreement;

(c) Where needed, establish new regional fisheries management organizations or arrangements for the conservation and management of straddling
fish stocks, highly migratory fish stocks and high-seas discrete stocks and agree on interim measures until such arrangements are established;

(d) Enhance understanding of ecosystem approaches and commit themselves to incorporating ecosystem considerations in fisheries management, including actions to conserve associated and dependent species and to protect habitats of specific concern, taking into account existing FAO guidelines, and request FAO to continue its work on the subject, as appropriate;

(e) Develop management tools, including closed areas, marine protected areas and marine reserves and criteria for their implementation, to effectively conserve and manage straddling fish stocks, highly migratory fish stocks and high-seas discrete stocks and protect habitats, marine biodiversity and vulnerable marine ecosystems, on a case-by-case basis in accordance with the best available scientific information, the precautionary approach and international law;

(f) Commit themselves to urgently reducing the capacity of the world’s fishing fleets to levels commensurate with the sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing capacity assessment, while avoiding the transfer of fishing capacity to other fisheries or areas, in a manner that undermines the sustainability of fish stocks, including, inter alia, those areas where fish stocks are overexploited or in a depleted condition, and recognizing in this context the legitimate rights of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks consistent with article 25 of the Agreement, article 5 of the Code of Conduct, and paragraph 10 of the International Plan of Action for the Management of Fishing Capacity;

(g) Eliminate subsidies that contribute to illegal, unregulated and unreported fishing, overfishing and overcapacity, while completing the efforts undertaken through the World Trade Organization in accordance with the Doha Declaration to clarify and improve its disciplines on fisheries subsidies;

(h) Enhance efforts to address and mitigate the incidence and impacts of all kinds of lost or abandoned gear (so-called ghost fishing), establish mechanisms for the regular retrieval of derelict gear and adopt mechanisms to monitor and reduce discards;

(i) Provide required catch and effort data, and fishery-related information, in a complete, accurate and timely way and to develop, where they do not exist, processes to strengthen data collection and reporting by members of regional fisheries management organizations, including through regular audits of member compliance with such obligations, and when such obligations are not met, require the member concerned to rectify the problem, including through the preparation of plans of action with timelines;

(j) Cooperate with FAO in the implementation and further development of the Fisheries Resources Monitoring System initiative;

(k) Commit themselves to submitting, on a priority basis, information on deep-sea fish catches, as requested by the twenty-sixth session of the FAO Committee on Fisheries, and contribute to the work of FAO to collect and collate information concerning past and present deep-water fishing activities and to
undertake an inventory of deep-water stocks and an assessment of the effects of fishing on deep-water fish populations and their ecosystems.

19. The Review Conference recommended that FAO should (a) establish arrangements for the collection and dissemination of data in accordance with article 7 of annex I to the Agreement, where none exist; and (b) revise its global fisheries statistics database to provide information for the stocks to which the Agreement applies and for high-seas discrete stocks on the basis of where the catch was taken.

20. The Review Conference recommended that States that are FAO members provide the organization with appropriate means to advance the above requests and objectives.

II. Mechanisms for international cooperation and non-members

21. The Review Conference underscored that international cooperation by all those fishing for straddling fish stocks and highly migratory fish stocks is necessary for the effective and long-term conservation and management of such stocks. The Convention and the Agreement provide the framework for such international cooperation by States directly or through regional fisheries management organizations and arrangements. Cooperation is also required to modernize and strengthen regional fisheries management organizations to ensure robust and systematic approaches in international fisheries governance.

A. Review and assessment

22. The Review Conference reviewed the current mechanisms for international cooperation for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as efforts to address fishing activity by vessels of non-members of regional fisheries management organizations. Based on this review, the Review Conference made the following assessments.

23. In recent years, a significant number of States whose vessels fish for stocks regulated by regional fisheries management organizations have become members of those organizations. Enabling all States with a real interest in the fisheries concerned to become members of regional fisheries management organizations is essential to their effectiveness. Enhanced capacity-building for developing States is critical in this regard.

24. A number of regional fisheries management organizations have created formal arrangements to promote non-member adherence to adopted conservation and management measures, including data collection and monitoring, control and surveillance measures. Such “cooperating non-member/party” status is often undertaken as an interim step leading to full membership, where this is possible.

25. However, problems of non-compliance by members and cooperating members and fishing by non-members continue to undermine the effectiveness of adopted conservation and management measures within regional convention areas.

26. Regional fisheries management organizations are making progress in addressing illegal, unregulated and unreported fishing activities that undermine the
integrity of their conservation and management measures through the adoption of, inter alia, increased monitoring, control and surveillance, positive and negative vessel lists, trade or market-related measures, catch and trade documentation schemes, port measures, vessel monitoring systems and regulations for trans-shipment. However, some regional organizations are more advanced than others and the implementation of such measures, particularly across organizations and oceans, needs to be strengthened and coordinated.

27. Reflagging activities that are undertaken to contravene the Agreement and circumvent regional organizations’ conservation and management measures continue. In addition, fish caught in contravention of applicable conservation and management measures continue to enter markets.

28. While several regional fisheries management organizations have made good progress in modernizing their mandates to implement the United Nations Fish Stocks Agreement, a number of organizations are not fulfilling fully in a number of areas the range of functions outlined in articles 10, 11 and 12 of the Agreement.

29. Some regional fisheries management organizations have begun processes to systematically review and assess their performance in implementing relevant provisions of the United Nations Fish Stocks Agreement and other relevant instruments. Such processes should be initiated in all other regional fisheries management organizations.

30. While some regional fisheries management organizations have undertaken efforts to address participatory rights and allocation issues, including accommodating the interests of new members and the interests of developing States to participate in high-seas fisheries for straddling fish stocks and highly migratory fish stocks, further work is needed, bearing in mind the importance of addressing social and economic interests in a manner consistent with conservation objectives.

31. An initiative is under way, aimed at developing the standards of regional fisheries management organizations that may help to promote improved governance by sharing information on best practices.

B. Proposed means of strengthening

32. As a result of the review and assessment, the Review Conference agreed to recommend that States individually and collectively through regional fisheries management organizations:

(a) Continue on an urgent basis to strengthen the mandates of, and measures adopted by, regional fisheries management organizations to implement modern approaches to fisheries management as reflected in the Agreement and other relevant international instruments, including relying on the best scientific information available and application of the precautionary approach, and incorporating an ecosystem approach into fisheries management;

(b) Strengthen and enhance cooperation among existing and developing regional organizations, including increased communication and further coordination of measures, and, following the example of regional organizations that regulate highly migratory fish stocks and the regional tuna meeting that will be hosted by Japan in 2007, agree to hold consultations of States members of regional fisheries
management organizations that regulate straddling fish stocks to exchange views on key issues;

(c) Address participatory rights through, inter alia, the development of transparent criteria for allocating fishing opportunities, taking due account, inter alia, of the status of the relevant stocks and the interests of all those with a real interest in the fishery;

(d) Recalling that only those States which are members of regional fisheries management organizations, or which agree to apply the conservation and management measures established by them, shall have access to the fishery resources to which those measures apply, establish mechanisms to promote the participation of non-members fishing in the area of competence of a regional organization to either join the organization or agree to apply the conservation and management measures established by it;

(e) Commit themselves to providing incentives, where needed, to encourage non-members to join the regional fisheries management organizations, including sharing technology and expertise, assistance in the development of appropriate frameworks, and enhancement of enforcement capabilities. Non-members shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks;

(f) Ensure that post opt-out behaviour is constrained by rules to prevent opting-out parties from undermining conservation, clear processes for dispute resolution, and a description of alternative measures that will be implemented in the interim;

(g) Improve the transparency of regional fisheries management organizations, both in terms of decision-making that incorporates the precautionary approach and the best scientific information available and by providing reasonable participation for intergovernmental and non-governmental organizations through the organizations’ rules and procedures;

(h) Cooperate to examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over fishing vessels flying their flag;

(i) Take concrete measures to enhance the ability of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks, including facilitating access to such fisheries, consistent with article 25 of the Agreement;

(j) Urge those regional fisheries management organizations of which they are members to undergo performance reviews on an urgent basis, whether initiated by the organizations themselves or with external partners; encourage the inclusion of some element of independent evaluation in such reviews; and ensure that the results are made publicly available. The reviews should use transparent criteria based on the Agreement and other relevant instruments, including best practices of regional fisheries management organizations;

(k) Cooperate to develop best practice guidelines for regional fisheries management organizations and apply, to the extent possible, those guidelines to organizations in which they participate.
III. Monitoring, control and surveillance and compliance and enforcement

33. Effective compliance with and enforcement of agreed conservation and management measures, supported by effective monitoring, control and surveillance, is critical to achieving the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

A. Review and assessment

34. The Review Conference reviewed the current efforts related to monitoring, control and surveillance and compliance and enforcement. Based on this review, the Conference made the following assessments.

35. There have been notable improvements in the area of monitoring, control and surveillance and compliance and enforcement, with many States individually and collectively, through regional fisheries management organizations, developing or adopting measures relating to, inter alia, licensing and authorization of vessels, positive and negative lists of vessels, high-seas boarding and inspection, alternative mechanisms, observer programmes, trade tracking or catch documentation schemes, vessel monitoring systems, registers of fishing vessels, and trans-shipment. Certain regional fisheries management organizations will need further work to adopt a comprehensive monitoring, control and surveillance scheme. In the absence of such schemes, regional fisheries management organizations cannot fully provide an appropriate framework for compliance with their conservation and management measures. In addition, significant levels of illegal, unregulated and unreported fishing continue to occur in many fisheries for straddling fish stocks and highly migratory fish stocks. Further steps to combat and deter illegal, unregulated and unreported activities are needed.

36. Effective control by flag States over fishing vessels flying their flag is critical to conserving and managing straddling fish stocks and highly migratory fish stocks and preserving the integrity of regional regimes.

37. Those engaged in illegal, unregulated and unreported fishing activities have been able to exploit differences or deficiencies among the monitoring, control and surveillance measures adopted by States and regional fisheries management organizations to escape detection or to avoid compliance.

38. While there has been progress in some areas regarding investigation and sanctions for violations, more effort is needed, particularly with respect to expeditious investigation of suspected violations and follow-up actions. Also, despite the standard set by article 19 of the Agreement, the sanctions imposed by some flag States against their vessels in cases of demonstrated violations are not severe enough to deter future violations.

39. States must ensure compliance of their nationals and vessels flying their flag with measures adopted by regional fisheries management organizations if those organizations are to effectively discharge their mandates and manage straddling fish stocks and highly migratory fish stocks. To do so, States often need the cooperation and assistance of other States, including flag States and port States, to obtain the necessary information or evidence.
40. A number of port States and regional fisheries management organizations have developed measures or schemes to prevent the landing and trans-shipment of illegally caught fish in order to promote compliance with regional organizations’ conservation and management measures. However, there is still much to be done in developing such measures or schemes. In particular, a more coordinated approach among States and regional organizations is required.

41. Mechanisms for international cooperation to ensure compliance with conservation and management measures have been established in a number of regions, in accordance with the Agreement, and at the global level regarding the exchange of monitoring, control and surveillance information.

42. In respect of concerns raised about boarding and inspection, it was noted that provision is made in article 21, paragraph 15, of the Agreement, for alternative mechanisms in regional fisheries management organizations. Some participants indicated that consideration of such alternative mechanisms could include, inter alia, on-board observer programmes, utilization of VMS, fish tracking and verification systems, fleet performance review instruments and catch documentation schemes.

B. Proposed means of strengthening

43. As a result of the review and assessment, the Review Conference recommended that States individually and collectively through regional fisheries management organizations:

(a) Strengthen effective control over vessels flying their flag and ensure that such vessels comply with, and do not undermine, conservation and management measures adopted by regional fisheries management organizations;

(b) Adopt, strengthen and implement compliance and enforcement schemes in all regional fisheries management organizations; enhance or develop mechanisms to coordinate monitoring, control and surveillance measures, including those directed at non-members, between regional fisheries management organizations and with relevant market States; and ensure the fullest possible exchange of monitoring, control and surveillance information related to illegal, unreported and unregulated fishing activities. Global information exchange efforts should be enhanced;

(c) Adopt stringent measures to regulate trans-shipment, in particular at-sea trans-shipment; and in parallel, encourage and support FAO in studying the current practices of trans-shipment as it relates to fishing operations for straddling fish stocks and highly migratory fish stocks and produce a set of guidelines for this purpose;

(d) Adopt all necessary port State measures, consistent with article 23 of the Agreement, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, and promote minimum standards at the regional level; and in parallel, initiate, as soon as possible, a process within FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
(e) Join and actively participate in the International Monitoring, Control and Surveillance Network for Fisheries-related Activities, where they have not already done so, and support the enhancement of the Network;

(f) Strengthen fisheries access agreements to include assistance for monitoring, control and surveillance and compliance and enforcement within the areas under the national jurisdiction of the coastal State providing fisheries access;

(g) Develop appropriate processes to assess flag States' performance with respect to implementing the obligations regarding fishing vessels flying their flag set out in the Agreement and other relevant international instruments; and consider the use of multilaterally agreed trade measures, consistent with the rules established by the World Trade Organization, to promote implementation of those obligations by flag States;

(h) Develop regional guidelines for fisheries sanctions to be applied by flag States so that flag States may evaluate their systems of sanctions to ensure that they are effective in securing compliance and deterring violations;

(i) Take necessary measures, consistent with international law, to ensure that only fish that have been taken in accordance with applicable conservation and management measures reach their markets, and take steps consistent with national and international law to require those involved in fish trade to cooperate fully to this end; at the same time, recognize the importance of market access, in accordance with provisions 11.2.4, 11.2.5 and 11.2.6 of the Code of Conduct for Responsible Fisheries, for fishery products and fish caught in a manner that is in conformity with the applicable conservation and management measures;

(j) Strengthen, consistent with national law, domestic mechanisms to deter nationals and beneficial owners from engaging in illegal, unregulated and unreported fishing activities and facilitate mutual assistance to ensure that such actions can be investigated and proper sanctions imposed;

(k) Promote universal acceptance of the FAO Compliance Agreement;

(l) Cooperate with FAO to develop a comprehensive global register of fishing vessels, including refrigerated transport and supply vessels, that incorporates all available information on beneficial ownership, subject to confidentiality requirements in accordance with national law;

(m) Develop measures to prohibit supply and refuelling vessels flying their flag from engaging in operations with vessels listed as engaging in illegal, unregulated or unreported fishing;

(n) Ensure that all vessels fishing on the high seas carry vessel monitoring systems as soon as practicable;

(o) Recognize that the development within regional fisheries management organizations of alternative mechanisms for compliance and enforcement in accordance with article 21, paragraph 15, of the Agreement, including other elements of a comprehensive monitoring, control and surveillance regime that effectively ensures compliance with the conservation and management measures adopted by the regional fisheries management organization, could facilitate accession to the Agreement by some States.
IV. Developing States and non-parties

44. The Conference affirmed that increasing adherence to the Agreement is vital to promoting full implementation of the Agreement and achieving its objective. The Conference further recognized the need to provide assistance to developing States in areas such as data collection, scientific research, monitoring, control and surveillance, human resource development and information sharing, as well as technical training and assistance as it relates to conservation and management of straddling fish stocks and highly migratory fish stocks and participation in such fisheries.

A. Review and assessment

45. The Review Conference reviewed the current efforts to implement Part VII of the Agreement relating to the requirements of developing States. The Conference also considered issues related to ratification and accession to the Agreement, including ways to encourage more States to become parties. Based on this review, the Review Conference made the following assessments.

46. Enhancing assistance to developing States parties is necessary to enable such States to implement the Agreement to the fullest extent possible.

47. Some useful steps have been taken to assist developing States parties in implementation. The States parties to the Agreement established an assistance fund pursuant to Part VII of the Agreement, administered by FAO, to provide those States parties, especially small island developing States parties, with financial assistance to help them in implementing the Agreement. The fund currently has $417,700 available, on the basis of the contributions of Canada, Iceland, Norway and the United States of America. Canada has pledged to increase its total contributions to the Part VII fund to Can$ 500,000.

48. Other vehicles also exist to assist developing States in the management of fisheries for straddling fish stocks and highly migratory fish stocks, including funds and other programmes established by regional fisheries management organizations, international financial institutions, and FAO, and bilateral programmes. For example, WCPFC has established a special requirements fund for developing State members. The Commission for the Conservation of Antarctic Marine Living Resources has agreed to develop a programme for contracting parties to provide support and technical assistance as well as advice and training to non-contracting parties. The SEAFO Convention has also established mechanisms to provide not only financial assistance to developing countries, but also technical assistance, information exchange to better facilitate conservation and management of stocks, and assistance with scientific research and monitoring, control and surveillance. The Commission for the Conservation of Southern Bluefin Tuna will cover travelling expenses for developing countries that would like to be observers at its meetings. The International Commission for the Conservation of Atlantic Tuna (ICCAT) also has mechanisms to assist developing States that are members and the Madrid Protocol to the ICCAT Convention has entered into force, reducing the costs of membership for developing States.

49. Further assistance is critically needed to build the capacity of developing States, particularly in the areas of (a) stock assessment and scientific research;
(b) data collection and reporting; (c) monitoring, control and surveillance; (d) port State control; (e) compliance with market and trade-related measures and meeting market access requirements, including with respect to health and quality standards; (f) development of fisheries for straddling fish stocks and highly migratory fish stocks; (g) human resource development; and (h) information sharing.

50. Developing States also require assistance in facilitating their participation in regional fisheries management organizations, including through facilitating access to fisheries for straddling fish stocks and highly migratory fish stocks, in accordance with article 25, paragraph 1(b), of the Agreement, as well as ensuring that such access benefits the States concerned and their nationals.

51. The number of States parties to the Agreement has been growing steadily and 14 States have indicated their intention to become parties to the Agreement in the near future.

52. Several non-parties to the Agreement identify impediments to the possibility of their becoming parties to the Agreement. Those impediments include lack of capacity and resources to implement the Agreement as well as concerns over the possible interpretation and implementation of several provisions of the Agreement, specifically articles 4, 7, 21, 22 and 23.

53. Many non-parties, along with States parties to the Agreement, cooperate as members of regional fisheries management organizations and implement conservation and management measures at the national level, contributing to the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

54. However, while there has been an increase in the number of parties to the Agreement, more efforts are needed to increase adherence in order to reach the goal of universal participation.

B. Proposed means of strengthening

55. As a result of the review and assessment, the Review Conference agreed to recommend that States:

(a) Urgently contribute, where they have not yet done so, to the Part VII fund or to other mechanisms to assist developing States in the conservation and management of straddling fish stocks and highly migratory fish stocks. Such assistance should be targeted to such areas as (i) stock assessment and scientific research; (ii) data collection and reporting; (iii) monitoring, control, and surveillance; (iv) port State control; (v) compliance with market and trade-related measures and meeting market access requirements, including with respect to health and quality standards; (vi) development of fisheries for straddling fish stocks and highly migratory fish stocks; (vii) human resource development; and (viii) the sharing of information, including vessel information;

(b) Enhance the participation of developing States in regional fisheries management organizations, including through facilitating access to fisheries for straddling fish stocks and highly migratory fish stocks, in accordance with article 25, paragraph 1(b), of the Agreement, taking into account the need to ensure that such access benefits the States concerned and their nationals;
(c) Cooperate with and assist developing States in designing and strengthening their domestic regulatory fisheries policies and those of regional fisheries management organizations in their regions;

(d) Promote coherence in the provision of such assistance and cooperation, both by individual Governments and through international mechanisms;

(e) Urge all States with an interest in fisheries for straddling fish stocks and highly migratory fish stocks that have not yet done so to become parties to the Agreement as soon as possible and disseminate information about the Agreement, including its objective and the rights and duties it provides;

(f) Exchange ideas on ways to promote further ratification and accession to the Agreement through a continuing dialogue to address concerns raised by some non-parties regarding, in particular, articles 4, 7, 21, 22, and 23 of the Agreement.

56. The Review Conference agreed to recommend that FAO and the Division for Ocean Affairs and the Law of the Sea should (a) further publicize the availability of assistance through the Part VII fund; and (b) solicit views from developing States parties regarding the application and award procedures of the Part VII fund, and consider changes where necessary to improve the process.

57. The Review Conference agreed to recommend that States collectively through regional fisheries management organizations establish a link to the Part VII fund homepage on their organization’s website.

V. Dissemination of the final report and further reviews

58. The Review Conference agreed to request the President of the Review Conference to transmit the final report of the Conference to the secretariats of all regional fisheries management organizations, including, where possible, those under negotiation, and to the General Assembly, the International Maritime Organization, FAO and other relevant organizations, and to highlight relevant recommendations and requests for action contained in the report.

59. The Review Conference further agreed:

(a) That the Review Conference has provided a useful opportunity to assess the effectiveness of the Agreement and its implementation. Further review is also necessary;

(b) To continue the informal consultations of States parties and keep the Agreement under review through the resumption of the Review Conference at a date not later than 2011, to be agreed at a future round of informal consultations, and to request the Secretary-General to convene such meetings.
Table recapitulating the status of the Convention and of the related Agreements, as at 10 August 2006

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1. This consolidated table, which provides unofficial, quick reference information related to the participation in UNCLOS and the two implementing Agreements, was prepared by the Division for Ocean Affairs and the Law of the Sea, Office of the Legal Affairs. For official information on the status of these treaties, please refer to the publication entitled “Multilateral Treaties Deposited with the Secretary-General” (http://untreaty.un.org/).”
2. States bound by the Agreement by having ratified, acceded or succeeded to the Convention under article 4, paragraph 1, of the Agreement.
3. States bound by the Agreement under the simplified procedure set out in article 5 of the Agreement.
4. In accordance with its article 40, the Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.
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* For further details, see Chapter XXI of the publication entitled "Multilateral Treaties deposited with the Secretary-General" (http://untreaty.un.org/ENGLISH/bible/englishinternetbible/part1/chapterXXI/chapterXXI.asp)
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Chapter 17

PROTECTION OF THE OCEANS, ALL KINDS OF SEAS, INCLUDING ENCLODED AND SEMI-ENCLOSED SEAS, AND COASTAL AREAS AND THE PROTECTION, RATIONAL USE AND DEVELOPMENT OF THEIR LIVING RESOURCES

INTRODUCTION

17.1. The marine environment - including the oceans and all seas and adjacent coastal areas - forms an integrated whole that is an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development. International law, as reflected in the provisions of the United Nations Convention on the Law of the Sea 1/ 2/ referred to in this chapter of Agenda 21, sets forth rights and obligations of States and provides the international basis upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources. This requires new approaches to marine and coastal area management and development at the national, subregional, regional and global levels, approaches that are integrated in content and are precautionary and anticipatory in ambit, as reflected in the following programme areas: 3/

(a) Integrated management and sustainable development of coastal areas, including exclusive economic zones;

(b) Marine environmental protection;

(c) Sustainable use and conservation of marine living resources of the high seas;

(d) Sustainable use and conservation of marine living resources under national jurisdiction;

(e) Addressing critical uncertainties for the management of the marine environment and climate change;

(f) Strengthening international, including regional, cooperation and coordination;

(g) Sustainable development of small islands.

17.2. The implementation by developing countries of the activities set forth below shall be commensurate with their individual technological and financial capacities and priorities in allocating resources for development needs and ultimately depends on the technology transfer and financial resources required and made available to them.
PROGRAMME AREAS

A. Integrated management and sustainable development of coastal and marine areas, including exclusive economic zones

Basis for action

17.3. The coastal area contains diverse and productive habitats important for human settlements, development and local subsistence. More than half the world's population lives within 60 km of the shoreline, and this could rise to three quarters by the year 2020. Many of the world's poor are crowded in coastal areas. Coastal resources are vital for many local communities and indigenous people. The exclusive economic zone (EEZ) is also an important marine area where the States manage the development and conservation of natural resources for the benefit of their people. For small island States or countries, these are the areas most available for development activities.

17.4. Despite national, subregional, regional and global efforts, current approaches to the management of marine and coastal resources have not always proved capable of achieving sustainable development, and coastal resources and the coastal environment are being rapidly degraded and eroded in many parts of the world.

Objectives

17.5. Coastal States commit themselves to integrated management and sustainable development of coastal areas and the marine environment under their national jurisdiction. To this end, it is necessary to, inter alia:

(a) Provide for an integrated policy and decision-making process, including all involved sectors, to promote compatibility and a balance of uses;

(b) Identify existing and projected uses of coastal areas and their interactions;

(c) Concentrate on well-defined issues concerning coastal management;

(d) Apply preventive and precautionary approaches in project planning and implementation, including prior assessment and systematic observation of the impacts of major projects;

(e) Promote the development and application of methods, such as national resource and environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction;

(f) Provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision-making at appropriate levels.
Activities

(a) Management-related activities

17.6. Each coastal State should consider establishing, or where necessary strengthening, appropriate coordinating mechanisms (such as a high-level policy planning body) for integrated management and sustainable development of coastal and marine areas and their resources, at both the local and national levels. Such mechanisms should include consultation, as appropriate, with the academic and private sectors, non-governmental organizations, local communities, resource user groups, and indigenous people. Such national coordinating mechanisms could provide, *inter alia*, for:

(a) Preparation and implementation of land and water use and siting policies;

(b) Implementation of integrated coastal and marine management and sustainable development plans and programmes at appropriate levels;

(c) Preparation of coastal profiles identifying critical areas, including eroded zones, physical processes, development patterns, user conflicts and specific priorities for management;

(d) Prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making;

(e) Contingency plans for human induced and natural disasters, including likely effects of potential climate change and sea-level rise, as well as contingency plans for degradation and pollution of anthropogenic origin, including spills of oil and other materials;

(f) Improvement of coastal human settlements, especially in housing, drinking water and treatment and disposal of sewage, solid wastes and industrial effluents;

(g) Periodic assessment of the impacts of external factors and phenomena to ensure that the objectives of integrated management and sustainable development of coastal areas and the marine environment are met;

(h) Conservation and restoration of altered critical habitats;

(i) Integration of sectoral programmes on sustainable development for settlements, agriculture, tourism, fishing, ports and industries affecting the coastal area;

(j) Infrastructure adaptation and alternative employment;

(k) Human resource development and training;
(1) Public education, awareness and information programmes;

(m) Promoting environmentally sound technology and sustainable practices;

(n) Development and simultaneous implementation of environmental quality criteria.

17.7. Coastal States, with the support of international organisations, upon request, should undertake measures to maintain biological diversity and productivity of marine species and habitats under national jurisdiction. Inter alia, these measures might include: surveys of marine biodiversity, inventories of endangered species and critical coastal and marine habitats; establishment and management of protected areas; and support of scientific research and dissemination of its results.

(b) Data and information

17.8. Coastal States, where necessary, should improve their capacity to collect, analyse, assess and use information for sustainable use of resources, including environmental impacts of activities affecting the coastal and marine areas. Information for management purposes should receive priority support in view of the intensity and magnitude of the changes occurring in the coastal and marine areas. To this end, it is necessary to, inter alia:

   (a) Develop and maintain databases for assessment and management of coastal areas and all seas and their resources;

   (b) Develop socio-economic and environmental indicators;

   (c) Conduct regular environmental assessment of the state of the environment of coastal and marine areas;

   (d) Prepare and maintain profiles of coastal area resources, activities, uses, habitats and protected areas based on the criteria of sustainable development;

   (e) Exchange information and data.

17.9. Cooperation with developing countries, and, where applicable, subregional and regional mechanisms, should be strengthened to improve their capacities to achieve the above.

(c) International and regional cooperation and coordination

17.10. The role of international cooperation and coordination on a bilateral basis and, where applicable, within a subregional, interregional, regional or global framework, is to support and supplement national efforts of coastal States to promote integrated management and sustainable development of coastal and marine areas.
17.11. States should cooperate, as appropriate, in the preparation of national guidelines for integrated coastal zone management and development, drawing on existing experience. A global conference to exchange experience in the field could be held before 1994.

Means of implementation

(a) Financing and cost evaluation

17.12. The Conference secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this programme to be about $6 billion, including about $50 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.

(b) Scientific and technological means

17.13. States should cooperate in the development of necessary coastal systematic observation, research and information management systems. They should provide access to and transfer environmentally safe technologies and methodologies for sustainable development of coastal and marine areas to developing countries. They should also develop technologies and endogenous scientific and technological capacities.

17.14. International organizations, whether subregional, regional or global, as appropriate, should support coastal States, upon request, in these efforts, as indicated above, devoting special attention to developing countries.

(c) Human resource development

17.15. Coastal States should promote and facilitate the organization of education and training in integrated coastal and marine management and sustainable development for scientists, technologists, managers (including community-based managers) and users, leaders, indigenous peoples, fisherfolk, women and youth, among others. Management and development, as well as environmental protection concerns and local planning issues, should be incorporated in educational curricula and public awareness campaigns, with due regard to traditional ecological knowledge and socio-cultural values.

17.16. International organizations, whether subregional, regional or global, as appropriate, should support coastal States, upon request, in the areas indicated above, devoting special attention to developing countries.
(d) **Capacity-building**

17.17. Full cooperation should be extended, upon request, to coastal States in their capacity-building efforts and, where appropriate, capacity-building should be included in bilateral and multilateral development cooperation. Coastal States may consider, **inter alia:**

(a) Ensuring capacity-building at the local level;

(b) Consulting on coastal and marine issues with local administrations, the business community, the academic sector, resource user groups and the general public;

(c) Coordinating sectoral programmes while building capacity;

(d) Identifying existing and potential capabilities, facilities and needs for human resource development and scientific and technological infrastructure;

(e) Developing scientific and technological means and research;

(f) Promoting and facilitating human resource development and education;

(g) Supporting "centres of excellence" in integrated coastal and marine resource management;

(h) Supporting pilot demonstration programmes and projects in integrated coastal and marine management.

**B. Marine environmental protection**

**Basis for action**

17.18. Degradation of the marine environment can result from a wide range of sources. Land-based sources contribute 70 per cent of marine pollution, while maritime transport and dumping-at-sea activities contribute 10 per cent each. The contaminants that pose the greatest threat to the marine environment are, in variable order of importance and depending on differing national or regional situations, sewage, nutrients, synthetic organic compounds, sediments, litter and plastics, metals, radionuclides, oil/hydrocarbons and polycyclic aromatic hydrocarbons (PAHs). Many of the polluting substances originating from land-based sources are of particular concern to the marine environment since they exhibit at the same time toxicity, persistence and bioaccumulation in the food chain. There is currently no global scheme to address marine pollution from land-based sources.
17.19. Degradation of the marine environment can also result from a wide range of activities on land. Human settlements, land use, construction of coastal infrastructure, agriculture, forestry, urban development, tourism and industry can affect the marine environment. Coastal erosion and siltation are of particular concern.

17.20. Marine pollution is also caused by shipping and sea-based activities. Approximately 600,000 tons of oil enter the oceans each year as a result of normal shipping operations, accidents and illegal discharges. With respect to offshore oil and gas activities, currently machinery space discharges are regulated internationally and six regional conventions to control platform discharges have been under consideration. The nature and extent of environmental impacts from offshore oil exploration and production activities generally account for a very small proportion of marine pollution.

17.21. A precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires, inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimisation, construction and/or improvement of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water. Any management framework must include the improvement of coastal human settlements and the integrated management and development of coastal areas.

Objectives

17.22. States, in accordance with the provisions of the United Nations Convention on the Law of the Sea on protection and preservation of the marine environment, commit themselves, in accordance with their policies, priorities and resources, to prevent, reduce and control degradation of the marine environment so as to maintain and improve its life-support and productive capacities. To this end, it is necessary to:

(a) Apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the marine environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;

(b) Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment;

(c) Integrate protection of the marine environment into relevant general environmental, social and economic development policies;

(d) Develop economic incentives, where appropriate, to apply clean technologies and other means consistent with the internalization of environmental costs, such as the polluter pays principle, so as to avoid degradation of the marine environment;
(e) Improve the living standards of coastal populations, particularly in developing countries, so as to contribute to reducing the degradation of the coastal and marine environment.

17.23. States agree that provision of additional financial resources, through appropriate international mechanisms, as well as access to cleaner technologies and relevant research, would be necessary to support action by developing countries to implement this commitment.

Activities

(a) Management-related activities

Prevention, reduction and control of degradation of the marine environment from land-based activities

17.24. In carrying out their commitment to deal with degradation of the marine environment from land-based activities, States should take action at the national level and, where appropriate, at the regional and subregional levels, in concert with action to implement programme area A, and should take account of the Montreal Guidelines for the Protection of the Marine Environment from Land-Based Sources.

17.25. To this end, States, with the support of the relevant international environmental, scientific, technical and financial organizations, should cooperate, inter alia, to:

(a) Consider updating, strengthening and extending the Montreal Guidelines, as appropriate;

(b) Assess the effectiveness of existing regional agreements and action plans, where appropriate, with a view to identifying means of strengthening action, where necessary, to prevent, reduce and control marine degradation caused by land-based activities;

(c) Initiate and promote the development of new regional agreements, where appropriate;

(d) Develop means of providing guidance on technologies to deal with the major types of pollution of the marine environment from land-based sources, according to the best scientific evidence;

(e) Develop policy guidance for relevant global funding mechanisms;

(f) Identify additional steps requiring international cooperation.

17.26. The UNEP Governing Council is invited to convene, as soon as practicable, an intergovernmental meeting on protection of the marine environment from land-based activities.
17.27. As concerns sewage, priority actions to be considered by States may include:

(a) Incorporating sewage concerns when formulating or reviewing coastal development plans, including human settlement plans;

(b) Building and maintaining sewage treatment facilities in accordance with national policies and capacities and international cooperation available;

(c) Locating coastal outfalls so as to maintain an acceptable level of environmental quality and to avoid exposing shell fisheries, water intakes and bathing areas to pathogens;

(d) Promoting environmentally sound co-treatments of domestic and compatible industrial effluents, with the introduction, where practicable, of controls on the entry of effluents that are not compatible with the system;

(e) Promoting primary treatment of municipal sewage discharged to rivers, estuaries and the sea, or other solutions appropriate to specific sites;

(f) Establishing and improving local, national, subregional and regional, as necessary, regulatory and monitoring programmes to control effluent discharge, using minimum sewage effluent guidelines and water quality criteria and giving due consideration to the characteristics of receiving bodies and the volume and type of pollutants.

17.28. As concerns other sources of pollution, priority actions to be considered by States may include:

(a) Establishing or improving, as necessary, regulatory and monitoring programmes to control effluent discharges and emissions, including the development and application of control and recycling technologies;

(b) Promoting risk and environmental impact assessments to help ensure an acceptable level of environmental quality;

(c) Promoting assessment and cooperation at the regional level, where appropriate, with respect to the input of point source pollutants from new installations;

(d) Eliminating the emission or discharge of organohalogen compounds that threaten to accumulate to dangerous levels in the marine environment;

(e) Reducing the emission or discharge of other synthetic organic compounds that threaten to accumulate to dangerous levels in the marine environment;

(f) Promoting controls over anthropogenic inputs of nitrogen and phosphorus that enter coastal waters where such problems as eutrophication threaten the marine environment or its resources;
(g) Cooperating with developing countries, through financial and technological support, to maximize the best practicable control and reduction of substances and wastes that are toxic, persistent or liable to bio-accumulate and to establish environmentally sound land-based waste disposal alternatives to sea dumping;

(h) Cooperating in the development and implementation of environmentally sound land-use techniques and practices to reduce run-off to water-courses and estuaries which would cause pollution or degradation of the marine environment;

(i) Promoting the use of environmentally less harmful pesticides and fertilizers and alternative methods for pest control, and considering the prohibition of those found to be environmentally unsound;

(j) Adopting new initiatives at national, subregional and regional levels for controlling the input of non-point source pollutants, which require broad changes in sewage and waste management, agricultural practices, mining, construction and transportation.

17.29. As concerns physical destruction of coastal and marine areas causing degradation of the marine environment, priority actions should include control and prevention of coastal erosion and siltation due to anthropogenic factors related to, inter alia, land-use and construction techniques and practices. Watershed management practices should be promoted so as to prevent, control and reduce degradation of the marine environment.

Prevention, reduction and control of degradation of the marine environment from sea-based activities

17.30. States, acting individually, bilaterally, regionally or multilaterally and within the framework of IMO and other relevant international organizations, whether subregional, regional or global, as appropriate, should assess the need for additional measures to address degradation of the marine environment:

(a) From shipping, by:

(i) Supporting wider ratification and implementation of relevant shipping conventions and protocols;

(ii) Facilitating the processes in (i), providing support to individual States upon request to help them overcome the obstacles identified by them;

(iii) Cooperating in monitoring marine pollution from ships, especially from illegal discharges (e.g., aerial surveillance), and enforcing MARPOL discharge provisions more rigorously;
(iv) Assessing the state of pollution caused by ships in particularly sensitive areas identified by IMO and taking action to implement applicable measures, where necessary, within such areas to ensure compliance with generally accepted international regulations;

(v) Taking action to ensure respect of areas designated by coastal States, within their exclusive economic zones, consistent with international law, in order to protect and preserve rare or fragile ecosystems, such as coral reefs and mangroves;

(vi) Considering the adoption of appropriate rules on ballast water discharge to prevent the spread of non-indigenous organisms;

(vii) Promoting navigational safety by adequate charting of coasts and ship-routing, as appropriate;

(viii) Assessing the need for stricter international regulations to further reduce the risk of accidents and pollution from cargo ships (including bulk carriers);

(ix) Encouraging IMO and IAEA to work together to complete consideration of a code on the carriage of irradiated nuclear fuel in flasks on board ships;

(x) Revising and updating the IMO Code of Safety for Nuclear Merchant Ships and considering how best to implement a revised code;

(xi) Supporting the ongoing activity within IMO regarding development of appropriate measures for reducing air pollution from ships;

(xii) Supporting the ongoing activity within IMO regarding the development of an international regime governing the transportation of hazardous and noxious substances carried by ships and further considering whether the compensation funds similar to the ones established under the Fund Convention would be appropriate in respect of pollution damage caused by substances other than oil;

(b) From dumping, by:

(i) Supporting wider ratification, implementation and participation in relevant Conventions on dumping at sea, including early conclusion of a future strategy for the London Dumping Convention;

(ii) Encouraging the London Dumping Convention parties to take appropriate steps to stop ocean dumping and incineration of hazardous substances;

(c) From offshore oil and gas platforms, by assessing existing regulatory measures to address discharges, emissions and safety and assessing the need for additional measures;
(d) From ports, by facilitating establishment of port reception facilities for the collection of oily and chemical residues and garbage from ships, especially in MARPOL special areas, and promoting the establishment of smaller scale facilities in marinas and fishing harbours.

17.31. IMO and as appropriate, other competent United Nations organizations, when requested by the States concerned, should assess, where appropriate, the state of marine pollution in areas of congested shipping, such as heavily used international straits, with a view to ensuring compliance with generally accepted international regulations, particularly those related to illegal discharges from ships, in accordance with the provisions of Part III of the United Nations Convention on the Law of the Sea.

17.32. States should take measures to reduce water pollution caused by organotin compounds used in anti-fouling paints.

17.33. States should consider ratifying the Convention on Oil Pollution Preparedness, Response and Cooperation, which addresses, inter alia, the development of contingency plans on the national and international level, as appropriate, including provision of oil-spill response material and training of personnel, including its possible extension to chemical spill response.

17.34. States should intensify international cooperation to strengthen or establish, where necessary, regional oil/chemical-spill response centres and/or, as appropriate, mechanisms in cooperation with relevant subregional, regional or global intergovernmental organizations and, where appropriate, industry-based organizations.

(b) Data and information

17.35. States should, as appropriate, and in accordance with the means at their disposal and with due regard for their technical and scientific capacity and resources, make systematic observations on the state of the marine environment. To this end, States should, as appropriate, consider:

(a) Establishing systematic observation systems to measure marine environmental quality, including causes and effects of marine degradation, as a basis for management;

(b) Regularly exchanging information on marine degradation caused by land-based and sea-based activities and on actions to prevent, control and reduce such degradation;

(c) Supporting and expanding international programmes for systematic observations such as the mussel watch programme, building on existing facilities with special attention to developing countries;

(d) Establishing a clearing-house on marine pollution control information, including processes and technologies to address marine pollution control and to support their transfer to developing countries and other countries with demonstrated needs;
(e) Establishing a global profile and database providing information on the sources, types, amounts and effects of pollutants reaching the marine environment from land-based activities in coastal areas and sea-based sources;

(f) Allocating adequate funding for capacity-building and training programmes to ensure the full participation of developing countries, in particular, in any international scheme under the organs and organizations of the United Nations system for the collection, analysis and use of data and information.

Means of implementation

(a) Financing and cost evaluation

17.36. The Conference secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this programme to be about $200 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.

(b) Scientific and technological means

17.37. National, subregional and regional action programmes will, where appropriate, require technology transfer, in conformity with chapter 34, and financial resources, particularly where developing countries are concerned, including:

(a) Assistance to industries in identifying and adopting clean production or cost-effective pollution control technologies;

(b) Planning development and application of low-cost and low-maintenance sewage installation and treatment technologies for developing countries;

(c) Equipment of laboratories to observe systematically human and other impacts on the marine environment;

(d) Identification of appropriate oil- and chemical-spill control materials, including low-cost locally available materials and techniques, suitable for pollution emergencies in developing countries;

(e) Study of the use of persistent organohalogens that are liable to accumulate in the marine environment to identify those that cannot be adequately controlled and to provide a basis for a decision on a time schedule for phasing them out as soon as practicable;

(f) Establishment of a clearing-house for information on marine pollution control, including processes and technologies to address marine pollution control, and support for their transfer to developing and other countries with demonstrated needs.
(c) Human resource development

17.38. States individually or in cooperation with each other and with the support of international organizations, whether subregional, regional or global, as appropriate, should:

(a) Provide training for critical personnel required for the adequate protection of the marine environment as identified by training needs' surveys at the national, regional or subregional levels;

(b) Promote the introduction of marine environmental protection topics into the curriculum of marine studies programmes;

(c) Establish training courses for oil- and chemical-spill response personnel, in cooperation, where appropriate, with the oil and chemical industries;

(d) Conduct workshops on environmental aspects of port operations and development;

(e) Strengthen and provide secure financing for new and existing specialized international centres of professional maritime education;

(f) States should, through bilateral and multilateral cooperation, support and supplement the national efforts of developing countries as regards human resource development in relation to prevention and reduction of degradation of the marine environment.

(d) Capacity-building

17.39. National planning and coordinating bodies should be given the capacity and authority to review all land-based activities and sources of pollution for their impacts on the marine environment and to propose appropriate control measures.

17.40. Research facilities should be strengthened or, where appropriate, developed in developing countries for systematic observation of marine pollution, environmental impact assessment and development of control recommendations and should be managed and staffed by local experts.

17.41. Special arrangements will be needed to provide adequate financial and technical resources to assist developing countries in preventing and solving problems associated with activities that threaten the marine environment.

17.42. An international funding mechanism should be created for the application of appropriate sewage treatment technologies and building sewage treatment facilities, including grants or concessional loans from international agencies and appropriate regional funds, replenished at least in part on a revolving basis by user fees.
17.43. In carrying out these programme activities, particular attention needs
to be given to the problems of developing countries that would bear an unequal
burden because of their lack of facilities, expertise or technical capacities.

C. Sustainable use and conservation of marine living
resources of the high seas

Basis for action

17.44. Over the last decade, fisheries on the high seas have considerably expanded and currently represent approximately 5 per cent of total world landings. The provisions of the United Nations Convention on the Law of the Sea on the marine living resources of the high seas sets forth rights and obligations of States with respect to conservation and utilization of those resources.

17.45. However, management of high seas fisheries, including the adoption, monitoring and enforcement of effective conservation measures, is inadequate in many areas and some resources are overutilized. There are problems of unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States. Action by States whose nationals and vessels fish on the high seas, as well as cooperation at the bilateral, subregional, regional and global levels, is essential particularly for highly migratory species and straddling stocks. Such action and cooperation should address inadequacies in fishing practices, as well as in biological knowledge, fisheries statistics and improvement of systems for handling data. Emphasis should also be on multi-species management and other approaches that take into account the relationships among species, especially in addressing depleted or unutilized populations.

Objectives

17.46. States commit themselves to the conservation and sustainable use of marine living resources on the high seas. To this end, it is necessary to:

(a) Develop and increase the potential of marine living resources to meet human nutritional needs, as well as social, economic and development goals;

(b) Maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors, taking into consideration relationships among species;

(c) Promote the development and use of selective fishing gear and practices that minimize waste in the catch of target species and minimize by-catch of non-target species;
(d) Ensure effective monitoring and enforcement with respect to fishing activities;

(e) Protect and restore endangered marine species;

(f) Preserve habitats and other ecologically sensitive areas;

(g) Promote scientific research with respect to the marine living resources in the high seas.

17.47. Nothing in paragraph 17.46 above restricts the right of a State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals on the high seas more strictly than provided for in that paragraph. States shall cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work through the appropriate international organizations for their conservation, management and study.

17.48. The ability of developing countries to fulfil the above objectives is dependent upon their capabilities, including the financial, scientific and technological means at their disposal. Adequate financial, scientific and technological cooperation should be provided to support action by them to implement these objectives.

Activities

(a) Management-related activities

17.49. States should take effective action, including bilateral and multilateral cooperation, where appropriate at the subregional, regional and global levels, to ensure that high seas fisheries are managed in accordance with the provisions of the United Nations Convention on the Law of the Sea. In particular, they should:

(a) Give full effect to these provisions with regard to fisheries populations whose ranges lie both within and beyond exclusive economic zones (straddling stocks);

(b) Give full effect to these provisions with regard to highly migratory species;

(c) Negotiate, where appropriate, international agreements for the effective management and conservation of fishery stocks;

(d) Define and identify appropriate management units.

17.50. States should convene, as soon as possible, an intergovernmental conference under United Nations auspices, taking into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations
Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The conference, drawing, inter alia, on scientific and technical studies by FAO, should identify and assess existing problems related to the conservation and management of such fish stocks, and consider means of improving cooperation on fisheries among States, and formulate appropriate recommendations. The work and the results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas.

17.51. States should ensure that fishing activities by vessels flying their flags on the high seas take place in such a manner as to minimize incidental catch.

17.52. States should take effective action consistent with international law to monitor and control fishing activities by vessels flying their flags on the high seas to ensure compliance with applicable conservation and management rules, including full, detailed, accurate and timely reporting of catches and effort.

17.53. States should take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas.

17.54. States should prohibit dynamiting, poisoning and other comparable destructive fishing practices.

17.55. States should fully implement General Assembly resolution 46/215 on large-scale pelagic drift-net fishing.

17.56. States should take measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation.

(b) Data and information

17.57. States, with the support of international organizations, whether subregional, regional or global, as appropriate, should cooperate to:

(a) Promote enhanced collection of data necessary for the conservation and sustainable use of the marine living resources of the high seas;

(b) Exchange on a regular basis up-to-date data and information adequate for fisheries assessment;

(c) Develop and share analytical and predictive tools, such as stock assessment and bioeconomic models;

(d) Establish or expand appropriate monitoring and assessment programmes.
(c) **International and regional cooperation and coordination**

17.58. States, through bilateral and multilateral cooperation and within the framework of subregional and regional fisheries bodies, as appropriate, and with the support of other international intergovernmental agencies, should assess high seas resource potentials and develop profiles of all stocks (target and non-target).

17.59. States should, where and as appropriate, ensure adequate levels of coordination and cooperation in enclosed and semi-enclosed seas and between subregional, regional and global intergovernmental fisheries bodies.

17.60. Effective cooperation within existing subregional, regional or global fisheries bodies should be encouraged. Where such organizations do not exist, States should, as appropriate, cooperate to establish such organizations.

17.61. States with an interest in a high seas fishery regulated by an existing subregional and/or regional high seas fisheries organization of which they are not members should be encouraged to join that organization, where appropriate.

17.62. States recognize:

(a) The responsibility of the International Whaling Commission for the conservation and management of whale stocks and the regulation of whaling pursuant to the 1946 International Convention for the Regulation of Whaling;

(b) The work of the International Whaling Commission Scientific Committee in carrying out studies of large whales in particular, as well as of other cetaceans;

(c) The work of other organizations, such as the Inter-American Tropical Tuna Commission and the Agreement on Small Cetaceans in the Baltic and North Sea under the Bonn Convention, in the conservation, management and study of cetaceans and other marine mammals.

17.63. States should cooperate for the conservation, management and study of cetaceans.

**Means of implementation**

(a) **Financing and cost evaluation**

17.64. The Conference secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this programme to be about $12 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.
(b) Scientific and technological means

17.65. States, with the support of relevant international organizations, where necessary, should develop collaborative technical and research programmes to improve understanding of the life cycles and migrations of species found on the high seas, including identifying critical areas and life stages.

17.66. States, with the support of relevant international organizations, whether subregional, regional or global, as appropriate, should:

(a) Develop databases on the high seas marine living resources and fisheries;

(b) Collect and correlate marine environmental data with high seas marine living resources data, including the impacts of regional and global changes brought about by natural causes and by human activities;

(c) Cooperate in coordinating research programmes to provide the knowledge necessary to manage high seas resources.

(c) Human resource development

17.67. Human resource development at the national level should be targeted at both development and management of high seas resources, including training in high seas fishing techniques and in high seas resource assessment, strengthening cadres of personnel to deal with high seas resource management and conservation and related environmental issues, and training observers and inspectors to be placed on fishing vessels.

(d) Capacity-building

17.68. States, with the support, where appropriate, of relevant international organizations, whether subregional, regional or global, should cooperate to develop or upgrade systems and institutional structures for monitoring, control and surveillance, as well as the research capacity for assessment of marine living resource populations.

17.69. Special support, including cooperation among States, will be needed to enhance the capacities of developing countries in the areas of data and information, scientific and technological means, and human resource development in order to participate effectively in the conservation and sustainable utilization of high seas marine living resources.
D. Sustainable use and conservation of marine living resources under national jurisdiction

Basis for action

17.70. Marine fisheries yield 80 to 90 million tons of fish and shellfish per year, 95 per cent of which is taken from waters under national jurisdiction. Yields have increased nearly fivefold over the past four decades. The provisions of the United Nations Convention on the Law of the Sea on marine living resources of the exclusive economic zone and other areas under national jurisdiction set forth rights and obligations of States with respect to conservation and utilization of those resources.

17.71. Marine living resources provide an important source of protein in many countries and their use is often of major importance to local communities and indigenous people. Such resources provide food and livelihoods to millions of people and, if sustainably utilized, offer increased potential to meet nutritional and social needs, particularly in developing countries. To realize this potential requires improved knowledge and identification of marine living resource stocks, particularly of underutilized and unutilized stocks and species, use of new technologies, better handling and processing facilities to avoid wastage, and improved quality and training of skilled personnel to manage and conserve effectively the marine living resources of the exclusive economic zone and other areas under national jurisdiction. Emphasis should also be on multi-species management and other approaches that take into account the relationships among species.

17.72. Fisheries in many areas under national jurisdiction face mounting problems, including local overfishing, unauthorized incursions by foreign fleets, ecosystem degradation, overcapitalization and excessive fleet sizes, underevaluation of catch, insufficiently selective gear, unreliable databases, and increasing competition between artisanal and large-scale fishing, and between fishing and other types of activities.

17.73. Problems extend beyond fisheries. Coral reefs and other marine and coastal habitats, such as mangroves and estuaries, are among the most highly diverse, integrated and productive of the Earth's ecosystems. They often serve important ecological functions, provide coastal protection, and are critical resources for food, energy, tourism and economic development. In many parts of the world, such marine and coastal systems are under stress or are threatened from a variety of sources, both human and natural.

Objectives

17.74. Coastal States, particularly developing countries and States whose economies are overwhelmingly dependent on the exploitation of the marine living resources of their exclusive economic zones, should obtain the full social and economic benefits from sustainable utilization of marine living resources within their exclusive economic zones and other areas under national jurisdiction.
17.75. States commit themselves to the conservation and sustainable use of marine living resources under national jurisdiction. To this end, it is necessary to:

(a) Develop and increase the potential of marine living resources to meet human nutritional needs, as well as social, economic and development goals;

(b) Take into account traditional knowledge and interests of local communities, small-scale artisanal fisheries and indigenous people in development and management programmes;

(c) Maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors, taking into consideration relationships among species;

(d) Promote the development and use of selective fishing gear and practices that minimize waste in the catch of target species and minimize by-catch of non-target species;

(e) Protect and restore endangered marine species;

(f) Preserve rare or fragile ecosystems, as well as habitats and other ecologically sensitive areas.

17.76. Nothing in paragraph 17.75 above 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 that paragraph. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

17.77. The ability of developing countries to fulfil the above objectives is dependent upon their capabilities, including the financial, scientific and technological means at their disposal. Adequate financial, scientific and technological cooperation should be provided to support action by them to implement these objectives.

Activities

(a) **Management-related activities**

17.78. States should ensure that marine living resources of the exclusive economic zone and other areas under national jurisdiction are conserved and managed in accordance with the provisions of the United Nations Convention on the Law of the Sea.

17.79. States, in implementing the provisions of the United Nations Convention on the Law of the Sea, should address the issues of straddling
stocks and highly migratory species, and, taking fully into account the objective set out in paragraph 17.74, access to the surplus of allowable catches.

17.80. Coastal States, individually or through bilateral and/or multilateral cooperation and with the support, as appropriate of international organizations, whether subregional, regional or global, should inter alia:

(a) Assess the potential of marine living resources, including underutilized or unutilized stocks and species, by developing inventories, where necessary, for their conservation and sustainable use;

(b) Implement strategies for the sustainable use of marine living resources, taking into account the special needs and interests of small-scale artisanal fisheries, local communities and indigenous people to meet human nutritional and other development needs;

(c) Implement, in particular in developing countries, mechanisms to develop mariculture, aquaculture and small-scale, deep-sea and oceanic fisheries within areas under national jurisdiction where assessments show that marine living resources are potentially available;

(d) Strengthen their legal and regulatory frameworks, where appropriate, including management, enforcement and surveillance capabilities, to regulate activities related to the above strategies;

(e) Take measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation;

(f) Develop and promote the use of environmentally sound technology under criteria compatible with the sustainable use of marine living resources, including assessment of the environmental impact of major new fishery practices;

(g) Enhance the productivity and utilization of their marine living resources for food and income.

17.81. Coastal States should explore the scope for expanding recreational and tourist activities based on marine living resources, including those for providing alternative sources of income. Such activities should be compatible with conservation and sustainable development policies and plans.

17.82. Coastal States should support the sustainability of small-scale artisanal fisheries. To this end, they should, as appropriate:

(a) Integrate small-scale artisanal fisheries development in marine and coastal planning, taking into account the interests and, where appropriate, encouraging representation of fishermen, small-scale fisherworkers, women, local communities and indigenous people;
(c) Develop and share analytical and predictive tools, such as stock assessment and bioeconomic models;

(d) Establish or expand appropriate monitoring and assessment programmes;

(e) Complete or update marine biodiversity, marine living resource and critical habitat profiles of exclusive economic zones and other areas under national jurisdiction, taking account of changes in the environment brought about by natural causes and human activities.

(c) International and regional cooperation and coordination

17.88. States, through bilateral and multilateral cooperation, and with the support of relevant United Nations and other international organizations, should cooperate to:

(a) Develop financial and technical cooperation to enhance the capacities of developing countries in small-scale and oceanic fisheries, as well as in coastal aquaculture and mariculture;

(b) Promote the contribution of marine living resources to eliminate malnutrition and to achieve food self-sufficiency in developing countries, inter alia, by minimizing post-harvest losses and managing stocks for guaranteed sustainable yields;

(c) Develop agreed criteria for the use of selective fishing gear and practices to minimize waste in the catch of target species and minimize by-catch of non-target species;

(d) Promote seafood quality, including through national quality assurance systems for seafood, in order to promote access to markets, improve consumer confidence and maximize economic returns.

17.89. States should, where and as appropriate, ensure adequate coordination and cooperation in enclosed and semi-enclosed seas and between subregional, regional and global intergovernmental fisheries bodies.

17.90. States recognize:

(a) The responsibility of the International Whaling Commission for the conservation and management of whale stocks and the regulation of whaling pursuant to the 1946 International Convention for the Regulation of Whaling;

(b) The work of the International Whaling Commission Scientific Committee in carrying out studies of large whales in particular, as well as of other cetaceans;

(c) The work of other organizations, such as the Inter-American Tropical Tuna Commission and the Agreement on Small Cetaceans in the Baltic and North Sea under the Bonn Convention, in the conservation, management and study of cetaceans and other marine mammals.
17.91. States should cooperate for the conservation, management and study of cetaceans.

Means of implementation

(a) Financing and cost evaluation

17.92. The Conference secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this programme to be about $6 billion, including about $60 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.

(b) Scientific and technological means

17.93. States, with the support of relevant intergovernmental organizations, as appropriate, should:

(a) Provide for the transfer of environmentally sound technologies to develop fisheries, aquaculture and mariculture, particularly to developing countries;

(b) Accord special attention to mechanisms for transferring resource information and improved fishing and aquaculture technologies to fishing communities at the local level;

(c) Promote the study, scientific assessment and use of appropriate traditional management systems;

(d) Consider observing, as appropriate, the FAO/ICES Code of Practice for Consideration of Transfer and Introduction of Marine and Freshwater Organisms;

(e) Promote scientific research on marine areas of particular importance for marine living resources, such as areas of high diversity, endemism and productivity and migratory stopover points.

(c) Human resource development

17.94. States individually, or through bilateral and multilateral cooperation and with the support of relevant international organizations, whether subregional, regional or global, as appropriate, should encourage and provide support for developing countries, inter alia, to:

(a) Expand multidisciplinary education, training and research on marine living resources, particularly in the social and economic sciences;
(b) Create training opportunities at national and regional levels to support artisanal (including subsistence) fisheries, to develop small-scale use of marine living resources and to encourage equitable participation of local communities, small-scale fish workers, women and indigenous people;

(c) Introduce topics relating to the importance of marine living resources in educational curricula at all levels.

(d) Capacity-building

17.95. Coastal States, with the support of relevant subregional, regional and global agencies, where appropriate, should:

(a) Develop research capacities for assessment of marine living resource populations and monitoring;

(b) Provide support to local fishing communities, in particular those that rely on fishing for subsistence, indigenous people and women, including, as appropriate, the technical and financial assistance to organize, maintain, exchange and improve traditional knowledge of marine living resources and fishing techniques, and upgrade knowledge on marine ecosystems;

(c) Establish sustainable aquaculture development strategies, including environmental management in support of rural fish-farming communities;

(d) Develop and strengthen, where the need may arise, institutions capable of implementing the objectives and activities related to the conservation and management of marine living resources.

17.96. Special support, including cooperation among States, will be needed to enhance the capacities of developing countries in the areas of data and information, scientific and technological means and human resource development in order to enable them to participate effectively in the conservation and sustainable use of marine living resources under national jurisdiction.

E. Addressing critical uncertainties for the management of the marine environment and climate change

Basis for action

17.97. The marine environment is vulnerable and sensitive to climate and atmospheric changes. Rational use and development of coastal areas, all seas and marine resources, as well as conservation of the marine environment, requires the ability to determine the present state of these systems and to predict future conditions. The high degree of uncertainty in present information inhibits effective management and limits the ability to make predictions and assess environmental change. Systematic collection of data on marine environmental parameters will be needed to apply integrated management approaches and to predict effects of global climate change and of atmospheric
phenomena, such as ozone depletion, on living marine resources and the marine
environment. In order to determine the role of the oceans and all seas in
driving global systems and to predict natural and human-induced changes in
marine and coastal environments, the mechanisms to collect, synthesize and
disseminate information from research and systematic observation activities
need to be restructured and reinforced considerably.

17.98. There are many uncertainties about climate change and particularly
about sealevel rise. Small increases in sealevel have the potential of
cauing significant damage to small islands and low-lying coasts. Response
strategies should be based on sound data. A long-term cooperative research
commitment is needed to provide the data required for global climate models
and to reduce uncertainty. Meanwhile, precautionary measures should be
undertaken to diminish the risks and effects, particularly on small islands
and on low-lying and coastal areas of the world.

17.99. Increased ultraviolet radiation derived from ozone depletion has been
reported in some areas of the world. An assessment of its effects in the
marine environment is needed to reduce uncertainty and to provide a basis for
action.

Objectives

17.100. States, in accordance with provisions of the United Nations
Convention on the Law of the Sea on marine scientific research, commit
themselves to improving the understanding of the marine environment and its
role on global processes. To this end, it is necessary to:

(a) Promote scientific research on and systematic observation of the
marine environment within the limits of national jurisdiction and high seas,
including interactions with atmospheric phenomena, such as ozone depletion;

(b) Promote exchange of data and information resulting from scientific
research and systematic observation and from traditional ecological knowledge
and ensure its availability to policy makers and the public at the national
level;

(c) Cooperate with a view to the development of standard
inter-calibrated procedures, measuring techniques, data storage and management
capabilities for scientific research on and systematic observation of the
marine environment.

Activities

(a) Management-related activities

17.101. States should consider, inter alia:

(a) Coordinating national and regional observation programmes for
coastal and near-shore phenomena related to climate change and for research
parameters essential for marine and coastal management in all regions;
(b) Providing improved forecasts of marine conditions for the safety of inhabitants of coastal areas and for the efficiency of maritime operations;

(c) Cooperating with a view to adopting special measures to cope with and adapt to potential climate change and sea level rise, including the development of globally accepted methodologies for coastal vulnerability assessment, modelling and response strategies particularly for priority areas, such as small islands and low-lying and critical coastal areas;

(d) Identifying ongoing and planned programmes of systematic observation of the marine environment, with a view to integrating activities and establishing priorities to address critical uncertainties for oceans and all seas;

(e) Initiating a programme of research to determine the marine biological effects of increased levels of ultraviolet rays due to the depletion of the stratospheric ozone layer and to evaluate the possible effects.

17.102. Recognizing the important role that oceans and all seas play in attenuating potential climate change, IOC and other relevant competent United Nations bodies, with the support of countries having the resources and expertise, should carry out analysis, assessments and systematic observation of the role of oceans as a carbon sink.

(b) Data and information

17.103. States should consider, inter alia:

(a) Increasing international cooperation particularly with a view to strengthening national scientific and technological capabilities for analysing, assessing and predicting global climate and environmental change;

(b) Supporting the role of the IOC in cooperation with WMO, UNEP and other international organizations in the collection, analysis and distribution of data and information from the oceans and all seas, including as appropriate, through the proposed Global Ocean Observing System, giving special attention to the need for IOC to develop fully the strategy for providing training and technical assistance for developing countries through its Training, Education and Mutual Assistance (TEMA) programme;

(c) Creating national multisectoral information bases, covering the results of research and systematic observation programmes;

(d) Linking these databases to existing data and information services and mechanisms, such as World Weather Watch and Earthwatch;

(e) Cooperating with a view to the exchange of data and information and its storage and archiving through the world and regional data centres;
Cooperating to ensure full participation of developing countries, in particular, in any international scheme under the organs and organizations of the United Nations system for the collection, analysis and use of data and information.

(c) **International and regional cooperation and coordination**

17.104. States should consider bilaterally and multilaterally and in cooperation with international organizations, whether subregional, regional, interregional or global, where appropriate:

(a) Providing technical cooperation in developing the capacity of coastal and island States for marine research and systematic observation and for using its results;

(b) Strengthening existing national institutions and creating, where necessary, international analysis and prediction mechanisms in order to prepare and exchange regional and global oceanographic analyses and forecasts and to provide facilities for international research and training at national, subregional and regional levels, where applicable.

17.105. In recognition of the value of Antarctica as an area for the conduct of scientific research, in particular research essential to understanding the global environment, States carrying out such research activities in Antarctica should, as provided for in Article III of the Antarctic Treaty, continue to:

(a) Ensure that data and information resulting from such research are freely available to the international community;

(b) Enhance access of the international scientific community and specialized agencies of the United Nations to such data and information, including the encouragement of periodic seminars and symposia.

17.106. States should strengthen high-level inter-agency, subregional, regional and global coordination, as appropriate, and review mechanisms to develop and integrate systematic observation networks. This would include:

(a) Review of existing regional and global databases;

(b) Mechanisms to develop comparable and compatible techniques, validate methodologies and measurements, organize regular scientific reviews, develop options for corrective measures, agree on formats for presentation and storage, and communicate the information gathered to potential users;

(c) Systematic observation of coastal habitats and sealevel changes, inventories of marine pollution sources and reviews of fisheries statistics;

(d) Organization of periodic assessments of ocean and all seas and coastal area status and trends.
17.107. International cooperation, through relevant organizations within the United Nations system, should support countries to develop and integrate regional systematic long-term observation programmes, when applicable, into the Regional Seas Programmes in a coordinated fashion to implement, where appropriate, subregional, regional and global observing systems based on the principle of exchange of data. One aim should be the predicting of the effects of climate-related emergencies on existing coastal physical and socio-economic infrastructure.

17.108. Based on the results of research on the effects of the additional ultraviolet radiation reaching the Earth's surface, in the fields of human health, agriculture and marine environment. States and international organizations should consider taking appropriate remedial measures.

Means of implementation

(a) Financing and cost evaluation

17.109. The Conference secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this programme to be about $750 million, including about $480 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.

17.110. Developed countries should provide the financing for the further development and implementation of the Global Ocean Observing System.

(b) Scientific and technological means

17.111. To address critical uncertainties through systematic coastal and marine observations and research, coastal States should cooperate in the development of procedures that allow for comparable analysis and soundness of data. They should also cooperate on a subregional and regional basis, through existing programmes where applicable, share infrastructure and expensive and sophisticated equipment, develop quality assurance procedures and develop human resources jointly. Special attention should be given to transfer of scientific and technological knowledge and means to support States, particularly developing countries, in the development of endogenous capabilities.

17.112. International organizations should support, when requested, coastal countries in implementing research projects on the effects of additional ultraviolet radiation.
17.113. States, individually or through bilateral and multilateral cooperation and with the support, as appropriate, of international organizations whether subregional, regional or global, should develop and implement comprehensive programmes, particularly in developing countries, for a broad and coherent approach to meeting their core human resource needs in the marine sciences.

(d) Capacity-building

17.114. States should strengthen or establish as necessary, national scientific and technological oceanographic commissions or equivalent bodies to develop, support and coordinate marine science activities and work closely with international organizations.

17.115. States should use existing subregional and regional mechanisms, where applicable, to develop knowledge of the marine environment, exchange information, organize systematic observations and assessments, and make the most effective use of scientists, facilities and equipment. They should also cooperate in the promotion of endogenous research capabilities in developing countries.

F. Strengthening international, including regional, cooperation and coordination

Basis for action

17.116. It is recognized that the role of international cooperation is to support and supplement national efforts. Implementation of strategies and activities under the programme areas relative to marine and coastal areas and seas requires effective institutional arrangements at national, subregional, regional and global levels, as appropriate. There are numerous national and international, including regional, institutions, both within and outside the United Nations system, with competence in marine issues, and there is a need to improve coordination and strengthen links among them. It is also important to ensure that an integrated and multisectoral approach to marine issues is pursued at all levels.

Objectives

17.117. States commit themselves, in accordance with their policies, priorities and resources, to promoting institutional arrangements necessary to support the implementation of the programme areas in this chapter. To this end, it is necessary, as appropriate, to:

(a) Integrate relevant sectoral activities addressing environment and development in marine and coastal areas at national, subregional, regional and global levels, as appropriate;
(b) Promote effective information exchange and, where appropriate, institutional linkages between bilateral and multilateral national, regional, subregional and interregional institutions dealing with environment and development in marine and coastal areas;

(c) Promote within the United Nations system, regular intergovernmental review and consideration of environment and development issues with respect to marine and coastal areas;

(d) Promote the effective operation of coordinating mechanisms for the components of the United Nations system dealing with issues of environment and development in marine and coastal areas, as well as links with relevant international development bodies.

Activities

(a) Management-related activities

Global

17.118. The General Assembly should provide for regular consideration, within the United Nations system, at the intergovernmental level of general marine and coastal issues, including environment and development matters, and should request the Secretary-General and executive heads of United Nations agencies and organizations to:

(a) Strengthen coordination and develop improved arrangements among the relevant United Nations organizations with major marine and coastal responsibilities, including their subregional and regional components;

(b) Strengthen coordination between those organizations and other United Nations organizations, institutions and specialized agencies dealing with development, trade and other related economic issues, as appropriate;

(c) Improve representation of United Nations agencies dealing with the marine environment in United Nations system-wide coordination efforts;

(d) Promote, where necessary, greater collaboration between the United Nations agencies and subregional and regional coastal and marine programmes;

(e) Develop a centralized system to provide for information on legislation and advice on implementation of legal agreements on marine environmental and development issues.

17.119. States recognize that environmental policies should deal with the root causes of environmental degradation, thus preventing environmental measures from resulting in unnecessary restrictions to trade. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the
jurisdiction of the importing country should be avoided. Environmental measures addressing international environmental problems should, as far as possible, be based on an international consensus. Domestic measures targeted to achieve certain environmental objectives may need trade measures to render them effective. Should trade policy measures be found necessary for the enforcement of environmental policies, certain principles and rules should apply. These could include, inter alia, the principle of non-discrimination; the principle that the trade measure chosen should be the least trade-restrictive necessary to achieve the objectives; an obligation to ensure transparency in the use of trade measures related to the environment and to provide adequate notification of national regulations; and the need to give consideration to the special conditions and development requirements of developing countries as they move towards internationally agreed environmental objectives.

Subregional and regional

17.120. States should consider, as appropriate:

(a) Strengthening, and extending where necessary, intergovernmental regional cooperation, the Regional Seas Programmes of UNEP, regional and subregional fisheries organizations and regional commissions;

(b) Introduce, where necessary, coordination among relevant United Nations and other multilateral organizations at the subregional and regional levels, including consideration of co-location of their staff;

(c) Arrange for periodic intraregional consultations;

(d) Facilitate access to and use of expertise and technology through relevant national bodies to subregional and regional centres and networks, such as the Regional Centres for Marine Technology.

(b) Data and information

17.121. States should, where appropriate:

(a) Promote exchange of information on marine and coastal issues;

(b) Strengthen the capacity of international organizations to handle information and support the development of national, subregional and regional data and information systems, where appropriate. This could also include networks linking countries with comparable environmental problems;

(c) Further develop existing international mechanisms such as Earthwatch and GESAMP.
Means of implementation

(a) Financing and cost evaluation

17.122. The Conference secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this programme to be about $50 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.

(b) Scientific and technological means, human resource development and capacity-building

17.123. The means of implementation outlined in the other programme areas on marine and coastal issues, under the sections on Scientific and technological means, human resource development and capacity-building are entirely relevant for this programme area as well. Additionally, States should, through international cooperation, develop a comprehensive programme for meeting the core human resource needs in marine sciences at all levels.

G. Sustainable development of small islands

Basis for action

17.124. Small island developing States, and islands supporting small communities are a special case both for environment and development. They are ecologically fragile and vulnerable. Their small size, limited resources, geographic dispersion and isolation from markets, place them at a disadvantage economically and prevent economies of scale. For small island developing States the ocean and coastal environment is of strategic importance and constitutes a valuable development resource.

17.125. Their geographic isolation has resulted in their habitation of a comparatively large number of unique species of flora and fauna, giving them a very high share of global biodiversity. They also have rich and diverse cultures with special adaptations to island environments and knowledge of the sound management of island resources.

17.126. Small island developing States have all the environmental problems and challenges of the coastal zone concentrated in a limited land area. They are considered extremely vulnerable to global warming and sea-level rise, with certain small low-lying islands facing the increasing threat of the loss of their entire national territories. Most tropical islands are also now experiencing the more immediate impacts of increasing frequency of cyclones, storms and hurricanes associated with climate change. These are causing major set-backs to their socio-economic development.
17.127. Because small island development options are limited, there are special challenges to planning for and implementing sustainable development. Small island developing States will be constrained in meeting these challenges without the cooperation and assistance of the international community.

Objectives

17.128. States commit themselves to addressing the problems of sustainable development of small island developing States. To this end, it is necessary:

(a) To adopt and implement plans and programmes to support the sustainable development and utilization of their marine and coastal resources, including meeting essential human needs, maintaining biodiversity and improving the quality of life for island people;

(b) To adopt measures which will enable small island developing States to cope effectively, creatively and sustainably with environmental change and to mitigate impacts and reduce the threats posed to marine and coastal resources.

Activities

(a) Management-related activities

17.129. Small island developing States, with the assistance as appropriate of the international community and on the basis of existing work of national and international organizations, should:

(a) Study the special environmental and developmental characteristics of small islands, producing an environmental profile and inventory of their natural resources, critical marine habitats and biodiversity;

(b) Develop techniques for determining and monitoring the carrying capacity of small islands under different development assumptions and resource constraints;

(c) Prepare medium- and long-term plans for sustainable development that emphasize multiple use of resources, integrate environmental considerations with economic and sectoral planning and policies, define measures for maintaining cultural and biological diversity and conserve endangered species and critical marine habitats;

(d) Adapt coastal area management techniques, such as planning, siting and environmental impact assessments, using Geographical Information Systems (GIS), suitable to the special characteristics of small islands, taking into account the traditional and cultural values of indigenous people of island countries;

(e) Review the existing institutional arrangements and identify and undertake appropriate institutional reforms essential to the effective
implementation of sustainable development plans, including intersectoral coordination and community participation in the planning process;

(f) Implement sustainable development plans, including the review and modification of existing unsustainable policies and practices;

(g) Based on precautionary and anticipatory approaches, design and implement rational response strategies to address the environmental, social and economic impacts of climate change and sea-level rise, and prepare appropriate contingency plans;

(h) Promote environmentally sound technology for sustainable development within small island developing States and identify technologies that should be excluded because of their threats to essential island ecosystems.

(b) Data and information

17.130. Additional information on the geographic, environmental, cultural and socio-economic characteristics of islands should be compiled and assessed to assist in the planning process. Existing island databases should be expanded and geographic information systems developed and adapted to suit the special characteristics of islands.

(c) International and regional cooperation and coordination

17.131. Small island developing States, with the support, as appropriate, of international organizations, whether subregional, regional or global, should develop and strengthen inter-island, regional and interregional cooperation and information exchange, including periodic regional and global meetings on sustainable development of small island developing States, with the first global conference on the sustainable development of small island developing States to be held in 1993.

17.132. International organizations, whether subregional, regional or global, must recognize the special development requirements of small island developing States and give adequate priority in the provision of assistance, particularly with respect to the development and implementation of sustainable development plans.

Means of implementation

(a) Financing and cost evaluation

17.133. The Conference secretariat has estimated the average total annual cost (1993–2000) of implementing the activities of this programme to be about $130 million, including about $50 million from the international community on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies and programmes Governments decide upon for implementation.
(b) Scientific and technical means

17.134. Centres for the development and diffusion of scientific information and advice on technical means and technologies appropriate to small island developing States, especially with reference to the management of the coastal zone, the exclusive economic zone and marine resources, should be established or strengthened, as appropriate, on a regional basis.

(c) Human resource development

17.135. Since populations of small island developing States cannot maintain all necessary specializations, training for integrated coastal management and development should aim to produce cadres of managers or scientists, engineers and coastal planners able to integrate the many factors that need to be considered in integrated coastal management. Resource users should be prepared to execute both management and protection functions and to apply the polluter pays principle and support the training of their personnel. Educational systems should be modified to meet these needs and special training programmes developed in integrated island management and development. Local planning should be integrated in educational curricula of all levels and public awareness campaigns developed with the assistance of non-governmental organizations and indigenous coastal populations.

(d) Capacity-building

17.136. The total capacity of small island developing States will always be limited. Existing capacity must therefore be restructured to meet efficiently the immediate needs for sustainable development and integrated management. At the same time, adequate and appropriate assistance from the international community must be directed at strengthening the full range of human resources needed on a continuous basis to implement sustainable development plans.

17.137. New technologies that can increase the output and range of capability of the limited human resources should be employed to increase the capacity of very small populations to meet their needs. The development and application of traditional knowledge to improve the capacity of countries to implement sustainable development should be fostered.

Notes

1/ References to the United Nations Convention on the Law of the Sea in this chapter of Agenda 21 do not prejudice the position of any State with respect to signature, ratification of or accession to the Convention.

2/ References to the United Nations Convention on the Law of the Sea in this chapter of Agenda 21 do not prejudice the position of States which view the Convention as having a unified character.

3/ Nothing in the programme areas of this chapter should be interpreted as prejudicing the rights of the States involved in a dispute of sovereignty or in the delimitation of the maritime areas concerned.
RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/48/L.60 and Add.1)]


The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 10 December 1982 1/ (hereinafter referred to as the "Convention") and to promote appropriate representation in the institutions established by it,

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, 2/

Recalling that the Convention in its Part XI and related provisions (hereinafter referred to as "Part XI") established a regime for the Area and its resources,


Taking note of the consolidated provisional final report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Recalling its resolution 48/28 of 9 December 1993 on the law of the sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, have necessitated the re-evaluation of some aspects of the regime for the Area and its resources,

Noting the initiative of the Secretary-General which began in 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the outcome of his informal consultations, including the draft of an agreement relating to the implementation of Part XI,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI,

Recognizing the need to provide for the provisional application of such an agreement from the date of entry into force of the Convention on 16 November 1994,

1. Expresses its appreciation to the Secretary-General for his report on the informal consultations;


3. Adopts the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as the “Agreement”), the text of which is annexed to the present resolution;

4. Affirms that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. Considers that future ratifications or formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention;

6. Calls upon States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. Expresses its satisfaction at the entry into force of the Convention on 16 November 1994;

4/ A/48/950.
8. **Decides** to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the Annex to the Agreement;

9. **Requests** the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in article 3 thereof, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

10. **Also requests** the Secretary-General immediately to open the Agreement for signature in accordance with article 3 thereof;

11. **Urges** all States and entities referred to in article 3 of the Agreement to consent to its provisional application as from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

12. **Also urges** all such States and entities that have not already done so to take all appropriate steps to ratify, formally confirm or accede to the Convention at the earliest possible date in order to ensure universal participation in the Convention;

13. **Calls upon** the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to take into account the terms of the Agreement when drawing up its final report.

101st plenary meeting 28 July 1994

ANNEX

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 1/ (hereinafter referred to as "the Convention") to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as "the Area"), as well as the resources of the Area, are the common heritage of mankind,

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

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention 4/ (hereinafter referred to as "Part XI"),

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

Wishing to facilitate universal participation in the Convention,

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

Have agreed as follows:

Article 1
Implementation of Part XI

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

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

Article 2
Relationship between this Agreement and Part XI

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

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

Article 3
Signature

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

Article 4
Consent to be bound

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

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.
3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:

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

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

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

   (d) Accession.

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

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

Article 5

Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3 (c), shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depository 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 5/ (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7

Provisional application

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

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

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

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

   (d) States which accede to this Agreement.

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

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

Article 8

States Parties

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

2. This Agreement applies mutatis mutandis to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.
Article 9

Depositary

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

Article 10

Authentic texts

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

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

DONE AT NEW YORK, this ... day of July, one thousand nine hundred and ninety-four.

Annex

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

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

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

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.
4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan of work for exploration, subject to paragraph 6 (a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

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

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

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.
12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:

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

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

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

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

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

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

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

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

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

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

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

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

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

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.
SECTION 2. THE ENTERPRISE

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

These functions shall be:

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

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

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

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

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

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

(g) Collection of information on the availability of trained manpower;

(h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

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

3. The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.
4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

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

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

SECTION 3. DECISION-MAKING

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

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

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

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

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

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.
7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8 (b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15 (a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State fulfills the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15 (a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15 (a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

(b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.
15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

(b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

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

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

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

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.
SECTION 5. TRANSFER OF TECHNOLOGY

1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:

   (a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;

   (b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

   (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

2. The provisions of Annex III, article 5, of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

   (a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

   (b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;

   (c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

   (d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:

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(i) By the use of tariff or non-tariff barriers; and

(ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

(i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1 (b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1 (b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1 (f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1 (b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.
7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2 (q), article 165, paragraph 2 (n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

   (a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

   (b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;

   (c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

   (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2 (l), article 162, paragraph 2 (n), article 164, paragraph 2(d), article 171, subparagraph (f), and article 173, paragraph 2 (c), of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACTS

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contracts:

   (a) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;
(b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(e) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$ 250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15 (a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the
Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2 (e), of the Convention;

(c) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) The administrative budget;

(e) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

9. The requirement of article 162, paragraph 2 (y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.
The Constitution of the United States of America
(1787)

Article. II.

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

[Boldface in clause 2 added.]
ARMS CONTROL
AND
DISARMAMENT
AGREEMENTS

TEXTS AND HISTORIES
OF THE NEGOTIATIONS

UNITED STATES ARMS CONTROL
AND DISARMAMENT AGENCY
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE PREVENTION OF INCIDENTS ON AND OVER THE HIGH SEAS

In the late 1960s, there were several incidents between forces of the U.S. Navy and the Soviet Navy. These included planes of the two nations passing near one another, ships bumping one another, and both ships and aircraft making threatening movements against those of the other side. In March 1968 the United States proposed talks on preventing such incidents from becoming more serious. The Soviet Union accepted the invitation in November 1970, and the talks were conducted in two rounds -- October 1, 1971, in Moscow and May 17, 1972, in Washington, D.C. The Agreement was signed by Secretary of the Navy John Warner and Soviet Admiral Sergei Gorshkov during the Moscow summit meeting in 1972.

Specifically, the agreement provides for:

• steps to avoid collision;
• not interfering in the "formations" of the other party;
• avoiding maneuvers in areas of heavy sea traffic;
• requiring surveillance ships to maintain a safe distance from the object of investigation so as to avoid "embarrassing or endangering the ships under surveillance";
• using accepted international signals when ships maneuver near one another;
• not simulating attacks at, launching objects toward, or illuminating the bridges of the other party's ships;
• informing vessels when submarines are exercising near them; and
• requiring aircraft commanders to use the greatest caution and prudence in approaching aircraft and ships of the other party and not permitting simulated attacks against aircraft or ships, performing aerobatics over ships, or dropping hazardous objects near them.

The agreement also provides for: (1) notice three to five days in advance, as a rule, of any projected actions that might "represent a danger to navigation or to aircraft in flight"; (2) information on incidents to be channeled through naval attaches assigned to the respective capitals; and (3) annual meetings to review the implementation of the Agreement.

The protocol to this agreement grew out of the first meeting of the Consultative Committee established by the agreement. Each side recognized that its effectiveness could be enhanced by additional understandings relating to nonmilitary vessels. In the protocol signed in Washington, D.C., on May 22, 1973, each party pledged not to make simulated attacks against the nonmilitary ships of the other.

Like other confidence-building measures, the Incidents at Sea Agreement does not directly affect the size, weaponry, or force structure of the parties. Rather, it serves to enhance mutual knowledge and understanding of military activities; to reduce the possibility of conflict by accident, miscalculation, or the failure of communication; and to increase stability in times of both calm and crisis. In 1983, Secretary of the Navy John Lehman cited the accord as "a good example of functional navy-to-navy process" and credited this area of Soviet-American relations with "getting better rather than worse." In 1985, he observed that the frequency of incidents was "way down from what it was in the 1960s and early 1970s."
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE PREVENTION OF INCIDENTS ON AND OVER THE HIGH SEAS

Signed at Moscow May 25, 1972
Entered into force May 25, 1972

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics,

Desiring to assure the safety of navigation of the ships of their respective armed forces on the high seas and flight of their military aircraft over the high seas, and

Guided by the principles and rules of international law,

Have decided to conclude this Agreement and have agreed as follows:

Article I

For the purpose of this Agreement, the following definitions shall apply:

1. "Ship" means:

(a) A warship belonging to the naval forces of the Parties bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy list, and manned by a crew who are under regular naval discipline;

(b) Naval auxiliaries of the Parties, which include all naval ships authorized to fly the naval auxiliary flag where such a flag has been established by either Party.

2. "Aircraft" means all military manned heavier-than-air and lighter-than-air craft, excluding space craft.

3. "Formation" means an ordered arrangement of two or more ships proceeding together and normally maneuvered together.

Article II

The Parties shall take measures to instruct the commanding officers of their respective ships to observe strictly the letter and spirit of the International Regulations for Preventing Collisions at Sea, hereinafter referred to as the Rules of the Road. The Parties recognize that their freedom to conduct operations on the high seas is based on the principles established under recognized international law and codified in the 1958 Geneva Convention on the High Seas.

Article III

1. In all cases ships operating in proximity to each other, except when required to maintain course and speed under the Rules of the Road, shall remain well clear to avoid risk of collision.

2. Ships meeting or operating in the vicinity of a formation of the other Party shall, while conforming to the Rules of the Road, avoid maneuvering in a manner which would hinder the evolutions of the formation.

3. Formations shall not conduct maneuvers through areas of heavy traffic where internationally recognized traffic separation schemes are in effect.

4. Ships engaged in surveillance of other ships shall stay at a distance which avoids the risk of collision and also shall avoid executing maneuvers embarrassing or endangering the ships under surveillance. Except when required to maintain course and speed under the Rules of the Road, a surveillance shall take positive early action so as, in the exercise of good seamanship, not to embarrass or endanger ships under surveillance.

5. When ships of both Parties maneuver in sight of one another, such signals (flag, sound, and light) as are prescribed by the Rules of the Road, the International Code of Signals, or other mutually agreed signals, shall be adhered to for signalling operations and intentions.

6. Ships of the Parties shall not simulate attacks by aiming guns, missile launchers, torpedo tubes, and other weapons in the direction of a passing ship of the other Party, not launch
any object in the direction of passing ships of the other Party, and not use searchlights or other powerful illumination devices to illuminate the navigation bridges of passing ships of the other Party.

7. When conducting exercises with submerged submarines, exercising ships shall show the appropriate signals prescribed by the International Code of Signals to warn ships of the presence of submarines in the area.

8. Ships of one Party when approaching ships of the other Party conducting operations as set forth in Rule 4 (c) of the Rules of the Road, and particularly ships engaged in launching or landing aircraft as well as ships engaged in replenishment underway, shall take appropriate measures not to hinder maneuvers of such ships and shall remain well clear.

Article IV

Commanders of aircraft of the Parties shall use the greatest caution and prudence in approaching aircraft and ships of the other Party operating on and over the high seas, in particular, ships engaged in launching or landing aircraft, and in the interest of mutual safety shall not permit: simulated attacks by the simulated use of weapons against aircraft and ships, or performance of various aerobatics over ships, or dropping various objects near them in such a manner as to be hazardous to ships or to constitute a hazard to navigation.

Article V

1. Ships of the Parties operating in sight of one another shall raise proper signals concerning their intent to begin launching or landing aircraft.

2. Aircraft of the Parties flying over the high seas in darkness or under instrument conditions shall, whenever feasible, display navigation lights.

Article VI

Both Parties shall:

1. Provide through the established system of radio broadcasts of information and warning to mariners, not less than 3 to 5 days in advance as a rule, notification of actions on the high seas which represent a danger to navigation or to aircraft in flight.

2. Make increased use of the informative signals contained in the International Code of Signals to signify the intentions of their respective ships when maneuvering in proximity to one another. At night, or in conditions of reduced visibility, or under conditions of lighting and such distances when signal flags are not distinct, flashing light should be used to inform ships of maneuvers which may hinder the movements of others or involve a risk of collision.

3. Utilize on a trial basis signals additional to those in the International Code of Signals, submitting such signals to the Intergovernmental Maritime Consultative Organization for its consideration and for the information of other States.

Article VII

The Parties shall exchange appropriate information concerning instances of collision, incidents which result in damage, or other incidents at sea between ships and aircraft of the Parties. The United States Navy shall provide such information through the Soviet Naval Attaché in Washington and the Soviet Navy shall provide such information through the United States Naval Attaché in Moscow.

Article VIII

This Agreement shall enter into force on the date of its signature and shall remain in force for a period of three years. It will thereafter be renewed without further action by the Parties for successive periods of three years each.

This Agreement may be terminated by either Party upon six months written notice to the other Party.

Article IX

The Parties shall meet within one year after the date of the signing of this Agreement to review the implementation of its terms. Similar consultations shall be held thereafter annually, or more frequently as the Parties may decide.
Article X

The Parties shall designate members to form a Committee which will consider specific measures in conformity with this Agreement. The Committee will, as a particular part of its work, consider the practical workability of concrete fixed distances to be observed in encounters between ships, aircraft, and ships and aircraft. The Committee will meet within six months of the date of signature of this Agreement and submit its recommendations for decision by the Parties during the consultations prescribed in Article IX.

DONE in duplicate on the 25th day of May 1972 in Moscow in the English and Russian languages each being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
John W. Warner
Secretary of the Navy

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:
Sergei G. Gorshkov
Commander-in-Chief of the Navy

Signed at Washington May 22, 1973
Entered into force May 22, 1973

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics, herein referred to as the Parties,

Having agreed on measures directed to improve the safety of navigation of the ships of their respective armed forces on the high seas and flight of their military aircraft over the high seas,

Recognizing that the objectives of the Agreement may be furthered by additional understandings, in particular concerning actions of naval ships and military aircraft with respect to the non-military ships of each Party,

Further agree as follows:

Article I

The Parties shall take measures to notify the non-military ships of each Party on the provisions of the Agreement directed at securing mutual safety.

Article II

Ships and aircraft of the Parties shall not make simulated attacks by aiming guns, missile launchers, torpedo tubes and other weapons at non-military ships of the other Party, nor launch nor drop any objects near non-military ships of the other Party in such a manner as to be hazardous to these ships or to constitute a hazard to Navigation.

Article III

This Protocol will enter into force on the day of its signing and will be considered as an integral part of the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas which was signed in Moscow on May 25, 1972.

DONE on the 22nd of May, 1973 in Washington, in two copies, each in the English and the Russian language, both texts having the same force.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
J.P. Weinel
Vice Admiral, U.S. Navy

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:
Alekseyev, Admiral
TREATY ON THE PROHIBITION OF THE
EMPLACEMENT OF NUCLEAR WEAPONS AND
OTHER WEAPONS OF MASS DESTRUCTION
ON THE SEABED AND THE OCEAN FLOOR
AND IN THE SUBSOIL THEREOF

Like the Antarctic Treaty, the Outer Space
Treaty, and the Latin American Nuclear-Free
Zone, the Seabed Treaty sought to prevent the
introduction of international conflict and nuclear
weapons into an area hitherto free of them.
Reaching agreement on the seabed, however,
involved problems not met in framing the other
two agreements.

In the 1960s, advances in the technology of
oceanography and greatly increased interest in
the vast and virtually untapped resources of the
ocean floor led to concern that the absence of
clearly established rules of law might lead to
strife. And there were concurrent fears that
nations might use the seabed as a new
environment for military installations, including
those capable of launching nuclear weapons.

In keeping with a proposal submitted to the
U.N. Secretary General by Ambassador Pardo of
Malta in August 1967, the U.N. General
Assembly, on December 18, 1967, established an
ad hoc committee to study ways of reserving the
seabed for peaceful purposes, with the objective
of ensuring "that the exploration and use of the
seabed and the ocean floor should be conducted
in accordance with the principles and purposes of
the Charter of the United Nations, in the interests
of maintaining international peace and security
and for the benefit of all mankind." The
Committee was given permanent status the
following year. At the same time, seabed-related
military and arms control issues were referred to
the ENDC and its successor, the CCD.1 In a
message of March 18, 1969, President Nixon said
the American delegation to the ENDC should
seek discussion of the factors necessary for an
international agreement prohibiting the
emplacement of weapons of mass destruction on
the seabed and ocean floor and pointed out that
an agreement of this kind would, like the Antarctic
and Outer Space treaties, "prevent an arms race
before it has a chance to start."

On March 18, 1969, the Soviet Union presented
a draft Treaty that provided for the complete
demilitarization of the seabed beyond a 12-mile
limit and making all seabed installations open to
Treaty parties on the basis of reciprocity. The
U.S. draft Treaty, submitted on May 22, prohibited
the emplacement of nuclear weapons and other
weapons of mass destruction on the seabed and
ocean floor beyond a three-mile band. This, the
United States held, was the urgent problem, and
complete demilitarization would not be verifiable.

As can be seen, the two drafts differed
importantly on what was to be prohibited. The
Soviet draft would have banned all military uses
of the seabed. It would have precluded, for
example, submarine surveillance systems that
were fixed to the ocean floor. The United States
regarded these as essential to its defense.

The two drafts also differed on the issue of
verification. Using as a model the provisions for
verification in the Outer Space Treaty, the Soviets
proposed that all installations and structures be
open to inspection, provided that reciprocal rights
to inspect were granted. The United States
contended that on the Moon no claims of national
jurisdiction existed and that provisions suitable for
the Moon would not be adequate for the seabed,
where many claims of national jurisdiction already
existed and many kinds of activities were in
progress or possible. Moreover, the United
States felt that to attempt to inspect for the
emplacement of all kinds of weapons would make
the problems connected with verification virtually
insuperable.

On the other hand, the United States stated the
case that any structures capable of handling
nuclear devices would necessarily be large and
elaborate; their installation would require
extensive activity, difficult to conceal; and there
would probably be a number of devices involved,
as it would not be worth violating the Treaty
simply to install one or two weapons. Violations,
therefore, would be readily observed and evoke
the appropriate steps -- first an effort to deal
directly with the problem through consultations
with the country violating the Treaty; if that failed,
recourse to cooperative action; and, as a last
resort, appeal to the Security Council.

Comments on the two drafts in the ENDC, U.S.
consultations with its NATO allies, and private
U.S.-Soviet talks at the ENDC eventually led to
the framing of a joint draft by the United States and the Soviet Union, submitted on October 7, 1969, to the CCD. This joint draft underwent intensive discussion and was three times revised in response to suggestions made in the CCD and at the United Nations.

Discussion centered on a few difficult issues. In international law there was much confusion about how territorial waters were to be defined. Some countries claimed up to 200 miles, and international conventions on the subject contained ambiguities. In its final form the Treaty adopted a 12-mile limit to define the seabed area.

The verification provisions also were a subject of intensive discussion. Coastal states were concerned about whether their rights would be protected. Smaller states had doubts as to their ability to check on violations. Some felt that the United Nations should play a larger role. Some wondered whether the verification procedures would really be effective. Reassurances were given to the coastal states. Smaller states could apply for assistance to another state to help it in case of a suspected violation.

The verification procedures are set forth in Article III. Parties may undertake verification using their own means, with the assistance of other parties, or through appropriate international procedures within the framework of the United Nations and in accordance with its Charter. These provisions permit parties to assure themselves the Treaty obligations are being fulfilled without interfering with legitimate seabed activities.

After more than two years of negotiation, the final draft was approved by the U.N. General Assembly on December 7, 1970, by a vote of 104 to 2 (El Salvador, Peru), with two abstentions (Ecuador and France).

Article I sets forth the principal obligation of the Treaty. It prohibits parties from emplacing nuclear weapons or weapons of mass destruction on the seabed and the ocean floor beyond a 12-mile coastal zone. Article II provides that the “seabed zone” is to be measured in accordance with the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone. To make clear that none of the Treaty’s provisions should be interpreted as supporting or prejudicing the positions of any party regarding law-of-the-sea issues, a broad disclaimer provision to this effect was included as Article IV.

In recognition of the feeling that efforts to achieve a more comprehensive agreement should continue, Article V of the Treaty bound parties to work for further measures to prevent an arms race on the seabed.

The Seabed Arms Control Treaty was opened for signature in Washington, London, and Moscow on February 11, 1971. It entered into force May 18, 1972, when the United States, the United Kingdom, the Soviet Union, and more than 22 nations had deposited instruments of ratification.

Article VII included a provision for a review conference to be held in five years. The Seabed Arms Control Treaty Review Conference was held in Geneva June 20 - July 1, 1977. The Conference concluded that the first five years in the life of the Treaty had demonstrated its effectiveness. The Second Review Conference, held in Geneva in September 1983, concluded that the Treaty continued to be an important and effective arms control measure. The Third Review Conference was held in Geneva in September 1989 and confirmed results of previous meetings. It was agreed that the next review conference would be convened in Geneva not earlier than 1996.
TREATY ON THE PROHIBITION OF THE
EMPLACEMENT OF NUCLEAR WEAPONS AND
OTHER WEAPONS OF MASS DESTRUCTION
ON THE SEABED AND THE OCEAN FLOOR
AND IN THE SUBSOIL THEREOF

Signed at Washington, London, and Moscow February 11,
1971
Ratification advised by U.S. Senate February 15, 1972
Ratified by U.S. President April 26, 1972
U.S. ratification deposited at Washington, London, and
Moscow May 18, 1972
Proclaimed by U.S. President May 18, 1972
Entered into force May 18, 1972

The States Parties to this Treaty,

Recognizing the common interest of mankind in the progress of the exploration and use of the seabed and the ocean floor for peaceful purposes,

Considering that the prevention of a nuclear arms race on the seabed and the ocean floor serves the interests of maintaining world peace, reduces international tensions and strengthens friendly relations among States,

Convinced that this Treaty constitutes a step towards the exclusion of the seabed, the ocean floor and the subsoil thereof from the arms race,

Convinced that this Treaty constitutes a step towards a Treaty on general and complete disarmament under strict and effective international control, and determined to continue negotiations to this end,

Convinced that this Treaty will further the purposes and principles of the Charter of the United Nations, in a manner consistent with the principles of international law and without infringing the freedoms of the high seas,

Have agreed as follows:

Article I

1. The States Parties to this Treaty undertake not to emplace or emplace on the seabed and the ocean floor and in the subsoil thereof beyond the outer limit of a seabed zone, as defined in article II, any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons.

2. The undertakings of paragraph 1 of this article shall also apply to the seabed zone referred to in the same paragraph, except that within such seabed zone, they shall not apply either to the coastal State or to the seabed beneath its territorial waters.

3. The States Parties to this Treaty undertake not to assist, encourage or induce any State to carry out activities referred to in paragraph 1 of this article and not to participate in any other way in such actions.

Article II

For the purpose of this Treaty, the outer limit of the seabed zone referred to in article I shall be coterminous with the twelve-mile outer limit of the zone referred to in part II of the Convention on the Territorial Sea and the Contiguous Zone, signed at Geneva on April 29, 1958, and shall be measured in accordance with the provisions of part I, section II, of that Convention and in accordance with international law.

Article III

1. In order to promote the objectives of and insure compliance with the provisions of this Treaty, each State Party to the Treaty shall have the right to verify through observations the activities of other States Parties to the Treaty on the seabed and the ocean floor and in the subsoil thereof beyond the zone referred to in article I, provided that observation does not interfere with such activities.

2. If after such observation reasonable doubts remain concerning the fulfillment of the obligations assumed under the Treaty, the State Party having such doubts and the State Party that is responsible for the activities giving rise to the doubts shall consult with a view to removing the doubts. If the doubts persist, the State Party having such doubts shall notify the other States Parties, and the Parties concerned shall cooperate on such further procedures for verification as may be agreed, including appropriate inspection of objects, structures, installations or other facilities that reasonably may be expected to be of a kind described in article I. The Parties in the region of the activities, including any coastal State, and any other Party so requesting, shall be entitled to participate in
such consultation and cooperation. After completion of the further procedures for verification, an appropriate report shall be circulated to other Parties by the Party that initiated such procedures.

3. If the State responsible for the activities giving rise to the reasonable doubts is not identifiable by observation of the object, structure, installation or other facility, the State Party having such doubts shall notify and make appropriate inquiries of States Parties in the region of the activities and of any other State Party. If it is ascertained through these inquiries that a particular State Party is responsible for the activities, that State Party shall consult and cooperate with other Parties as provided in paragraph 2 of this article. If the identity of the State responsible for the activities cannot be ascertained through these inquiries, then further verification procedures, including inspection, may be undertaken by the inquiring State Party, which shall invite the participation of the Parties in the region of the activities, including any coastal State, and of any other Party desiring to cooperate.

4. If consultation and cooperation pursuant to paragraphs 2 and 3 of this article have not removed the doubts concerning the activities and there remains a serious question concerning fulfillment of the obligations assumed under this Treaty, a State Party may, in accordance with the provisions of the Charter of the United Nations, refer the matter to the Security Council, which may take action in accordance with the Charter.

5. Verification pursuant to this article may be undertaken by any State Party using its own means, or with the full or partial assistance of any other State Party, or through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

6. Verification activities pursuant to this Treaty shall not interfere with activities of other States Parties and shall be conducted with due regard for rights recognized under international law, including the freedoms of the high seas and the rights of coastal States with respect to the exploration and exploitation of their continental shelves.

Article IV

Nothing in this Treaty shall be interpreted as supporting or prejudicing the position of any State Party with respect to existing international conventions, including the 1958 Convention on the Territorial Sea and the Contiguous Zone, or with respect to rights or claims which such State Party may assert, or with respect to recognition or non-recognition of rights or claims asserted by any other State, related to waters off its coasts, including, inter alia, territorial seas and contiguous zones, or to the seabed and the ocean floor, including continental shelves.

Article V

The Parties to this Treaty undertake to continue negotiations in good faith concerning further measures in the field of disarmament for the prevention of an arms race on the seabed, the ocean floor and the subsoil thereof.

Article VI

Any State Party may propose amendments to this Treaty. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Treaty and, thereafter, for each remaining State Party on the date of acceptance by it.

Article VII

Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held at Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized. Such review shall take into account any relevant technological developments. The review conference shall determine, in accordance with the views of a majority of those Parties attending, whether and when an additional review conference shall be convened.

Article VIII

Each State Party to this Treaty shall in exercising its national sovereignty have the right
to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it considers to have jeopardized its supreme interests.

Article IX

The provisions of this Treaty shall in no way affect the obligations assumed by States Parties to the Treaty under international instruments establishing zones free from nuclear weapons.

Article X

1. This Treaty shall be open for signature to all States. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositary Governments of this Treaty.

4. For states whose instruments of ratification or accession are deposited after the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform the Governments of all signatory and acceding States of the date of each signature, of the date of deposit of each instrument of ratification or of accession, of the date of the entry into force of this Treaty, and of the receipt of other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the States signatory and acceding thereto.

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

DONE in triplicate, at the cities of Washington, London and Moscow, this eleventh day of February, one thousand nine hundred seventy-one.
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\(^1\) Notification of succession
See footnotes on page 350.
CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

The States Parties to this Convention:

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promoting of friendly relations and co-operation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the University Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Considering that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the people of the world in the safety of maritime navigation,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Being convinced of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

Recalling resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, “urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security”.

Recalling further that resolution 40/61 “unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security”.

Recalling also that by resolution 40/61, the International Maritime Organization was invited to “study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures”.

Having in mind resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called
for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

Noting that acts of the crews which are subject to normal shipboard discipline are outside the purview of this Convention,

Affirming the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

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

Recognizing the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law.

Have agreed as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:
   (a) a warship; or
   (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
   (c) a ship which has been withdrawn from navigation or laid up.

2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:
   (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
   (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
   (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
   (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2. Any person also commits an offence if that person:
   (a) attempts to commit any of the offences set forth in paragraph 1; or
   (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
   (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
   (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
   (b) in the territory of that State, including its territorial sea; or
   (c) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:
   (a) it is committed by a stateless person whose habitual residence is in that State; or
   (b) during its commission a national of that State is seized, threatened, injured or killed; or
   (c) it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Secretary-General”). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction to accordance with paragraphs 1 and 2 of this article.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who he has reasonable grounds to believe has committed one of the offences set forth article 3.

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person
whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigatory or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as
a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3 including assistance in obtaining evidence at their disposal necessary for the proceedings. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present
shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
   (a) the circumstances of the offence;
   (b) the action taken pursuant to article 13, paragraph 2;
   (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as “the Organization”), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by

2. States may express their consent to be bound by this Convention by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
   (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:
   (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
(ii) the date of the entry into force of this Convention;
(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
(iv) the receipt of any declaration or notification made under this Convention;
(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

Done at Rome this tenth day of March one thousand nine hundred and eighty-eight.

Certified true copy in the English, French and Spanish languages of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, the original of which is deposited with the Secretary-General of the International Maritime Organization.

For the Secretary-General of the International Maritime Organization:
The Antarctic Treaty

Done at Washington 1 December 1959

Entered into force 23 June 1961

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

RECOGNIZING that it is in the interest of all mankind that Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

ACKNOWLEDGING the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica;

CONVINCED that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

CONVINCED also that a treaty ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;

Have agreed as follows:

Article I

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measure of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapon.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

Article II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty.
Article III

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

a. information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy of and efficiency of operations;

b. scientific personnel shall be exchanged in Antarctica between expeditions and stations;

c. scientific observations and results from Antarctica shall be exchanged and made freely available.

Article IV

Nothing contained in the present Treaty shall be interpreted as:

a. a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;

b. a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;

c. prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's rights of or claim or basis of claim to territorial sovereignty in Antarctica.

No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

Article V

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

Article VI
The provisions of the present Treaty shall apply to the area south of 60 deg. South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

Article VII

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of:

a. all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory;

b. all stations in Antarctica occupied by its nationals; and

c. any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.

Article VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under
paragraph 1 of Article VII and scientific personnel exchanged under sub-paragraph 1(b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.

2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1(e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

Article IX

1. Representatives of the Contracting Parties named in the preamble to the present Treaty shall meet at the City of Canberra within two months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

a. use of Antarctica for peaceful purposes only;

b. facilitation of scientific research in Antarctica;

c. facilitation of international scientific cooperation in Antarctica;

d. facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty;

e. questions relating to the exercise of jurisdiction in Antarctica;

f. preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such times as that Contracting Party demonstrates its interest in Antarctica by conducting substantial research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present Treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.
4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised from the date of entry into force of the Treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

Article X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

Article XI

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

Article XII

1a. The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.

b. Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provision of subparagraph 1(a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2a. If after the expiration of thirty years from the date of
entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.

b. Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under Article IX, shall be communicated by the depositary Government to all Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

c. If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1(a) of this Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depositary Government of its withdrawal from the present Treaty; and such withdrawal shall take effect two years after the receipt of the notice by the depositary Government.

Article XIII

1. The present Treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by any other State which may be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary Government.

4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instruments of accession.

6. The present Treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United
Nations.

Article XIV

The present Treaty, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.
CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES

Canberra, 20 May 1980

The Contracting Parties,

Recognising the importance of safeguarding the environment and protecting the integrity of the ecosystem of the seas surrounding Antarctica;

Noting the concentration of marine living resources found in Antarctic waters and the increased interest in the possibilities offered by the utilization of these resources as a source of protein;

Conscious of the urgency of ensuring the conservation of Antarctic marine living resources;

Considering that it is essential to increase knowledge of the Antarctic marine ecosystem and its components so as to be able to base decisions on harvesting on sound scientific information;

Believing that the conservation of Antarctic marine living resources calls for international cooperation with due regard for the provisions of the Antarctic Treaty and with the active involvement of all States engaged in research or harvesting activities in Antarctic waters;

Recognising the prime responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the Antarctic environment and, in particular, their responsibilities under Article IX, paragraph 1(f) of the Antarctic Treaty in respect of the preservation and conservation of living resources in Antarctica;

Recalling the action already taken by the Antarctic Treaty Consultative Parties including in particular the Agreed Measures for the Conservation of Antarctic Fauna and Flora, as well as the provisions of the Convention for the Conservation of Antarctic Seals;

Bearing in mind the concern regarding the conservation of Antarctic marine living resources expressed by the Consultative Parties at the Ninth Consultative Meeting of the Antarctic Treaty and the importance of the provisions of Recommendation IX-2 which led to the establishment of the present Convention;

Believing that it is in the interest of all mankind to preserve the waters surrounding the Antarctic continent for peaceful purposes only and to prevent their becoming the
scene or object of international discord;

Recognising, in the light of the foregoing, that it is desirable to establish suitable machinery for recommending, promoting, deciding upon and coordinating the measures and scientific studies needed to ensure the conservation of Antarctic marine living organisms;

Have agreed as follows:

Article I

1. This Convention applies to the Antarctic marine living resources of the area south of 60 deg south latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence which form part of the Antarctic marine ecosystem.

2. Antarctic marine living resources means the populations of fin fish, mollusks, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

3. The Antarctic marine ecosystem means the complex of relationships of Antarctic marine living resources with each other and with their physical environment.

4. The Antarctic Convergence shall be deemed to be a line joining the following points along parallels of latitude and meridians of longitude:

50 deg S, 0 deg; 50 deg S, 30 deg E; 45 deg S, 30 deg E; 45 deg S, 80 deg E; 55 deg S, 80 deg E, 55 deg S, 150 deg E; 60 deg S, 150 deg E; 60 deg S, 50 deg W; 50 deg S, 50 deg W; 50 deg S, 0 deg.

Article II

1. The objective of this Convention is the conservation of Antarctic marine living resources.

2. For the purposes of this Convention, the term "conservation" includes rational use.

3. Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation:

(a) prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;
(b) maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in sub-paragraph (a) above; and

(c) prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.

Article III

The Contracting Parties, whether or not they are Parties to the Antarctic Treaty, agree that they will not engage in any activities in the Antarctic Treaty area contrary to the principles and purposes of that Treaty and that, in their relations with each other, they are bound by the obligations contained in Articles I and V of the Antarctic Treaty.

Article IV

1. With respect to the Antarctic Treaty area, all Contracting Parties, whether or not they are Parties to the Antarctic Treaty, are bound by Articles IV and VI of the Antarctic Treaty in their relations with each other.

2. Nothing in this Convention and no acts or activities taking place while the present Convention is in force shall:

(a) constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area;

(b) be interpreted as a renunciation or diminution by any Contracting Party of, or as prejudicing, any right or claim on basis of claim to exercise coastal State jurisdiction under international law within the area to which this Convention applies;

(c) be interpreted as prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any such right, claim or basis of claim;

(d) affect the provision of Article IV, paragraph 2, of the Antarctic Treaty that no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Antarctic Treaty is in force.
Article V

1. The Contracting Parties which are not Parties to the Antarctic Treaty acknowledge the special obligations and responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the environment of the Antarctic Treaty area.

2. The Contracting Parties which are not Parties to the Antarctic Treaty agree that, in their activities in the Antarctic Treaty area, they will observe as and when appropriate the Agreed Measures for the Conservation of Antarctic Fauna and Flora and such other measures as have been recommended by the Antarctic Treaty Consultative Parties in fulfilment of their responsibility for the protection of the Antarctic environment from all forms of harmful human interference.

3. For the purposes of this Convention, "Antarctic Treaty Consultative Parties" means the Contracting Parties to the Antarctic Treaty whose Representatives participate in meetings under Article IX of the Antarctic Treaty.

Article VI

Nothing in this Convention shall derogate from the rights and obligations of Contracting Parties under the International Convention for the Regulation of Whaling and the Convention for the Conservation of Antarctic Seals.

Article VII

1. The Contracting Parties hereby establish and agree to maintain the Commission for the Conservation of Antarctic Marine Living Resources (hereinafter referred to as "the Commission").

2. Membership in the Commission shall be as follows:

(a) each Contracting Party which participated in the meeting at which this Convention was adopted shall be a Member of the Commission;

(b) each State Party which has acceded to this Convention pursuant to Article XXIX shall be entitled to be a Member of the Commission during such time as that acceding party is engaged in research or harvesting activities in relation to the marine living resources to which this Convention applies;

(c) each regional economic integration organization which has acceded to this Convention pursuant to Article XXIX shall be entitled to be a Member of the Commission during such time as its States members are so entitled;
(d) a Contracting Party seeking to participate in the work of the Commission pursuant to sub-paragraphs (b) and (c) above shall notify the Depositary of the basis upon which it seeks to become a Member of the Commission and of its willingness to accept conservation measures in force. The Depositary shall communicate to each Member of the Commission such notification and accompanying information. Within two months of receipt of such communication from the Depositary, any Member of the Commission may request that a special meeting of the Commission be held to consider the matter. Upon receipt of such request, the Depositary shall call such a meeting. If there is no request for a meeting, the Contracting Party submitting the notification shall be deemed to have satisfied the requirements for Commission Membership.

3. Each Member of the Commission shall be represented by one representative who may be accompanied by alternate representatives and advisers.

Article VIII

The Commission shall have legal personality and shall enjoy in the territory of each of the States Parties such legal capacity as may be necessary to perform its function and achieve the purposes of this Convention. The privileges and immunities to be enjoyed by the Commission and its staff in the territory of a State Party shall be determined by agreement between the Commission and the State Party concerned.

Article IX

1. The function of the Commission shall be to give effect to the objective and principles set out in Article II of this Convention. To this end, it shall:

(a) facilitate research into and comprehensive studies of Antarctic marine living resources and of the Antarctic marine ecosystem;

(b) compile data on the status of and changes in population of Antarctic marine living resources and on factors affecting the distribution, abundance and productivity of harvested species and dependent or related species or populations;

(c) ensure the acquisition of catch and effort statistics on harvested populations;

(d) analyse, disseminate and publish the information referred to in sub-paragraphs (b) and (c) above and the reports of the Scientific Committee:

(e) identify conservation needs and analyse the effectiveness of conservation measures;

(f) formulate, adopt and revise conservation measures on the basis of the best scientific evidence available, subject to the provisions of paragraph 5 of this Article;
(g) implement the system of observation and inspection established under Article XXIV of this Convention;

(h) carry out such other activities as are necessary to fulfill the objective of this Convention.

2. The conservation measures referred to in paragraph 1(f) above include the following:

(a) the designation of the quantity of any species which may be harvested in the area to which this Convention applies;

(b) the designation of regions and sub-regions based on the distribution of populations of Antarctic marine living resources;

(c) the designation of the quantity which may be harvested from the populations of regions and sub-regions;

(d) the designation of protected species;

(e) the designation of the size, age and, as appropriate, sex of species which may be harvested;

(f) the designation of open and closed seasons for harvesting;

(g) the designation of the opening and closing of areas, regions or sub-regions for purposes of scientific study or conservation, including special areas for protection and scientific study;

(h) regulation of the effort employed and methods of harvesting, including fishing gear, with a view, inter alia, to avoiding undue concentration of harvesting in any region or sub-region;

(i) the taking of such other conservation measures as the Commission considers necessary for the fulfillment of the objective of this Convention, including measures concerning the effects of harvesting and associated activities on components of the marine ecosystem other than the harvested populations.

3. The Commission shall publish and maintain a record of all conservation measures in force.

4. In exercising its functions under paragraph 1 above, the Commission shall take full account of the recommendations and advice of the Scientific Committee.

5. The Commission shall take full account of any relevant measures or regulations established or recommended by the Consultative Meetings pursuant to Article IX of the Antarctic Treaty or by existing fisheries commissions responsible for species which may
enter the area to which this Convention applies, in order that there shall be no inconsistency between the rights and obligations of a Contracting Party under such regulations or measures and conservation measures which may be adopted by the Commission.

6. Conservation measures adopted by the Commission in accordance with this Convention shall be implemented by Members of the Commission in the following manner:

(a) the Commission shall notify conservation measures to all Members of the Commission;

(b) conservation measures shall become binding upon all Members of the Commission 180 days after such notification, except as provided in subparagraphs (c) and (d) below:

(c) if a Member of the Commission, within ninety days following the notification specified in subparagraph (a), notifies the Commission that it is unable to accept the conservation measure, in whole or in part, the measure shall not, to the extent stated, be binding upon that Member of the Commission;

(d) in the event that any Member of the Commission invokes the procedure set forth in subparagraph (c) above, the Commission shall meet at the request of any Member of the Commission to review the conservation measure. At the time of such meeting and within thirty days following the meeting, any Member of the Commission shall have the right to declare that it is no longer able to accept the conservation measure, in which case the Member shall no longer be bound by such measure.

Article X

1. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by its nationals or vessels which, in the opinion of the Commission, affects the implementation of the objective of this Convention.

2. The Commission shall draw the attention of all Contracting Parties to any activity which, in the opinion of the Commission, affects the implementation by a Contracting Party of the objective of this Convention or the compliance by that Contracting Party with its obligations under this Convention.

Article XI

The Commission shall seek to co-operate with Contracting Parties which may exercise jurisdiction in marine areas adjacent to the area to which this Convention applies in respect of the conservation of any stock or stocks of associated species which occur both within those areas and the area to which this Convention applies, with a view to harmonizing the conservation measures adopted in respect of such stocks.
Article XII

1. Decisions of the Commission on matters of substance shall be taken by consensus. The question of whether a matter is one of substance shall be treated as a matter of substance.

2. Decisions on matters other than those referred to in paragraph 1 above shall be taken by a simple majority of the Members of the Commission present and voting.

3. In Commission consideration of any item requiring a decision, it shall be made clear whether a regional economic integration organization will participate in the taking of the decision and, if so, whether any of its member States will also participate. The number of Contracting Parties so participating shall not exceed the number of member States of the regional economic integration organization which are Members of the Commission.

4. In the taking of decisions pursuant to this Article, a regional economic integration organization shall have only one vote.

Article XIII

1. The headquarters of the Commission shall be established at Hobart, Tasmania, Australia.

2. The Commission shall hold a regular annual meeting. Other meetings shall also be held at the request of one-third of its members and as otherwise provided in this Convention. The first meeting of the Commission shall be held within three months of the entry into force of this Convention, provided that among the Contracting Parties there are at least two States conducting harvesting activities within the area to which this Convention applies. The first meeting shall, in any event, be held within one year of the entry into force of this Convention. The Depositary shall consult with the signatory States regarding the first Commission meeting, taking into account that a broad representation of such States is necessary for the effective operation of the Commission.

3. The Depositary shall convene the first meeting of the Commission at the headquarters of the Commission. Thereafter, meetings of the Commission shall be held at its headquarters, unless it decides otherwise.

4. The Commission shall elect from among its members a Chairman and Vice-Chairman, each of whom shall serve for a term of two years and shall be eligible for re-election for one additional term. The first Chairman shall, however, be elected for an initial term of three years. The Chairman and Vice-Chairman shall not be representatives of the same Contracting Party.

5. The Commission shall adopt and amend as necessary the rules of procedure for the conduct of its meetings, except with respect to the matters dealt with in Article XII of this
6. The Commission may establish such subsidiary bodies as are necessary for the performance of its functions.

Article XIV

1. The Contracting Parties hereby establish the Scientific Committee for the Conservation of Antarctic Marine Living Resources (hereinafter referred to as the "Scientific Committee") which shall be a consultative body to the Commission. The Scientific Committee shall normally meet at the headquarters of the Commission unless the Scientific Committee decides otherwise.

2. Each Member of the Commission shall be a member of the Scientific Committee and shall appoint a representative with suitable scientific qualifications who may be accompanied by other experts and advisers.

3. The Scientific Committee may seek the advice of other scientists and experts as may be required on an ad hoc basis.

Article XV

1. The Scientific Committee shall provide a forum for consultation and co-operation concerning the collection, study and exchange of information with respect to the marine living resources to which this Convention applies. It shall encourage and promote co-operation in the field of scientific research in order to extend knowledge of the marine living resources of the Antarctic marine ecosystem.

2. The Scientific Committee shall conduct such activities as the Commission may direct in pursuance of the objective of this Convention and shall:

(a) establish criteria and methods to be used for determinations concerning the conservation measures referred to in Article IX of this Convention;

(b) regularly assess the status and trends of the populations of Antarctic marine living resources;

(c) analyse data concerning the direct and indirect effects of harvesting on the populations of Antarctic marine living resources;

(d) assess the effects of proposed changes in the methods or levels of harvesting and proposed conservation measures;
(e) transmit assessments, analyses, reports and recommendations to the Commission as requested or on its own initiative regarding measures and research to implement the objective of this Convention;

(f) formulate proposals for the conduct of international and national programs of research into Antarctic marine living resources.

3. In carrying out its functions, the Scientific Committee shall have regard to the work of other relevant technical and scientific organizations and to the scientific activities conducted within the framework of the Antarctic Treaty.

Article XVI

1. The first meeting of the Scientific Committee shall be held within three months of the first meeting of the Commission. The Scientific Committee shall meet thereafter as often as may be necessary to fulfil its functions.

2. The Scientific Committee shall adopt and amend as necessary its rules of procedure. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.

3. The Scientific Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

Article XVII

1. The Commission shall appoint an Executive Secretary to serve the Commission and Scientific Committee according to such procedures and on such terms and conditions as the Commission may determine. His term of office shall be for four years and he shall be eligible for reappointment.

2. The Commission shall authorize such staff establishment for the Secretariat as may be necessary and the Executive Secretary shall appoint, direct and supervise such staff according to such rules and procedures and on such terms and conditions as the Commission may determine.

3. The Executive Secretary and Secretariat shall perform the functions entrusted to them by the Commission.

Article XVIII

The official languages of the Commission and of the Scientific Committee shall be English, French, Russian and Spanish.
Article XIX

1. At each annual meeting, the Commission shall adopt by consensus its budget and the budget of the Scientific Committee.

2. A draft budget for the Commission and the Scientific Committee and any subsidiary bodies shall be prepared by the Executive Secretary and submitted to the Members of the Commission at least sixty days before the annual meeting of the Commission.

3. Each Member of the Commission shall contribute to the budget. Until the expiration of five years after the entry into force of this Convention, the contribution of each Member of the Commission shall be equal. Thereafter the contribution shall be determined in accordance with two criteria: the amount harvested and an equal sharing among all Members of the Commission. The Commission shall determine by consensus the proportion in which these two criteria shall apply.

4. The financial activities of the Commission and Scientific Committee shall be conducted in accordance with financial regulations adopted by the Commission and shall be subject to an annual audit by external auditors selected by the Commission.

5. Each Member of the Commission shall meet its own expenses arising from attendance at meetings of the Commission and of the Scientific Committee.

6. A Member of the Commission that fails to pay its contributions for two consecutive years shall not, during the period of its default, have the right to participate in the taking of decisions in the Commission.

Article XX

1. The Members of the Commission shall, to the greatest extent possible, provide annually to the Commission and to the Scientific Committee such statistical, biological and other data and information as the Commission and Scientific Committee may require in the exercise of their functions.

2. The Members of the Commission shall provide, in the manner and at such intervals as may be prescribed, information about their harvesting activities, including fishing areas and vessels, so as to enable reliable catch and effort statistics to be compiled.

3. The Members of the Commission shall provide to the Commission at such intervals as may be prescribed information on steps taken to implement the conservation measures adopted by the Commission.

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4. The Members of the Commission agree that in any of their harvesting activities, advantage shall be taken of opportunities to collect data needed to assess the impact of harvesting.

Article XXI

1. Each Contracting Party shall take appropriate measures within its competence to ensure compliance with the provisions of this Convention and with conservation measures adopted by the Commission to which the Party is bound in accordance with Article IX of this Convention.

2. Each Contracting Party shall transmit to the Commission information on measures taken pursuant to paragraph 1 above, including the imposition of sanctions for any violation.

Article XXII

1. Each Contracting Party undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to the objective of this Convention.

2. Each Contracting Party shall notify the Commission of any such activity which comes to its attention.

Article XXIII

1. The Commission and the Scientific Committee shall co-operate with the Antarctic Treaty Consultative Parties on matters falling within the competence of the latter.

2. The Commission and the Scientific Committee shall co-operate, as appropriate, with the Food and Agriculture Organization of the United Nations and with other Specialised Agencies.

3. The Commission and the Scientific Committee shall seek to develop co-operative working relationships, as appropriate, with inter-governmental and non-governmental organizations which could contribute to their work, including the Scientific Committee on Antarctic Research, the Scientific Committee on Oceanic Research and the International Whaling Commission.

4. The Commission may enter into agreements with the organizations referred to in this Article and with other organizations as may be appropriate. The Commission and the Scientific Committee may invite such organizations to send observers to their meetings and to meetings of their subsidiary bodies.
Article XXIV

1. In order to promote the objective and ensure observance of the provisions of this Convention, the Contracting Parties agree that a system of observation and inspection shall be established.

2. The system of observation and inspection shall be elaborated by the Commission on the basis of the following principles:

(a) Contracting Parties shall co-operate with each other to ensure the effective implementation of the system of observation and inspection, taking account of the existing international practice. This system shall include, inter alia, procedures for boarding and inspection by observers and inspectors designated by the Members of the Commission and procedures for flag State prosecution and sanctions on the basis of evidence resulting from such boarding and inspections. A report of such prosecutions and sanctions imposed shall be included in the information referred to in Article XXI of this Convention;

(b) in order to verify compliance with measures adopted under this Convention, observation and inspection shall be carried out on board vessels engaged in scientific research or harvesting of marine living resources in the area to which this Convention applies, through observers and inspectors designated by the Members of the Commission and operating under terms and conditions to be established by the Commission;

(c) designated observers and inspectors shall remain subject to the jurisdiction of the Contracting Party of which they are nationals. They shall report to the Member of the Commission by which they have been designated which in turn shall report to the Commission.

3. Pending the establishment of the system of observation and inspection, the Members of the Commission shall seek to establish interim arrangements to designate observers and inspectors and such designated observers and inspectors shall be entitled to carry out inspections in accordance with the principles set out in paragraph 2 above.

Article XXV

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.
2. Any dispute of this character not so resolved shall, with the consent in each case of all Parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court or to arbitration shall not absolve Parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.

3. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Convention.

Article XXVI

1. This Convention shall be open for signature at Canberra from 1 August to 31 December 1980 by the States participating in the Conference on the Conservation of Antarctic Marine Living Resources held at Canberra from 7 to 20 May 1980.

2. The States which so sign will be the original signatory States of the Convention.

Article XXVII

1. This Convention is subject to ratification, acceptance or approval by signatory States.

2. Instruments of ratification, acceptance or approval shall be deposited with the Government of Australia, hereby designated as the Depositary.

Article XXVIII

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the eighth instrument of ratification, acceptance or approval by States referred to in paragraph 1 of Article XXVI of this Convention.

2. With respect to each State or regional economic integration organization which subsequent to the date of entry into force of this Convention deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following such deposit.

Article XXIX

1. This Convention shall be open for accession by any State interested in research or harvesting activities in relation to the marine living resources to which this Convention applies.
2. This Convention shall be open for accession by regional economic integration organizations constituted by sovereign States which include among their members one or more States Members of the Commission and to which the States members of the organization have transferred, in whole or in part, competences with regard to the matters covered by this Convention. The accession of such regional economic integration organizations shall be the subject of consultations among Members of the Commission.

Article XXX

1. This Convention may be amended at any time.

2. If one-third of the Members of the Commission request a meeting to discuss a proposed amendment the Depositary shall call such a meeting.

3. An amendment shall enter into force when the Depositary has received instruments of ratification, acceptance or approval thereof from all the Members of the Commission.

4. Such amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification, acceptance or approval by it has been received by the Depositary. Any such Contracting Party from which no such notice has been received within a period of one year from the date of entry into force of the amendment in accordance with paragraph 3 above shall be deemed to have withdrawn from this Convention.

Article XXXI

1. Any Contracting Party may withdraw from this Convention on 30 June of any year, by giving written notice not later than 1 January of the same year to the Depositary, which, upon receipt of such a notice, shall communicate it forthwith to the other Contracting Parties.

2. Any other Contracting Party may, within sixty days of the receipt of a copy of such a notice from the Depositary, give written notice of withdrawal to the Depositary in which case the Convention shall cease to be in force on 30 June of the same year with respect to the Contracting Party giving such notice.

3. Withdrawal from this Convention by any Member of the Commission shall not affect its financial obligations under this Convention.

Article XXXII

The Depositary shall notify all Contracting Parties of the
following:

(a) signatures of this Convention and the deposit of instruments of ratification, acceptance, approval or accession;

(b) the date of entry into force of this Convention and of any amendment thereto.

Article XXXIII

1. This Convention, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Government of Australia which shall transmit duly certified copies thereof to all signatory and acceding Parties.

2. This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

Drawn up at Canberra this twentieth day of May 1980.

In witness whereof the undersigned, being duly authorized, have signed this Convention.

Annex for an arbitral tribunal

The arbitral tribunal referred to in paragraph 3 of Article XXV shall be composed of three arbitrators who shall be appointed as follows:

The Party commencing proceedings shall communicate the name of an arbitrator to the other Party which, in turn, within a period of forty days following such notification, shall communicate the name of the second arbitrator. The Parties shall, within a period of sixty days following the appointment of the second arbitrator, appoint the third arbitrator, who shall not be a national of either Party and shall not be of the same nationality as either of the first two arbitrators. The third arbitrator shall preside over the tribunal.

If the second arbitrator has not been appointed within the prescribed period, or if the Parties have not reached agreement within the prescribed period on the appointment of the third arbitrator, that arbitrator shall be appointed, at the request of either Party, by the Secretary-General of the Permanent Court of Arbitration, from among persons of international standing not having the nationality of a State which is a Party to this Convention.

The arbitral tribunal shall decide where its headquarters will be located and shall adopt its own rules of procedure.

The award of the arbitral tribunal shall be made by a majority of its members, who may not abstain from voting.
Any Contracting Party which is not a Party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.

The award of the arbitral tribunal shall be final and binding on all Parties to the dispute and on any Party which intervenes in the proceedings and shall be complied with without delay. The arbitral tribunal shall interpret the award at the request of one of the Parties to the dispute or of any intervening Party.

Unless the arbitral tribunal determines 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.
Convention on the Regulation of Antarctic Mineral Resource Activities

Done at Wellington 2 June 1988

Not in force

The States Parties to this Convention, hereinafter referred to as the Parties,

RECALLING the provisions of the Antarctic Treaty;

CONVINCED that the Antarctic Treaty system has proved effective in promoting international harmony in furtherance of the purposes and principles of the Charter of the United Nations, in ensuring the absence of any measures of a military nature and the protection of the Antarctic environment and in promoting freedom of scientific research in Antarctica;

REAFFIRMING that it is in the interest of all mankind that the Antarctic Treaty area shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

NOTING the possibility that exploitable mineral resources may exist in Antarctica;

BEARING IN MIND the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principles of the Antarctic Treaty;

BEARING IN MIND also that a regime for Antarctic mineral resources must be consistent with Article IV of the Antarctic Treaty and in accordance therewith be without prejudice and acceptable to hose States which assert rights of or claims to territorial sovereignty in Antarctica, and those States which neither recognise nor assert such rights or claims, including those States which assert a basis of claim to territorial sovereignty in Antarctica;

NOTING the unique ecological, scientific and wilderness value of Antarctica and the importance of Antarctica to the global environment;

RECOGNISING that Antarctic mineral resource activities could adversely affect the Antarctic environment or dependent or associated ecosystems;

BELIEVING that the protection of the Antarctic environment and dependent and associated ecosystems must be a basic
consideration in decisions taken on possible Antarctic mineral resource activities;

CONCERNED to ensure that Antarctic mineral resource activities, should they occur, are compatible with scientific investigation in Antarctica and other legitimate uses of Antarctica;

BELIEVING that a regime governing Antarctic mineral resource activities will further strengthen the Antarctic Treaty system;

CONVINCED that participation in Antarctic mineral resource activities should be open to all States which have an interest in such activities and subscribe to a regime governing them and that the special situation of developing country Parties to the regime should be taken into account.

BELIEVING that the effective regulation of Antarctic mineral resource activities is in the interest of the international community as a whole;

HAVE AGREED as follows:

CHAPTER I. GENERAL PROVISIONS

Article 1

DEFINITIONS

For the purposes of this Convention:

1. 'Antarctic Treaty' means the Antarctic Treaty done at Washington on 1 December 1959.

2. 'Antarctic Treaty Consultative Parties' means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty.

3. 'Antarctic Treaty area' means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty.


6 'Mineral resources' means all non-living natural non-renewable resources, including fossil fuels, metallic and non-metallic minerals.

7. 'Antarctic mineral resource activities' means prospecting, exploration or development, but does not include scientific research activities within the meaning of Article III of the Antarctic Treaty.
8. 'Prospecting' means activities, including logistic support, aimed at identifying areas of mineral resource potential for possible exploration and development, including geological, geochemical and geophysical investigations and field observations, the use of remote sensing techniques and collection of surface, sea floor and sub-ice samples. Such activities do not include dredging and excavations, except for the purpose of obtaining small-scale samples, or drilling, except shallow drilling into rock and sediment to depths not exceeding 25 metres, or such other depth as the Commission may determine for particular circumstances.

9. 'Exploration' means activities, including logistic support, aimed at identifying and evaluating specific mineral resource occurrences or deposits, including exploratory drilling, dredging and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development, but excluding pilot projects or commercial production.

10. 'Development' means activities, including logistic support, which take place following exploration and are aimed at or associated with exploitation of specific mineral resource deposits, including pilot projects, processing, storage and transport activities.

11. 'Operator' means:

a. a Party; or

b. an agency or instrumentality of a Party; or

c. a juridical person established under the law of a Party; or

d. a joint venture consisting exclusively of any combination of any of the foregoing, which is undertaking Antarctic mineral resource activities and for which there is a Sponsoring State.

12. 'Sponsoring State' means the Party with which an Operator has a substantial and genuine link, through being:

in the case of a Party, that Party;

in the case of an agency or instrumentality of a Party, that Party;

in the case of a juridical person other than an agency or instrumentality of a Party, the Party:

i. under whose law that juridical person is established and to whose law it is subject, without prejudice to any other law which might be applicable, and

ii. in whose territory the management of that juridical person is located, and

iii. to whose effective control that juridical person is
subject;

d. in the case of a joint venture not constituting a juridical person:

1. where the managing member of the joint venture is a Party or an agency or instrumentality of a Party, that Party; or

ii. in any other case, where in relation to a Party the managing member of the joint venture satisfies the requirements of subparagraph (c) above, that Party.

13. 'Managing member of the joint venture' means that member which the participating members in the joint venture have by agreement designated as having responsibility for central management of the joint venture, including the functions of organising and supervising the activities to be undertaken, and controlling the financial resources involved.

14. 'Effective control' means the ability of the Sponsoring State to ensure the availability of substantial resources of the Operator for purposes connected with the implementation of this Convention, through the location of such resources in the territory of the Sponsoring State or otherwise.

15. 'Damage to the Antarctic environment or dependent or associated ecosystems' means any impact on the living or non-living components of that environment or those ecosystems, including harm to atmospheric, marine or terrestrial life, beyond that which is negligible or which has been assessed and judged to be acceptable pursuant to this Convention.

16. 'Commission' means the Antarctic Mineral Resources Commission established pursuant to Article 18.

17. 'Regulatory Committee' means an Antarctic Mineral Resources Regulatory Committee established pursuant to Article 29.

18. 'Advisory Committee' means the Scientific, Technical and Environmental Advisory Committee established pursuant to Article 23.

19. 'Special Meeting of Parties' means the Meeting referred to in Article 28.

20. 'Arbitral Tribunal' means an Arbitral Tribunal constituted as provided for in the Annex, which forms an integral part of this Convention.

Article 2.

OBJECTIVES AND GENERAL PRINCIPLES

1. This Convention is an integral part of the Antarctic Treaty system, comprising the Antarctic Treaty, the measures in effect under that Treaty, and its associated separate legal instruments, the prime purpose of which is to ensure that
Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord. The Parties provide through this Convention, the principles it establishes, the rules it prescribes, the institutions it creates and the decisions adopted pursuant to it, a means for:

assessing the possible impact on the environment of Antarctic mineral resource activities;

determining whether Antarctic mineral resource activities are acceptable;

governing the conduct of such Antarctic mineral resource activities as may be found acceptable; and

ensuring that any Antarctic mineral resource activities are undertaken in strict conformity with this Convention.

2. In implementing this Convention, the Parties shall ensure that Antarctic mineral resource activities, should they occur, take place in a manner consistent with all the components of the Antarctic Treaty system and the obligations flowing therefrom.

3. In relation to Antarctic mineral resource activities, should they occur, the Parties acknowledge the special responsibility of the Antarctic Treaty Consultative Parties for the protection of the environment and the need to:

a. protect the Antarctic environment and dependent and associated ecosystems;

b. respect Antarctica's significance for, and influence on, the global environment;

c. respect other legitimate uses of Antarctica;

d. respect Antarctica's scientific value and aesthetic and wilderness qualities;

e. ensure the safety of operations in Antarctica;

f. promote opportunities for fair and effective participation of all Parties; and

g. take into account the interests of the international community as a whole.

Article 3.

PROHIBITION OF ANTARCTIC MINERAL RESOURCE ACTIVITIES OUTSIDE THIS CONVENTION

No Antarctic mineral resource activities shall be conducted except in accordance with this Convention and measures in effect pursuant to it and, in the case of exploration or development, with a Management Scheme approved pursuant to Article 48 or 54.
Article 4.

PRINCIPLES CONCERNING JUDGMENTS ON ANTARCTIC MINERAL RESOURCE ACTIVITIES

1. Decisions about Antarctic mineral resource activities shall be based upon information adequate to enable informed judgments to be made about their possible impacts and no such activities shall take place unless this information is available for decisions relevant to those activities.

2. No Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts on the Antarctic environment and on dependent and on associated ecosystems, that the activity in question would not cause:

   significant adverse effects on air and water quality;

   significant changes in atmospheric, terrestrial or marine environments;

   significant changes in the distribution, abundance or productivity of populations of species of fauna or flora;

   further jeopardy to endangered or threatened species or populations of such species; or

   degradation of, or substantial risk to, areas of special biological, scientific, historic, aesthetic or wilderness significance.

3. No Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts, that the activity in question would not cause significant adverse effects on global or regional climate or weather patterns.

4. No Antarctic mineral resource activity shall take place until it is judged that:

   technology and procedures are available to provide for safe operations and compliance with paragraphs 2 and 3 above;

   there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify any adverse effects of such activity and to provide for the modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment or dependent or associated ecosystems; and

   there exists the capacity to respond effectively to accidents, particularly those with potential environmental effects.

5. The judgments referred to in paragraphs 2, 3 and 4 above shall take into account the cumulative impacts of possible Antarctic mineral resource activities both by themselves and in
combination with other such activities and other uses of Antarctica.

Article 5.

AREA OF APPLICATION

1. This Convention shall, subject to paragraphs 2, 3 and 4 below, apply to the Antarctic Treaty area.

2. Without prejudice to the responsibilities of the Antarctic Treaty Consultative Parties under the Antarctic Treaty and measures pursuant to it, the Parties agree that this Convention shall regulate Antarctic mineral resource activities which take place on the continent of Antarctica and all Antarctic islands, including all ice shelves, south of 60 deg. south latitude and in the seabed and subsoil of adjacent offshore areas up to the deep seabed.

3. For the purposes of this Convention 'deep seabed' means the seabed and subsoil beyond the geographic extent of the continental shelf as the term continental shelf is defined in accordance with international law.

4. Nothing in this Article shall be construed as limiting the application of other Articles of this Convention in so far as they relate to possible impacts outside the area referred to in paragraphs 1 and 2 above, including impacts on dependent or on associated ecosystems.

Article 6.

COOPERATION AND INTERNATIONAL PARTICIPATION

In the implementation of this Convention cooperation within its framework shall be promoted and encouragement given to international participation in Antarctic mineral resource activities by interested Parties which are Antarctic Treaty Consultative Parties and by other interested Parties, in particular, developing countries in either category. Such participation may be realised through the Parties themselves and their Operators.

Article 7.

COMPLIANCE WITH THIS CONVENTION

1. Each Party shall take appropriate measures within its competence to ensure compliance with this Convention and any measures in effect pursuant to it.

2. If a Party is prevented by the exercise of jurisdiction by another Party from ensuring compliance in accordance with paragraph 1 above, it shall not, to the extent that it is so prevented, bear responsibility for that failure to ensure compliance.

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3. If any jurisdictional dispute related to compliance with this Convention or any measure in effect pursuant to it arises between two or more Parties, the Parties concerned shall immediately consult together with a view to reaching a mutually acceptable solution.

4. Each Party shall notify the Executive Secretary, for circulation to all other Parties, of the measures taken pursuant to paragraph 1 above.

5. Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any Antarctic mineral resource activities contrary to the objectives and principles of this Convention.

6. Each Party may, whenever it deems it necessary, draw the attention of the Commission to any activity which in its opinion affects the implementation of the objectives and principles of this Convention.

7. The Commission shall draw the attention of all Parties to any activity which, in the opinion of the Commission, affects the implementation of the objectives and principles of this Convention or the compliance by any Party with its obligations under this Convention and any measures in effect pursuant to it.

8. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by that State, its agencies or instrumentalities, natural or juridical persons, ships, aircraft or other means of transportation which, in the opinion of the Commission, affects the implementation of the objectives and principles of this Convention. The Commission shall inform all Parties accordingly.

9. Nothing in this Article shall affect the operation of Article 127 of this Convention or Article VIII of the Antarctic Treaty.

Article 8.

RESPONSE ACTION AND LIABILITY

1. An Operator undertaking any Antarctic mineral resource activity shall take necessary and timely response action, including prevention, containment, clean up and removal measures, if the activity results in or threatens to result in damage to the Antarctic environment or dependent or associated ecosystems. The Operator, through its Sponsoring State, shall notify the Executive Secretary, for circulation to the relevant institutions of this Convention and to all Parties, of action taken pursuant to this paragraph.

2. An Operator shall be strictly liable for:

damage to the Antarctic environment or dependent or associated ecosystems arising from its Antarctic mineral resource activities, including payment in the event that there has been no restoration to the status quo ante;
loss of or impairment to an established use, as referred to in Article 15, or loss of or impairment to an established use of dependent or associated ecosystems, arising directly out of damage described in subparagraph (a) above; 

loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in subparagraph (a) above; and 

reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment, clean up and removal measures, and action taken to restore the status quo ante where Antarctic mineral resource activities undertaken by that Operator result in or threaten to resulting damage to the Antarctic environment or dependent or associated ecosystems.

3. Damage of the kind referred to in paragraph 2 above which would not have occurred or continued if the Sponsoring State had carried out its obligations under this Convention with respect to its Operator shall, in accordance with international law, entail liability of that Sponsoring State. Such liability shall be limited to that portion of liability not satisfied by the Operator or otherwise.

Nothing in subparagraph (a) above shall affect the application of the rules of international law applicable in the event that damage not referred to in that subparagraph would not have occurred or continued if the Sponsoring State had carried out its obligations under this Convention with respect to its Operator.

4. An Operator shall not be liable pursuant to paragraph 2 above if it proves that the damage has been caused directly by, and to the extent that it has been caused directly by:

an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character which could not reasonably have been foreseen; or 

armed conflict, should it occur notwithstanding the Antarctic Treaty, or an act of terrorism directed against the activities of the Operator, against which no reasonable precautionary measures could have been effective.

5. Liability of an Operator for any loss of life, personal injury or loss of or damage to property other than that governed by this Article shall be regulated by applicable law and procedures.

6. If an Operator proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that Operator may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.
Further rules and procedures in respect of the provisions on liability set out in this Article shall be elaborated through a separate Protocol which shall be adopted by consensus by the members of the Commission and shall enter into force according to the procedure provided for in Article 62 for the entry into force of this Convention.

Such rules and procedures shall be designed to enhance the protection of the Antarctic environment and dependent and associated ecosystems.

Such rules and procedures:

i. may contain provisions for appropriate limits on liability, where such limits can be justified;

ii. without prejudice to Article 57, shall prescribe means and mechanisms such as a claims tribunal or other for a by which claims against Operators pursuant to this Article may be assessed and adjudicated;

iii. shall ensure that means is provided to assist with immediate response action, and to satisfy liability under paragraph 2 above in the event, inter alia, that an Operator liable is financially incapable of meeting its obligation in full, that it exceeds any relevant limits of liability, that there is a defence to liability or that the loss or damage is of undetermined origin. Unless it is determined during the elaboration of the Protocol that there are other effective means of meeting these objectives, the Protocol shall establish a Fund or Funds and make provision in respect of such Fund or Funds, inter alia, for the following:

* financing by Operators or on industry wide bases;

* ensuring the permanent liquidity and mandatory supplementation thereof in the event of insufficiency;

* reimbursement of costs of response action, by whomsoever incurred.

8. Nothing in paragraphs 4, 6 and 7 above or in the Protocol adopted pursuant to paragraph 7 shall affect in any way the provisions of paragraph 1 above.

9. No application for an exploration or development permit shall be made until the Protocol provided for in paragraph 7 above is in force for the Party lodging such application.

10. Each Party, pending the entry into force for it of the Protocol provided for in paragraph 7 above, shall ensure, consistently with Article 7 and in accordance with its legal system, that recourse is available in its national courts for adjudicating liability claims pursuant to paragraphs 2, 4 and 6 above against Operators which are engaged in prospecting. Such recourse shall include the adjudication of claims against any Operator it has sponsored. Each Party shall also ensure, in
accordance with its legal system, that the Commission has the right to appear as a party in its national courts to pursue relevant liability claims under paragraph 2(a) above.

11. Nothing in this Article or in the Protocol provided for in paragraph 7 above shall be construed as to:

a. preclude the application of existing rules on liability, and the development in accordance with international law of further such rules, which may have application to either States or Operators; or

b. affect the right of an Operator incurring liability pursuant to this Article to seek redress from another party which caused or contributed to the damage in question.

12. When compensation has been paid other than under this Convention liability under this Convention shall be offset by the amount of such payment.

* Article 9.

* PROTECTION OF LEGAL POSITIONS UNDER THE ANTARCTIC TREATY

Nothing in this Convention and no acts or activities taking place while this Convention is in force shall:

constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area;

be interpreted as a renunciation or diminution by any Party of, or as prejudicing, any right or claim or basis of claim to territorial sovereignty in Antarctica or to exercise coastal state jurisdiction under international law;

be interpreted as prejudicing the position of any Party as regards its recognition or non-recognition of any such right, claim or basis of claim; or

affect the provision of Article IV(2) of the Antarctic Treaty that no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Antarctic Treaty is in force.

* Article 10.

* CONSISTENCY WITH THE OTHER COMPONENTS OF THE ANTARCTIC TREATY SYSTEM

1. Each Party shall ensure that Antarctic mineral resource activities take place in a manner consistent with the components of the Antarctic Treaty system, including the Antarctic Treaty,

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the Convention for the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources and the measures in effect pursuant to those instruments.

2. The Commission shall consult and cooperate with the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, and the Commission for the Conservation of Antarctic Marine Living Resources with a view to ensuring the achievement of the objectives and principles of this Convention and avoiding any interference with the achievement of the objectives and principles of the Antarctic Treaty, the Convention for the Conservation of Antarctic Seals or the Convention on the Conservation of Antarctic Marine Living Resources, or inconsistency between the measures in effect pursuant to those instruments and measures in effect pursuant to this Convention.

* Article 11.

* 

INSPECTION UNDER THE ANTARCTIC TREATY

All stations, installations and equipment, in the Antarctic Treaty area, relating to Antarctic mineral resource activities, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel at such stations and installations, shall be open at all times to inspection by observers designated under Article VII of the Antarctic Treaty for the purposes of that Treaty.

* Article 12.

* 

INSPECTION UNDER THIS CONVENTION

1. In order to promote the objectives and principles and to ensure the observance of this Convention and measures in effect pursuant to it, all stations, installations and equipment relating to Antarctic mineral resource activities in the area in which these activities are regulated by this Convention, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel anywhere in that area shall be open at all times to inspection by:

observers designated by any member of the Commission who shall be nationals of that member; and

observers designated by the Commission or relevant Regulatory Committees.

2. Aerial inspection may be carried out at any time over the area in which Antarctic mineral resource activities are regulated by this Convention.
3. The Commission shall maintain an up-to-date list of observers designated pursuant to paragraph 1(a) and (b) above.

4. Reports from the observers shall be transmitted to the Commission and to any Regulatory Committee having competence in the area where the inspection has been carried out.

5. Observers shall avoid interference with the safe and normal operations of stations, installations and equipment visited and shall respect measures adopted by the Commission to protect confidentiality of data and information.

6. Inspections undertaken pursuant to paragraph 1(a) and (b) above shall be compatible and reinforce each other and shall not impose an undue burden on the operation of stations, installations and equipment visited.

7. In order to facilitate the exercise of their functions under this Convention, and without prejudice to the respective positions of the Parties relating to jurisdiction over all other persons in the area in which Antarctic mineral resource activities are regulated by this Convention, observers designated under this Article shall be subject only to the jurisdiction of the Party of which they are nationals in respect of all acts or omissions occurring while they are in that area for the purpose of exercising their functions.

8. No exploration or development shall take place in an area identified pursuant to Article 41 until effective provision has been made for inspection in that area.

* Article 13.

*

PROTECTED AREAS

1. Antarctic mineral resource activities shall be prohibited in any area designated as a Specially Protected Area or a Site of Special Scientific Interest under Article IX(1) of the Antarctic Treaty. Such activities shall also be prohibited in any other area designated as a protected area in accordance with Article IX(1) of the Antarctic Treaty, except to the extent that the relevant measure provides otherwise. Pending any designation becoming effective in accordance with Article IX(4) of the Antarctic Treaty, no Antarctic mineral resource activities shall take place in any such area which would prejudice the purpose for which it was designated.

2. The Commission shall also prohibit or restrict Antarctic mineral resource activities in any area which, for historic, ecological, environmental, scientific or other reasons, it has designated as a protected area.

3. In exercising its powers under paragraph 2 above or under Article 41 the Commission shall consider whether to restrict or prohibit Antarctic mineral resource activities in any area, in
addition to those referred to in paragraph 1 above, protected or set aside pursuant to provisions of other components of the Antarctic Treaty system, to ensure the purposes for which they are designated.

4. In relation to any area in which Antarctic mineral resource activities are prohibited or restricted in accordance with paragraph 1, 2 or 3 above, the Commission shall consider whether, for the purposes of Article 4(2)(e), it would be prudent, additionally, to prohibit or restrict Antarctic mineral resource activities in adjacent areas for the purpose of creating a buffer zone.

5. The Commission shall give effect to Article 10(2) in acting pursuant to paragraphs 2, 3 and 4 above.

6. The Commission shall, where appropriate, bring any decisions it takes pursuant to this Article to the attention of the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, the Commission for the Conservation of Antarctic Marine Living Resources and the Scientific Committee on Antarctic Research.

* Article 14.

* NON-DISCRIMINATION

In the implementation of this Convention there shall be no discrimination against any Party or its Operators.

* Article 15.

* RESPECT FOR OTHER USES OF ANTARCTICA

1. Decisions about Antarctic mineral resource activities shall take into account the need to respect other established uses of Antarctica, including:

the operation of stations and their associated installations, support facilities and equipment in Antarctica;

scientific investigation in Antarctica and cooperation therein;

the conservation, including rational use, of Antarctic marine living resources;

tourism;

the preservation of historic monuments; and

navigation and aviation,

that are consistent with the Antarctic Treaty system.
2. Antarctic mineral resource activities shall be conducted so as to respect any uses of Antarctica as referred to in paragraph 1 above.

* Article 16.

* 

AVAILABILITY AND CONFIDENTIALITY OF DATA AND INFORMATION

Data and information obtained from Antarctic mineral resource activities shall, to the greatest extent practicable and feasible, be made freely available, provided that:

a. as regards data and information of commercial value deriving from prospecting, they may be retained by the Operator in accordance with Article 37;

b. as regards data and information deriving from exploration or development, the Commission shall adopt measures relating, as appropriate, to their release and to ensure the confidentiality of data and information of commercial value.

* Article 17.

* 

NOTIFICATIONS AND PROVISIONAL EXERCISE OF FUNCTIONS OF THE EXECUTIVE SECRETARY

1. Where in this Convention there is a reference to the provision of information, a notification or a report to any institution provided for in this Convention and that institution has not been established, the information, notification or report shall be provided to the Executive Secretary who shall circulate it as required.

2. Where in this Convention a function is assigned to the Executive Secretary and no Executive Secretary has been appointed under Article 33, that function shall be performed by the Depositary.

* CHAPTER II. INSTITUTIONS

* Article 18.

* 

COMMISSION

1. There is hereby established the Antarctic Mineral Resources Commission.

2. Membership of the Commission shall be as follows:

each Party which was an Antarctic Treaty Consultative Party on
the date when this Convention was opened for signature; and

each other Party during such time as it is actively engaged
in substantial scientific, technical or environmental research in
the area to which this Convention applies directly relevant to
decisions about Antarctic mineral resource activities,
particularly the assessments and judgments called for in Article
4; and

each other Party sponsoring Antarctic mineral resource
exploration or development during such time as the relevant
Management Scheme is in force.

3. A Party seeking to participate in the work of the Commission
pursuant to subparagraph (b) or (c) above shall notify the
Depositary of the basis upon which it seeks to become a member
of the Commission. In the case of a Party which is not an
Antarctic Treaty Consultative Party, such notification shall
include a declaration of intent to abide by recommendations
pursuant to Article IX(1) of the Antarctic Treaty. The
Depositary shall communicate to each member of the Commission
such notification and accompanying information.

4. The Commission shall consider the notification at its next
meeting. In the event that a Party referred to in paragraph 2(b)
above submitting a notification pursuant to paragraph

3 above is an Antarctic Treaty Consultative Party, it shall be
deemed to have satisfied the requirements for Commission
membership unless more than one-third of the members of the
Commission object at the meeting at which such notification is
considered. Any other Party submitting a notification shall be
deemed to have satisfied the requirements for Commission
membership if no member of the Commission objects at the meeting
at which such notification is considered.

5. Each member of the Commission shall be represented by one
representative who may be accompanied by alternate
representatives and advisers.

6. Observer status in the Commission shall be open to any Party
and to any Contracting Party to the Antarctic Treaty which is
not a Party to this Convention.

* Article 19.

*

COMMISSION MEETINGS

The first meeting of the Commission, held for the purpose of
taking organisational, financial and other decisions necessary
for the effective functioning of this Convention and its
institutions, shall be convened within six months of the entry
into force of this Convention.

After the Commission has held the meeting or meetings necessary
to take the decisions referred to in subparagraph (a) above, the Commission shall not hold further meetings except in accordance with paragraph 2 or 3 below.

2. Meetings of the Commission shall be held within two months of:

receipt of a notification pursuant to Article 39;

a request by at least six members of the Commission; or

a request by a member of a Regulatory Committee in accordance with Article 49(1).

3. The Commission may establish a regular schedule of meetings if it determines that it is necessary for the effective functioning of this Convention.

4. Unless the Commission decides otherwise, its meetings shall be convened by the Executive Secretary.

* Article 20.

* 

COMMISION PROCEDURE

1 The Commission shall elect from among its members a Chairman and two Vice-Chairmen, each of whom shall be a representative of a different Party.

Until such time as the Commission has established a regular schedule of meetings in accordance with Article 19(3), the Chairman and Vice-Chairmen shall be elected to serve for a period of two years, provided that if no meeting is held during that period they shall continue to serve until the conclusion of the first meeting held there after.

When a regular schedule of meetings has been established, the Chairman and Vice-Chairmen shall be elected to serve for a period of two years.

3. The Commission shall adopt its rules of procedure. Such rules may include provisions concerning the number of terms of office which the Chairman and Vice-Chairmen may serve and for the rotation of such offices.

4. The Commission may establish such subsidiary bodies as are necessary for the performance of its functions.

5. The Commission may decide to establish a permanent headquarters which shall be in New Zealand.

6. The Commission shall have legal personality and shall enjoy in the territory of each Party such legal capacity as may be necessary to perform its functions and achieve the objectives of this Convention.
7. The privileges and immunities to be enjoyed by the Commission, the Secretariat and representatives attending meetings in the territory of a Party shall be determined by agreement between the Commission and the Party concerned.

* Article 21.

* FUNCTIONS OF THE COMMISSION

1. The functions of the Commission shall be:

- to facilitate and promote the collection and exchange of scientific, technical and other information and research projects necessary to predict, detect and assess the possible environmental impact of Antarctic mineral resource activities, including the monitoring of key environmental parameters and ecosystem components;

- to designate areas in which Antarctic mineral resource activities shall be prohibited or restricted in accordance with Article 13, and to perform the related functions assigned to it in that Article;

- to adopt measures for the protection of the Antarctic environment and dependent and associated ecosystems and for the promotion of safe and effective exploration and development techniques and, as it may deem appropriate, to make available a handbook of such measures;

- to determine, in accordance with Article 41, whether or not to identify an area for possible exploration and development, and to perform the related functions assigned to it in Article 42;

- to adopt measures relating to prospecting applicable to all relevant Operators:
  
  i. to determine for particular circumstances maximum drilling depths in accordance with Article 1(8);

  ii. to restrict or prohibit prospecting consistently with Articles 13, 37 and 38;

- to ensure the effective application of Articles 12(4), 37(7) and (8), 38(2) and 39(2), which require the submission to the Commission of information, notifications and reports;

- to give advance public notice of matters upon which it is requesting the advice of the Advisory Committee;

- to adopt measures relating to the availability and confidentiality of data and information, including measures pursuant to Article 16;

  i. to elaborate the principle of non-discrimination set forth in
Article 14;

j. to adopt measures with respect to maximum block sizes;

k. to perform the functions assigned to it in Article 29;

l. to review action by Regulatory Committees in accordance with Article 49;

m. to adopt measures in accordance with Articles 6 and 41(1)(d) related to the promotion of cooperation and to participation in Antarctic mineral resource activities;

n. to adopt general measures pursuant to Article 51(6);

o. to take decisions on budgetary matters and adopt financial regulations in accordance with Article 35;

p. to adopt measures regarding fees payable in connection with notifications submitted pursuant to Articles 37 and 39 and applications lodged pursuant to Articles 44 and 53, the purpose of which fees shall be to cover the administrative costs of handling such notifications and applications;

q. to adopt measures regarding levies payable by Operators engaged in exploration and development, the principal purpose of which levies shall be to cover the costs of the institutions of this Convention;

r. to determine in accordance with Article 35(7) the disposition of revenues, if any, accruing to the Commission which are surplus to the requirements for financing the budget pursuant to Article 35;

s. to perform the functions assigned to it in Article 7(7) and(8);

t. to perform the functions relating to inspection assigned to it in Article 12;

u. to consider monitoring reports received pursuant to Article 52;

v. to perform the functions relating to dispute settlement assigned to it in Article 59;

w. to perform the functions relating to consultation and cooperation assigned to it in Articles 10(2) and 34;

x. to keep under review the conduct of Antarctic mineral resource activities with a view to safeguarding the protection of the Antarctic environment in the interest of all mankind; and

y. to perform such other functions as are provided for elsewhere in this Convention.

2. In performing its functions the Commission shall seek and
take full account of the views of the Advisory Committee provided in accordance with Article 26.

3. Each measure adopted by the Commission shall specify the date on which it comes into effect.

4. The Commission shall, subject to Article 16 and measures in effect pursuant to it and paragraph 1(h) above, ensure that a publicly available record of its meetings and decisions and of information, notifications and reports submitted to it is maintained.

* Article 22.

* DECISION MAKING IN THE COMMISSION

1. The Commission shall take decisions on matters of substance by a three-quarters majority of the members present and voting. When a question arises as to whether a matter is one of substance or not, that matter shall be treated as one of substance unless otherwise decided by a three-quarters majority of the members present and voting.

2. Notwithstanding paragraph 1 above, consensus shall be required for the following:

a. the adoption of the budget and decisions on budgetary and related matters pursuant to Article 21(1)(p), (q) and (r) and Article 35(1), (2), (3), (4) and (5);

b. decisions taken pursuant to Article 21(1)(i);

c. decisions taken pursuant to Article 41(2).

3. Decisions on matters of procedure shall be taken by a simple majority of the members present and voting.

4. Nothing in this Article shall be interpreted as preventing the Commission, in taking decisions on matters of substance, from endeavouring to reach a consensus.

5. For the purposes of this Article, consensus means the absence of a formal objection. If, with respect to any decision covered by paragraph 2(c) above, the Chairman of the Commission determines that there would be such an objection he shall consult the members of the Commission. If, as a result of these consultations, the Chairman determines that an objection would remain, he shall convene those members most directly interested for the purpose of seeking to reconcile the differences and producing a generally acceptable proposal.

* Article 23.

*
ADVISORY COMMITTEE

1. There is hereby established the Scientific, Technical and Environmental Advisory Committee.

2. Membership of the Advisory Committee shall be open to all Parties.

3. Each member of the Advisory Committee shall be represented by one representative with suitable scientific, technical or environmental competence who may be accompanied by alternate representatives and by experts and advisers.

4. Observer status in the Advisory Committee shall be open to any Contracting Party to the Antarctic Treaty or to the Convention on the Conservation of Antarctic Marine Living Resources which is not a Party to this Convention.

* Article 24.

*

ADVISORY COMMITTEE MEETINGS

1. Unless the Commission decides otherwise, the Advisory Committee shall be convened for its first meeting within six months of the first meeting of the Commission. It shall meet thereafter as necessary to fulfil its functions on the basis of a schedule established by the Commission.

2. Meetings of the Advisory Committee, in addition to those scheduled pursuant to paragraph 1 above, shall be convened at the request of at least six members of the Commission or pursuant to Article 40(1).

3. Unless the Commission decides otherwise, the meetings of the Advisory Committee shall be convened by the Executive Secretary.

* Article 25.

*

ADVISORY COMMITTEE PROCEDURE

1. The Advisory Committee shall elect from among its members a Chairman and two Vice-Chairmen, each of whom shall be a representative of a different Party.

a. Until such time as the Commission has established a schedule of meetings in accordance with Article 24(1), the Chairman and Vice-Chairmen shall be elected to serve for a period of two years, provided that if no meeting is held during that period they shall continue to serve until the conclusion of the first meeting held there after.

b. When a schedule of meetings has been established, the Chairman and Vice-Chairmen shall be elected to serve for a
period of two years.

3. The Advisory Committee shall give advance public notice of its meetings and of matters to be considered at each meeting so as to permit the receipt and consideration of views on such matters from international organisations having an interest in them. For this purpose the Advisory Committee may, subject to review by the Commission, establish procedures for the transmission of relevant information to these organisations.

4. The Advisory Committee shall, by a two-thirds majority of the members present and voting, adopt its rules of procedure. Such rules may include provisions concerning the number of terms of office which the Chairman and Vice-Chairmen may serve and for the rotation of such offices. The rules of procedure and any amendments thereto shall be subject to approval by the Commission.

5. The Advisory Committee may establish such subcommittees, subject to budgetary approval, as may be necessary for the performance of its functions.

* Article 26.

* FUNCTIONS OF THE ADVISORY COMMITTEE

1. The Advisory Committee shall advise the Commission and Regulatory Committees, as required by this Convention, or as requested by them, on the scientific, technical and environmental aspects of Antarctic mineral resource activities. It shall provide a forum for consultation and cooperation concerning the collection, exchange and evaluation of information related to the scientific, technical and environmental aspects of Antarctic mineral resource activities.

2. It shall provide advice to:

a. the Commission relating to its functions under Articles 21(1)(a) to (f), (u) and (x) and 35(7)(a) (in matters relating to scientific research) as well as on the implementation if Article 4; and

b. Regulatory Committees with respect to:

i. the implementation of Article 4;

ii. scientific, technical and environmental aspects of Articles 43(3) and (5), 45, 47, 51, 52 and 54;

iii. data to be collected and reported in accordance with Articles 47 and 52; and

iv the scientific, technical and environmental implications of reports and reported data provided in accordance with Articles 47 and 52.
3. It shall provide advice to the Commission and to Regulatory Committees on:

a. criteria in respect of the judgments required under Article 4(2) and (3) for the purposes of Article 4(1);

b. types of data and information required to carry out its functions, and how they should be collected, reported and archived;

c. scientific research which would contribute to the base of data and information required in subparagraph (b) above;

d. effective procedures and systems for data and information analysis, evaluation, presentation and dissemination to facilitate the judgments referred to in Article 4; and

e. possibilities for scientific, technical and environmental cooperation amongst interested Parties which are developing countries and other Parties.

4. The Advisory Committee, in providing advice on decisions to be taken in accordance with Articles 41, 43, 45 and 54 shall, in each case, undertake a comprehensive environmental and technical assessment of the proposed actions. Such assessments shall be based on all information, and any amplifications thereof, available to the Advisory Committee, including the information provided pursuant to Articles 39(2)(e), 44(2)(b)(iii) and 53(2)(b). The assessments of the Advisory Committee shall, in each case, address the nature and scope of the decisions to be taken and shall include consideration, as appropriate, of, inter alia:

a. the adequacy of existing information to enable informed judgments to be made;

b. the nature, extent, duration and intensity of likely direct environmental impacts resulting from the proposed activity;

c. possible indirect impacts;

d. means and alternatives by which such direct or indirect impacts might be reduced, including environmental consequences of the alternative of not proceeding;

e. cumulative impacts of the proposed activity in the light of existing or planned activities;

f. capacity to respond effectively to accidents with potential environmental effects;

g. the environmental significance of unavoidable impacts; and

h. the probabilities of accidents and their environmental consequences.
5. In preparing its advice the Advisory Committee may seek information and advice from other scientists and experts or scientific organisations as may be required on an ad hoc basis.

6. The Advisory Committee shall, with a view to promoting international participation in Antarctic mineral resource activities as provided for in Article 6, provide advice concerning the availability to interested developing country Parties and other Parties, of the information referred to in paragraph 3 above, of training programs related to scientific, technical and environmental matters bearing on Antarctic mineral resource activities, and of opportunities for cooperation among Parties in these programs.

* Article 27.

* REPORTING BY THE ADVISORY COMMITTEE

The Advisory Committee shall present a report on each of its meetings to the Commission and to any relevant Regulatory Committee. The report shall cover all matters considered at the meeting and shall reflect the conclusions reached and all the views expressed by members of the Advisory Committee. The report shall be circulated by the Executive Secretary to all Parties, and to observers attending the meeting, and shall thereupon be made publicly available.

* Article 28.

* SPECIAL MEETING OF PARTIES

1. A Special Meeting of Parties shall, as required, be convened in accordance with Article 40(2) and shall have the functions, in relation to the identification of an area for possible exploration and development, specified in Article 40(3).

2. Membership of a Special Meeting of Parties shall be open to all Parties, each of which shall be represented by one representative who may be accompanied by alternate representatives and advisers.

3. Observer status at a Special Meeting of Parties shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Convention.

4. Each Special Meeting of Parties shall elect from among its members a Chairman and Vice-Chairmen, each of whom shall serve for the duration of that meeting. The Chairman and Vice-Chairman shall not be representatives of the same Party.

5. The Special Meeting of Parties shall, by a two-thirds majority of the members present and voting, adopt its rules of procedure. Until such time as this has been done the Special
Meeting of Parties shall apply provisional rules of procedure drawn up by the Commission.

6. Unless the Commission decides otherwise, a Special Meeting of Parties shall be convened by the Executive Secretary and shall be held at the same venue as the meeting of the Commission convened to consider the identification of an area for possible exploration and development.

* Article 29.

*  

REGULATORY COMMITTEES

1. An Antarctic Mineral Resources Regulatory Committee shall be established for each area identified by the Commission pursuant to Article 41.

2. Subject to paragraph 6 below, each Regulatory Committee shall consist of 10 members. Membership shall be determined by the Commission in accordance with this Article and, taking into account Article 9, shall include:

a. the member, if any, or if there are more than one, those members of the Commission identified by reference to Article 9(b) which assert rights or claims in the identified area;

b. the two members of the Commission also identified by reference to Article 9(b) which assert a basis of claim in Antarctica;

c. other members of the Commission determined in accordance with this Article so that the Regulatory Committee shall, subject to paragraph 6 below, consist, in total, of 10 members:

i. four members identified by reference to Article 9(b) which assert rights or claims, including the member or members, if any, referred to in subparagraph (a) above and

ii. six members which do not assert rights or claims as described in Article 9(b), including the two members referred to in subparagraph (b) above.

3. Upon the identification of an area in accordance with Article 41(2), the Chairman of the Commission shall, as soon as possible and in any event within 90 days, make a recommendation to the Commission concerning the membership of the Regulatory Committee. To this end the Chairman shall consult, as appropriate, with the Chairman of the Advisory Committee and all members of the Commission. Such recommendation shall comply with the requirements of paragraphs 2 and 4 of this Article and shall ensure:

a. the inclusion of members of the Commission which, whether through prospecting, scientific research or otherwise, have contributed substantial scientific, technical or environmental
information relevant to the identification of the area by the Commission pursuant to Article 41;

b. adequate and equitable representation of developing country members of the Commission, having regard to the overall balance between developed and developing country members of the Commission, including at least three developing country members of the Commission;

c. that account is taken of the value of a rotation of membership of Regulatory Committees as a further means of ensuring equitable representation of members of the Commission.

a. When there are one or more members of the Regulatory Committee referred to in paragraph 2(a) above, the Chairman of the Commission shall make the recommendation in respect of paragraph 2(c)(i) above upon the nomination, if any, of such member or members which shall take into account paragraph 3 above, in particular subparagraph (b) of that paragraph.

b. In making the recommendation in respect of paragraph 2(c)(ii) above, the Chairman of the Commission shall give full weight to the views (which shall take into account paragraph 3 above) which may be presented on behalf of those members of the Commission which do not assert rights of or claims to territorial sovereignty in Antarctica and, with reference to the requirements of paragraph 3(b) above, to the views which may be presented on behalf of the developing countries among them.

5. The recommendation of the Chairman of the Commission shall be deemed to have been approved by the Commission if it does not decide otherwise at the same meeting as the recommendation is submitted. In taking any decision in accordance with this Article the Commission shall ensure that the requirements of paragraphs 2 and 3 above are complied with and that the nomination, if any, referred to in paragraph 4(a) above is given effect.

a. If a member of the Commission which has sponsored prospecting in the identified area and submitted the notification pursuant to Article 39 upon which the Commission based its identification of the area pursuant to Article 41, is not a member of the Regulatory Committee by virtue of paragraphs 2 and 3 above, that member of the Commission shall be a member of the Regulatory Committee until such time as an application for an exploration permit is lodged pursuant to Article 44.

b. If a Party lodging an application for an exploration permit pursuant to Article 44 is not a member of the Regulatory Committee by virtue of paragraphs 2 and 3 above, that Party shall be a member of the Regulatory Committee for its consideration of that application. Should such application result in approval of a Management Scheme pursuant to Article 48, the Party in question shall remain a member of the Regulatory Committee during such time as that Management Scheme is in force with the right to take part in decisions on matters affecting that Management Scheme.
7. Nothing in this Article shall be interpreted as affecting Article IV of the Antarctic Treaty.

* Article 30.

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REGULATORY COMMITTEE PROCEDURE

1. The first meeting of each Regulatory Committee shall be convened by the Executive Secretary in accordance with Article 43(1). Each Regulatory Committee shall meet thereafter when and where necessary to fulfil its functions.

2. Each member of a Regulatory Committee shall be represented by one representative who may be accompanied by alternate representatives and advisers.

3. Each Regulatory Committee shall elect from among its members a Chairman and Vice-Chairman. The Chairman and Vice-Chairman shall not be representatives of the same Party.

4. Any Party may attend meetings of a Regulatory Committee as an observer.

5. Each Regulatory Committee shall adopt its rules of procedure. Such rules may include provisions concerning the period and number of terms of office which the Chairman and Vice-Chairman may serve and for the rotation of such offices.

* Article 31

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FUNCTIONS OF REGULATORY COMMITTEES

1. The functions of each Regulatory Committee shall be:

a. to undertake the preparatory work provided for in Article 43;

b. to consider applications for exploration and development permits in accordance with Articles 45, 46 and 54;

c. to approve Management Schemes and issue exploration and development permits in accordance with Articles 47, 48 and 54;

d. to monitor exploration and development activities in accordance with Article 52;

e. to perform the functions assigned to it in Article 51;

f. to perform the functions relating to inspection assigned to it in Article 12;

g. to perform the functions relating to dispute settlement assigned to it in Article 47(r); and
h. to perform such other functions as are provided for elsewhere in this Convention.

2. In performing its functions each Regulatory Committee shall seek and take full account of the views of the Advisory Committee provided in accordance with Article 26.

3. Each Regulatory Committee shall, subject to Article 16 and measures in effect pursuant to it and Article 21(1)(h), ensure that a publicly available record of its decisions, and of Management Schemes in force, is maintained.

* Article 32.

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DECISION MAKING IN REGULATORY COMMITTEES

1. Decisions by a Regulatory Committee pursuant to Articles 48 and 54(5) shall be taken by a two-thirds majority of the members present and voting, which majority shall include a simple majority of those members present and voting referred to in Article 29(2)(c)(I) and also simple majority of those members present and voting referred to in Article 29(2)(c)(ii).

2. Decisions by a Regulatory Committee pursuant to Article 43(3) and(5) shall be taken by a two-thirds majority of the members present and voting, which majority shall include at least half of those members present and voting referred to in Article 29(2)(c)(i) and also at least half of those members present and voting referred to in Article 29(2)(c)(ii).

3. Decisions on all other matters of substance shall be taken by a two-thirds majority of the members present and voting. When a question arises as to whether a matter is one of substance or not, that matter shall be treated as one of substance unless otherwise decided by a two-thirds majority of the members present and voting.

4. Decisions on matters of procedure shall be taken by a simple majority of the members present and voting.

5. Nothing in this Article shall be interpreted as preventing a Regulatory Committee, in taking decisions on matters of substance, from endeavoring to reach a consensus.

* Article 33.

*

SECRETARIAT

1. The Commission may establish a Secretariat to serve the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any subsidiary bodies established.
2. The Commission may appoint an Executive Secretary, who shall be the head of the Secretariat, according to such procedures and on such terms and conditions as the Commission may determine. The Executive Secretary shall serve for a four year term and may be reappointed.

3. The Commission may, with due regard to the need for efficiency and economy, authorise such staff establishment for the Secretariat as maybe necessary. The Executive Secretary shall appoint, direct and supervise the staff according to such rules and procedures and on such terms and conditions as the Commission may determine.

4. The Secretariat shall perform the functions specified in this Convention and, subject to the approved budget, the tasks entrusted to it by the Commission, Regulatory Committees, the Advisory Committee and the Special Meeting of Parties.

* Article 34.

* 

COOPERATION WITH INTERNATIONAL ORGANISATIONS

1. The Commission and, as appropriate, the Advisory Committee shall cooperate with the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, the Commission for the Conservation of Antarctic Marine Living Resources, and the Scientific Committee on Antarctic Research.

2. The Commission shall cooperate with the United Nations, its relevant Specialised Agencies, and, as appropriate, any international organisation which may have competence in respect of mineral resources in areas adjacent to those covered by this Convention.

3. The Commission shall also, as appropriate, cooperate with the International Union for the Conservation of Nature and Natural Resources, and with other relevant international organisations, including non-governmental organisations, having a scientific, technical or environmental interest in Antarctica.

4. The Commission may, as appropriate, accord observer status in the Commission and in the Advisory Committee to such relevant international organisations, including non-governmental organisations, as might assist in the work of the institution in question. Observer status at a Special Meeting of Parties shall be open to such organisations as have been accorded observer status in the Commission or the Advisory Committee.

5. The Commission may enter into agreements with the organisations referred to in this Article.

* Article 35.
FINANCIAL PROVISIONS

1 The Commission shall adopt a budget, on an annual or other appropriate basis, for:

a. its activities and the activities of Regulatory Committees, the Advisory Committee, the Special Meeting of Parties, any subsidiary bodies established and the Secretariat; and

b. the progressive reimbursement of any contributions paid under paragraphs 5 and 6 below whenever revenues under paragraph 4 below exceed expenditure.

2 The first draft budget shall be submitted by the Depository at least 90 days before the first meeting of the Commission. At that meeting the Commission shall adopt its first budget and decide upon arrangements for the preparation of subsequent budgets.

3 The Commission shall adopt financial regulations.

4. Subject to paragraph 5 below, the budget shall be financed, inter alia, by:

a. fees prescribed pursuant to Articles 21(1)(p) and 43(2)(b);

b. levies on Operators, subject to any measures adopted by the Commission in accordance with Article 21(1)(q), pursuant to Article 47(k)(i); and

c. such other financial payments by Operators pursuant to Article 47(k)(ii) as may be required to be paid to the institutions of This Convention.

5. If the budget is not fully financed by revenues in accordance with paragraph 4 above, and subject to reimbursement in accordance with paragraph 1(b) above, the budget shall, to the extent of any shortfall and subject to paragraph 6 below, be financed by contributions from the members of the Commission. To this end, the Commission shall adopt as soon as possible a method of equitable sharing of contributions to the budget. The budget shall, in the meantime, to the extent of any shortfall, be financed by equal contributions from each member of the Commission.

6. In adopting the method of contributions referred to in paragraph 5 above the Commission shall consider the extent to which members of and observers at institutions of this Convention may be called upon to contribute to the costs of those institutions.

7. The Commission, in determining the disposition of revenues accruing to it, which are surplus to the requirements for financing the budget pursuant to this Article, shall:
a. promote scientific research in Antarctica, particularly that related to the Antarctic environment and Antarctic resources, and a wide spread of participation in such research by all Parties, in particular developing country Parties;

b. ensure that the interests of the members of Regulatory Committees having the most direct interest in the matter in relation to the areas in question are respected in any disposition of that surplus.

8. The finances of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties, any subsidiary bodies established and the Secretariat shall accord with the financial regulations adopted by the Commission and shall be subject to an annual audit by external auditors selected by the Commission.

9. Each member of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any subsidiary bodies established, as well as any observer at a meeting of any of the institutions of this Convention, shall meet its own expenses arising from attendance at meetings.

10. A member of the Commission that fails to pay its contribution for two consecutive years shall not, during the period of its continuing subsequent default, have the right to participate in the taking of decisions in any of the institutions of this Convention. If it continues to be in default for a further two consecutive years, the Commission shall decide what further action should be taken, which may include loss by that member of the right to participate in meetings of the institutions of this Convention. Such member shall resume the full enjoyment of its rights upon payment of the outstanding contributions.

11. Nothing in this Article shall be construed as prejudicing the position of any member of a Regulatory Committee on the outcome of consideration by the Regulatory Committee of terms and conditions in a Management Scheme pursuant to Article 47(k)(ii).

* Article 36.

* OFFICIAL AND WORKING LANGUAGES

The official and working languages of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any meeting convened under Article 64 shall be English, French, Russian and Spanish.

* CHAPTER III. PROSPECTING

* Article 37.
PROSPECTING

1. Prospecting shall not confer upon any Operator any right to Antarctic mineral resources.

2. Prospecting shall at all times be conducted in compliance with this Convention and with measures in effect pursuant to this Convention, but shall not require authorisation by the institutions of this Convention.

a. The Sponsoring State shall ensure that its Operators undertaking prospecting maintain the necessary financial and technical means to comply with Article 8(1), and, to the extent that any such Operator fails to take response action as required in Article 8(1), shall ensure that this is undertaken.

b. The Sponsoring State shall also ensure that its Operators undertaking prospecting maintain financial capacity, commensurate with the nature and level of the activity undertaken and the risks involved, to comply with Article 8(2).

4. In cases where more than one Operator is engaged in prospecting in the same general area, the Sponsoring State or States shall ensure that those Operators conduct their activities with due regard to each others’ rights.

5. Where an Operator wishes to conduct prospecting in an area identified under Article 41 in which another Operator has been authorised to undertake exploration or development, the Sponsoring State shall ensure that such prospecting is carried out subject to the rights of any authorised Operator and any requirements to protect its rights specified by the relevant Regulatory Committee.

6. Each Operator shall ensure upon cessation of prospecting the removal of all installations and equipment and site rehabilitation. On the request of the Sponsoring State, the Commission may waive the obligation to remove installations and equipment.

7. The Sponsoring State shall notify the Commission at least nine months in advance of the commencement of planned prospecting. The notification shall be accompanied by such fees as may be established by the Commission in accordance with Article 21(1)(p) and shall:

a. identify, by reference to coordinates of latitude and longitude or identifiable geographic features, the general area in which the prospecting is to take place;

b. broadly identify the mineral resource or resources which are to be the subject of the prospecting;

c. describe the prospecting, including the methods to be used, and the general program of work to be undertaken and its expected duration;
d. provide an assessment of the possible environmental and other impacts of the prospecting, taking into account possible cumulative impacts as referred to in Article 4(5).

e. describe the measures, including monitoring programs, to be adopted to avoid harmful environmental consequences or undue interference with other established uses of Antarctica, and outline the measures to be put into effect in the event of any accident and contingency plans for evacuation in an emergency;

f. provide details on the Operator and certify that it:

i. has a substantial and genuine link with the Sponsoring State as defined in Article 1(12); and

ii. is financially and technically qualified to carry out the proposed prospecting in accordance with this Convention; and

g. provide such further information as may be required by measures adopted by the Commission.

8. The Sponsoring State shall subsequently provide to the Commission:

a. notification of any changes to the information referred to in paragraph 7 above;

b. notification of the cessation of prospecting, including removal of any installations and equipment as well as site rehabilitation; and

c. a general annual report on the prospecting undertaken by the Operator.

9. Notifications and reports submitted pursuant to this Article shall be circulated by the Executive Secretary without delay to all Parties and observers attending Commission meetings.

10. Paragraphs 7, 8 and 9 above shall not be interpreted as requiring the disclosure of data and information of commercial value.

11. The Sponsoring State shall ensure that basic data and information of commercial value generated by prospecting are maintained in archives and may at any time release part of or all such data and information, on conditions which it shall establish, for scientific or environmental purposes.

12. The Sponsoring State shall ensure that basic data and information, other than interpretative data, generated by prospecting are made readily available when such data and information are not, or are no longer, of commercial value and, in any event, no later than 10 years after the year the data and information were collected, unless it certifies to the Commission that the data and information continue to have commercial value. It shall review at regular intervals whether
such data and information may be released and shall report the results of such reviews to the Commission.

13. The Commission may adopt measures consistent with this Article relating to the release of data and information of commercial value including requirements for certifications, the frequency of reviews and maximum time limits for extensions of the protection of such data and information.

* Article 38.

* CONSIDERATION OF PROSPECTING BY THE COMMISSION

1. If a member of the Commission considers that a notification submitted in accordance with Article 37(7) or (8), or ongoing prospecting, causes concern as to consistency with this Convention or measures in effect pursuant thereto, that member may request the Sponsoring State to provide a clarification. If that member considers that an adequate response is not forthcoming from the Sponsoring State within a reasonable time, the member may request that the Commission be convened in accordance with Article 19(2)(b) to consider the question and take appropriate action.

2. If measures applicable to all relevant Operators are adopted by the Commission following a request made in accordance with paragraph 1 above, Sponsoring States that have submitted notifications in accordance with Article 37(7) or (8), and Sponsoring States whose Operators are conducting prospecting, shall ensure that the plans and activities of their Operators are modified to the extent necessary to conform with those measures within such time limit as the Commission may prescribe, and shall notify the Commission accordingly.

* CHAPTER IV. EXPLORATION

* Article 39.

* REQUESTS FOR IDENTIFICATION OF AN AREA FOR POSSIBLE EXPLORATION AND DEVELOPMENT

1. Any Party may submit to the Executive Secretary a notification requesting that the Commission identify an area for possible exploration and development of a particular mineral resource or resources.

2. Any such notification shall be accompanied by such fees as may be established by the Commission in accordance with Article 21(1)(p) and shall contain:

a. a precise delineation, including coordinates, of the area proposed for identification;
b. specification of the resource or resources for which the area would be identified and any relevant data and information, excluding data and information of commercial value, concerning that resource or those resources, including a geological description of the proposed area;

c. a detailed description of the physical and environmental characteristics of the proposed area;

d. a description of the likely scale of exploration and development for the resource or resources involved in the proposed area and of the methods which could be employed in such exploration and development;

e. a detailed assessment of the environmental and other impacts of possible exploration and development for the resource or resources involved, taking into account Articles 15 and 26(4); and

f. such other information as may be required pursuant to measures adopted by the Commission.

3. A notification under paragraph 1 above shall be referred promptly by the Executive Secretary to all Parties and shall be circulated to observers attending the meeting of the Commission to be convened pursuant to Article 19(2)(a).

* Article 40.

* ACTION BY THE ADVISORY COMMITTEE AND SPECIAL MEETING OF PARTIES

1. The Advisory Committee shall meet as soon as possible after the meeting of the Commission convened pursuant to Article 19(2)(a) has commenced. The Advisory Committee shall provide advice to the Commission on the notification submitted pursuant to Article 39(1). The Commission may prescribe a time limit for the provision of such advice.

2. A Special Meeting of Parties shall meet as soon as possible after circulation of the report of the Advisory Committee and in any event not later than two months after that report has been circulated.

3. The Special Meeting of Parties shall consider whether identification of an area by the Commission in accordance with the request contained in the notification would be consistent with this Convention, and shall report thereon to the Commission as soon as possible and in any event not later than 21 days from the commencement of the meeting.

4. The report of the Special Meeting of Parties to the Commission shall reflect the conclusions reached and all the views expressed by Parties participating in the meeting.

* Article 41.
ACTION BY THE COMMISSION

1. The Commission shall, as soon as possible after receipt of the report of the Special Meeting of Parties, consider whether or not it will identify an area as requested. Taking full account of the views and giving special weight to the conclusions of the Special Meeting of Parties, and taking full account of the views and the conclusions of the Advisory Committee, the Commission shall determine whether such identification would be consistent with this Convention. For this purpose:

a. the Commission shall ensure that an area to be identified shall be such that, taking into account all factors relevant to such identification, including the physical, geological, environmental and other characteristics of such area, it forms a coherent unit for the purposes of resource management. The Commission shall thus consider whether an area to be identified should include all or part of that which was requested in the notification and, subject to the necessary assessments having been made, adjacent areas not covered by that notification;

b. the Commission shall consider whether there are, within an area requested or to be identified, any areas in which exploration and development are or should be prohibited or restricted in accordance with Article 13;

c. the Commission shall specify the mineral resource or resources for which the area would be identified;

d. the Commission shall give effect to Article 6, by elaborating opportunities for joint ventures or different forms of participation, up to a defined level, including procedures for offering such participation, in possible exploration and development, within the area, by interested Parties which are Antarctic Treaty Consultative Parties and by other interested Parties, in particular, developing countries in either category;

e. the Commission shall prescribe any additional associated conditions necessary to ensure that an area to be identified is consistent with other provisions of this Convention and may prescribe general guidelines relating to the operational requirements for exploration and development in an area to be identified including measures establishing maximum block sizes and advice concerning related support activities; and

f. the Commission shall give effect to the requirement in Article 59 to establish additional procedures for the settlement of disputes.

2. After it has completed its consideration in accordance with paragraph 1 above, the Commission shall identify an area for possible exploration and development if there is a consensus of Commission members that such identification is consistent with
this Convention.

* Article 42.

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**REVISION IN THE SCOPE OF AN IDENTIFIED AREA**

1. If, after an area has been identified in accordance with Article 41, a Party requests identification of an area, all or part of which is contained within the boundaries of the area already identified but in respect of a mineral resource or resources different from any resource in respect of which the area has already been identified, the request shall be dealt with in accordance with Articles 39, 40 and 41. Should the Commission identify an area in respect of such different mineral resource or resources, it shall have regard, in addition to the requirements of Article 41(1)(a), to the desirability of specifying the boundaries of the area in such a way that it can be assigned to the Regulatory Committee with competence for the area already identified.

2. In the light of increased knowledge bearing on the effective management of the area, and after seeking the views of the Advisory Committee and the relevant Regulatory Committee, the Commission may amend the boundaries of any area it has identified. In making any such amendment, the Commission shall ensure that authorised exploration and development in the area are not adversely affected. Unless there are compelling reasons for doing so, the Commission shall not amend the boundaries of an area it has identified in such a way as to involve a change in the composition of the relevant Regulatory Committee.

* Article 43.

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**PREPARATORY WORK BY REGULATORY COMMITTEES**

1. As soon as possible after the identification of an area pursuant to Article 41, the relevant Regulatory Committee established with Article 29 shall be convened.

2. The Regulatory Committee shall:

a. subject to any measures adopted by the Commission pursuant to Article 21(1)(j) relating to maximum block sizes, divide its area of competence into blocks in respect of which applications for exploration and development may be submitted and make provision for a limit in appropriate circumstances on the number of blocks to be accorded to any Party;

b. subject to any measures adopted by the Commission pursuant to Article 21(1)(p), establish fees to be paid with any application for an exploration or development permit lodged pursuant to Article 44 or 53;
c. establish periods within which applications for exploration and development may be lodged, all applications received within each such period being considered as simultaneous;

d. establish procedures for the handling of applications; and

e. determine a method of resolving competing applications which are not resolved in accordance with Article 45(4)(a), which method shall, provided that all other requirements of this Convention are satisfied and consistently with measures adopted pursuant to Article 41(1)(d), include priority for the application with the broadest participation among interested Parties which are Antarctic Treaty Consultative Parties, in particular, developing countries in either category.

3. The Regulatory Committee shall adopt guidelines which are consistent with, and which taken together with, the provisions of this Convention and measures of general applicability adopted by the Commission, as well as associated conditions and general guidelines adopted by the Commission when identifying the area, shall, by addressing the relevant items in Article 47, identify the general requirements for exploration and development in its area of competence.

4. Upon adoption of guidelines under paragraph 3 above the Executive Secretary shall, without delay, inform all members of the Commission of the decisions taken by the Regulatory Committee pursuant to paragraphs 2 and 3 above and shall make them publicly available together with relevant measures, associated conditions and general guidelines adopted by the Commission.

5. The Regulatory Committee may from time to time revise guidelines adopted under paragraph 3 above, taking into account any views of the Commission.

6. In performing its functions under paragraphs 3 and 5 above, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee provided in accordance with Article 26.

* Article 44.

* APPLICATION FOR AN EXPLORATION PERMIT

1. Following completion of the work undertaken pursuant to Article 43, any Party, on behalf of an Operator for which it is the Sponsoring State, may lodge with the Regulatory Committee an application for an exploration permit within the periods established by the Regulatory Committee pursuant to Article 43(2)(c).

2. An application shall be accompanied by the fees established by the Regulatory Committee in accordance with Article 43(2)(b) and shall contain:
a. a detailed description of the Operator, including its managerial structure, financial composition and resources and technical expertise, and, in the case of an Operator being a joint venture, the inclusion of a detailed description of the degree to which Parties are involved in the Operator through, inter alia, juridical persons with which Parties have substantial and genuine links, so that each component of the joint venture can be easily attributed to a Party or Parties for the purposes of identifying the level of Antarctic mineral resource activities thereof, which description of substantial and genuine links shall include a description of equity sharing;

b. a detailed description of the proposed exploration activities and a description in as much detail as possible of proposed development activities, including:

i. an identification of the mineral resource or resources and the block to which the application applies;

ii. a detailed explanation of how the proposed activities conform with the general requirements referred to in Article 43(3);

iii. a detailed assessment of the environmental and other impacts of the proposed activities, taking into account Articles 15 and 26(4); and

iv. a description of the capacity to respond effectively to accidents, especially those with potential environmental effects;

c. a certification by the Sponsoring State of the capacity of the Operator to comply with the general requirements referred to in Article 43(3).

d. a certification by the Sponsoring State of the technical competence and financial capacity of the Operator and that the Operator has a substantial and genuine link with it as defined in Article 1(12);

e. a description of the manner in which the application complies with any measures adopted by the Commission pursuant to Article 41(1)(d); and

f. such further information as may be required by the Regulatory Committee or in measures adopted by the Commission.

* Article 45.

* EXAMINATION OF APPLICATIONS

1. The Regulatory Committee shall meet as soon as possible after an application has been lodged pursuant to Article 44, for the purpose of elaborating a Management Scheme. In performing this
function it shall:

a. determine whether the application contains sufficient or adequate information pursuant to Article 44(2). To this end, it may at any time seek further information from the Sponsoring State consistent with Article 44(2);

b. consider the exploration and development activities proposed in the application, and such elaborations, revisions or adaptations as necessary:

i. to ensure their consistency with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article 43(3); and

ii. to prescribe the specific terms and conditions of a Management Scheme in accordance with Article 47.

2. At any time during the process of consideration described above, the Regulatory Committee may decline the application if it considers that the activities proposed therein cannot be elaborated, revised or adapted to ensure consistency with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article 43(3).

3. In performing its functions under this Article, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee. To that end the Regulatory Committee shall refer to the Advisory Committee all parts of the application which are necessary for it to provide advice pursuant to Article 26, together with any other relevant information.

4. If two or more applications meeting the requirements of Article 44(2) are lodged in respect of the same block:

a. the competing applicants shall be invited by the Regulatory Committee to resolve the competition amongst themselves, by means of their own choice within a prescribed period;

b. if the competition is not resolved pursuant to subparagraph(a) above it shall be resolved by the Regulatory Committee in accordance with the method determined by it pursuant to Article 43(2)(e).

* Article 46.

* MANAGEMENT SCHEME

In performing its functions under Article 45, including the preparation of a Management Scheme, and under Article 54, the Regulatory Committee shall have recourse to the Sponsoring State and the member or members, if any, referred to in Article 29(2)(a) and, as may be required, one or two additional members of the Regulatory Committee.
SCOPE OF THE MANAGEMENT SCHEME

The Management Scheme shall prescribe the specific terms and conditions for exploration and development of the mineral resource or resources concerned within the relevant block. Such terms and conditions shall be consistent with the general requirements referred to in Article 43(3), and shall cover, inter alia:

a. duration of exploration and development permits;

b. measures and procedures for the protection of the Antarctic environment and dependent and associated ecosystems, including methods, activities and undertakings by the Operator to minimise environmental risks and damage;

c. provision for necessary and timely response action, including prevention, containment and clean up and removal measures, for restoration to the status quo ante, and for contingency plans, resources and equipment to enable such action to be taken;

d. procedures for the implementation of different stages of exploration and development;

e. performance requirements;

f. technical and safety specifications, including standards and procedures to ensure safe operations;

g. monitoring and inspection;

h. liability;

i. procedures for the development of mineral deposits which extend outside the area covered by a permit;

j. resource conservation requirements;

k. financial obligations of the Operator including:

i. levies in accordance with measures adopted pursuant to Article 21(1)(q);

ii. payments in the nature of and similar to taxes, royalties or payments in kind;

l. financial guarantees and insurance;

m. assignment and relinquishment;

n. suspension and modification of the Management Scheme, or cancellation of the Management Scheme, exploration or
development permit, and the imposition of monetary penalties, in accordance with Article 51;

o. procedures for agreed modifications;
p. enforcement of the Management Scheme;
q. applicable law to the extent necessary;
r. effective additional procedures for the settlement of disputes;
s. provisions to avoid and to resolve conflict with other legitimate uses of Antarctica;
t. data and information collection, reporting and notification requirements;
u. confidentiality; and
v. removal of installations and equipment, as well as site rehabilitation.

* Article 48.

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APPROVAL OF THE MANAGEMENT SCHEME

A Management Scheme prepared in accordance with Articles 45, 46 and 47 shall be subject to approval pursuant to Article 32. Such approval shall constitute authorisation for the issue without delay of an exploration permit by the Regulatory Committee. The exploration permit shall accord exclusive rights to the Operator to explore and, subject to Articles 53 and 54, to develop the mineral resource or resources which are the subject of the Management Scheme exclusively in accordance with the terms and conditions of the Management Scheme.

* Article 49.

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REVIEW

1. Any member of the Commission, or any member of a Regulatory Committee, may within one month of a decision by that Regulatory Committee to approve a Management Scheme or issue a development permit, request that the Commission be convened in accordance with Article 19(2)(b) or (c), as the case may be, to review the decision of the Regulatory Committee for consistency with the decision taken by the Commission to identify the area pursuant to Article 41 and any measures in effect relevant to that decision.

2. The Commission shall complete its consideration within three months of a request made pursuant to paragraph 1 above. In
performing its functions the Commission shall not assume the functions of the Regulatory Committee, nor shall it substitute its discretion for that of the Regulatory Committee.

3. Should the Commission determine that a decision to approve a Management Scheme or issue a development permit is inconsistent with the decision taken by the Commission to identify the area pursuant to Article 41 and any measures in effect relevant to that decision, it may request that Regulatory Committee to reconsider its decision.

* Article 50.

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RIGHTS OF AUTHORISED OPERATORS

1. No Management Scheme shall be suspended or modified and no Management Scheme, exploration or development permit shall be cancelled without the consent of the Sponsoring State except pursuant to Article 51, or Article 54 or the Management Scheme itself.

2. Each Operator authorised to conduct activities pursuant to a Management Scheme shall exercise its rights with due regard to the rights of other Operators undertaking exploration or development in the same identified area.

* Article 51

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SUSPENSION, MODIFICATION OR CANCELLATION OF THE MANAGEMENT SCHEME AND MONETARY PENALTIES

1. If a Regulatory Committee determines that exploration or development authorised pursuant to a Management Scheme has resulted or is about to result in impacts on the Antarctic environment or dependent or associated ecosystems beyond those judged acceptable pursuant to this Convention, it shall suspend the relevant activities and as soon as possible modify the Management Scheme so as to avoid such impacts. If such impacts cannot be avoided by the modification of the Management Scheme, the Regulatory Committee shall suspend it, or cancel it and the exploration or development permit.

2. In performing its functions under paragraph 1 above a Regulatory Committee shall, unless emergency action is required, seek and taken into account the views of the Advisory Committee.

3. If a Regulatory Committee determines that an Operator has failed to comply with this Convention or with measures in effect pursuant to it or a Management Scheme applicable to that Operator, the Regulatory Committee may do all or any of the following:

a. modify the Management Scheme;
b. suspend the Management Scheme;

c. cancel the Management Scheme and the exploration or development permit; and

d. impose a monetary penalty.

4. Sanctions determined pursuant to paragraph 3(a) to (d) above shall be proportionate to the seriousness of the failure to comply.

5. A Regulatory Committee shall cancel a Management Scheme and the exploration or development permit if an Operator ceases to have substantial and genuine link with the Sponsoring State as defined in Article 1(12).

6. The Commission shall adopt general measures, which may include mitigation, relating to action by Regulatory Committees pursuant to paragraphs 1 and 3 above and, as appropriate, to the consequences of such action. No application pursuant to Article 44 may be lodged until such measures have come into effect.

* Article 52.

* MONITORING IN RELATION TO MANAGEMENT SCHEMES

1. Each Regulatory Committee shall monitor the compliance of Operators with Management Schemes within its area of competence.

2. Each Regulatory Committee, taking into account the advice of The Advisory Committee, shall monitor and assess the effects on the Antarctic environment and on dependent and on associated ecosystems of Antarctic mineral resource activities within its area of competence, particularly by reference to key environmental parameters and ecosystem components.

3. Each Regulatory Committee shall, as appropriate, inform the Commission and the Advisory Committee in a timely fashion of monitoring under this Article.

* CHAPTER V. DEVELOPMENT

* Article 53.

* APPLICATION FOR A DEVELOPMENT PERMIT

1. At any time during the period in which an approved Management Scheme and exploration permit are in force for an Operator, the Sponsoring State may, on behalf of that Operator, lodge with the Regulatory Committee an application for a development permit.

2. An application shall be accompanied by the fees established
by the Regulatory Committee in accordance with Article 43(2)(b) and shall contain:

a. an updated description of the planned development identifying any modifications proposed to the approved Management Scheme and any additional measures to be taken, consequent upon such modifications, to ensure consistency with this Convention, including any measures in effect pursuant thereto and the general requirements referred to in Article 43(3);

b. a detailed assessment of the environmental and other impacts of the planned development, taking into account Articles 15 and 26(4);

c. a recertification by the Sponsoring State of the technical competence and financial capacity of the Operator and that the Operator has a substantial and genuine link with it as defined in Article 1(12);

d. a recertification by the Sponsoring State of the capacity of the Operator to comply with the general requirements referred to in Article 43(3);

e. updated information in relation to all other matters specified in Article 44(2); and

f. such further information as may be required by the Regulatory Committee or in measures adopted by the Commission.

* Article 54.

EXAMINATION OF APPLICATIONS AND ISSUE OF DEVELOPMENT PERMITS

1 The Regulatory Committee shall meet as soon as possible after an application has been lodged pursuant to Article 53.

2 The Regulatory Committee shall determine whether the application contains sufficient or adequate information pursuant to Article 53(2). In performing this function it may at any time seek further information from the Sponsoring State consistent with Article 53(2).

3 The Regulatory Committee shall consider whether: a. the application reveals modifications to the planned development previously envisaged;

b. the planned development would cause previously unforeseen impacts on the Antarctic environment or dependent or associated ecosystems, either as a result of any modifications referred to in subparagraph (a) above or in the light of increased knowledge.

4. The Regulatory Committee shall consider any modifications to the Management Scheme necessary in the light of paragraph 3 above to ensure that the development activities proposed would
be undertaken consistently with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article 43(3). However, the financial obligations specified in the approved Management Scheme may not be revised without the consent of the Sponsoring State, unless provided for in the Management Scheme itself.

5 If the Regulatory Committee in accordance with Article 32 approves modifications under paragraph 4 above, or if it does not consider that such modifications are necessary, the Regulatory Committee shall issue without delay a development permit.

6 In performing its functions under this Article, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee. To that end the Regulatory Committee shall refer to the Advisory Committee all parts of the application which are necessary for it to provide advice pursuant to Article 26, together with any other relevant information.

* CHAPTER VI. DISPUTES SETTLEMENT

* Article 55.

*

DISPUTES BETWEEN TWO OR MORE PARTIES

Articles 56, 57 and 58 apply to disputes between two or more Parties.

* Article 56.

*

CHOICE OF PROCEDURE

1. Each Party, when signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, may choose, by written declaration, one or both of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

a. the International Court of Justice;

b. the Arbitral Tribunal.

2. A declaration made under paragraph 1 above shall not affect the operation of Article 57(1), (3), (4) and (5).

3. A Party that has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.
4. If the parties to a dispute have accepted the same means for the settlement of a dispute, the dispute may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.

6. A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until 3 months after written notice of revocation has been deposited with the Depository.

7. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

8. Declarations and notices referred to in this Article shall be deposited with the Depository who shall transmit copies thereof to all Parties.

* Article 57.

*

PROCEDURE FOR DISPUTE SETTLEMENT

1. If a dispute arises concerning the interpretation or application of this Convention, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their choice.

2. If the parties to a dispute concerning the interpretation or application of this Convention have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by the operation of Article 56(4) and (5).

3. If a dispute concerning the interpretation or application of this Convention relates to a measure in effect pursuant to this Convention or a Management Scheme and the parties to such a dispute:

a. have not agreed on a means for resolving the dispute within 6 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred, at the request of any party to the dispute, for discussion in the institution which adopted the instrument in question; b. have not agreed on a means for resolving the dispute within 12 months of the request for consultation pursuant to paragraph 1 above, the dispute
shall be referred for settlement, at the request of any party to
the dispute, to the Arbitral Tribunal.

4. The Arbitral Tribunal shall not be competent to decide or
otherwise rule upon any matter within the scope of Article 9. In
addition, nothing in this Convention shall be interpreted as
confering competence or jurisdiction on the International Court
of Justice or any other tribunal established for the purpose of
settling disputes between Parties to decide or otherwise rule
upon any matter within the scope of Article 9.

5. The Arbitral Tribunal shall not be competent with regard to
the exercise by an institution of its discretionary powers in
accordance with this Convention; in no case shall the Arbitral
Tribunal substitute its discretion for that of an institution.
In addition, nothing in this Convention shall be interpreted as
confering competence or jurisdiction on the International Court
of Justice or any other tribunal established for the purpose of
settling disputes between Parties with regard to the exercise by
an institution of its discretionary powers or to substitute its
discretion for that of an institution.

* Article 58.

* 

EXCLUSION OF CATEGORIES OF DISPUTES

1. Any Party, when signing, ratifying, accepting, approving or
acceding to this Convention, or at any time thereafter, may, by
written declaration, exclude the operation of Article 57(2) or
(3) without its consent with respect to a category or categories
of disputes specified in the declaration. Such declaration may
not cover disputes concerning

the interpretation or application of:

a. any provision of this Convention or of any measure in effect
pursuant to it relating to the protection of the Antarctic
environment or dependent or associated ecosystems;

b. Article 7(1); c. Article 8; d. Article 12; e. Article 14; f.
Article 15; or g. Article 37.

2. Nothing in paragraph 1 above or in any declaration made under
it shall affect the operation of Article 57(1), (4) and (5).

3. A declaration made under paragraph 1 above shall remain in
force until it expires in accordance with its terms or until 3
months after written notice of revocation has been deposited
with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a
declaration shall not in any way affect proceedings pending
before the International Court of Justice or the Arbitral
Tribunal, unless the parties to the dispute otherwise agree.
5. Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.

6. A Party which, by declaration made under paragraph 1 above, has excluded a specific category or categories of disputes from the operation of Article 57(2) or (3) without its consent shall not be entitled to submit any dispute falling within that category or those categories for settlement pursuant to Article 57(2) or (3), as the case may be, without the consent of the other party or parties to the dispute.

* Article 59.

* ADDITIONAL DISPUTE SETTLEMENT PROCEDURES

1. The Commission, in conjunction with its responsibilities pursuant to Article 41(1), shall establish additional procedures for third-party settlement, by the Arbitral Tribunal or through other similar procedures, of disputes which may arise if it is alleged that a violation of this Convention has occurred by virtue of:

a. a decision to decline a Management Scheme; b. a decision to decline the issue of a development permit; or c. a decision to suspend, modify or cancel a Management Scheme or to impose monetary penalties.

2. Such procedures shall:

a. permit, as appropriate, Parties and Operators under their sponsorship, but not both in respect of any particular dispute, to initiate proceedings against a Regulatory Committee; b. require disputes to which they relate to be referred in the first instance to the relevant Regulatory Committee for consideration; c. incorporate the rules in Article 57(4) and (5).

* CHAPTER VII. FINAL CLAUSES

* Article 60.

* SIGNATURE

This Convention shall be open for signature at Wellington from 25 November 1988 to 25 November 1989 by States which participated in the final session of the Fourth Special Antarctic Treaty Consultative Meeting.

* Article 61.

* RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention is subject to ratification, acceptance or approval by Signatory States.
2. After 25 November 1989 this Convention shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.

3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of New Zealand, hereby designated as the Depositary.

* Article 62.

* 

ENTRY INTO FORCE

1. This Convention shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by 16 Antarctic Treaty Consultative Parties which participated as such in the final session of the Fourth Special Antarctic Treaty Consultative Meeting, provided that number includes all the States necessary in order to establish all of the institutions of the Convention in respect of every area of Antarctica, including 5 developing countries and 11 developed countries.

2. For each State which, subsequent to the date of entry into force of this Convention, deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following such deposit.

* Article 63.

* 

RESERVATIONS, DECLARATIONS AND STATEMENTS

1. Reservations to this Convention shall not be permitted. This does not preclude a State, when signing, ratifying, accepting, approving or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonisation of its laws and regulations with this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of this Convention in its application to that State.

2. The provisions of this Article are without prejudice to the right to make written declarations in accordance with Article 58.

* Article 64.

* 

AMENDMENT

1. This Convention shall not be subject to amendment until after
the expiry of 10 years from the date of its entry into force. Thereafter, any Party may, by written communication addressed to the Depositary, propose a specific amendment to this Convention and request the convening of a meeting to consider such proposed amendment.

2. The Depositary shall circulate such communication to all Parties. If within 12 months of the date of circulation of the communication at least one-third of the Parties reply favourably to the request, the Depositary shall convene the meeting.

3. The adoption of an amendment considered at such a meeting shall require the affirmative votes of two-thirds of the Parties present and voting, including the concurrent votes of the members of the Commission attending the meeting.

4. The adoption of any amendment relating to the Special Meeting of Parties or to the Advisory Committee shall require the affirmative votes of three-quarters of the Parties present and voting, including the concurrent votes of the members of the Commission attending the meeting.

5. An amendment shall enter into force for those Parties having deposited instruments of ratification, acceptance or approval thereof 30 days after the Depositary has received such instruments of ratification, acceptance or approval from all the members of the Commission.

6. Such amendment shall thereafter enter into force for any other Party 30 days after the Depositary has received its instrument of ratification, acceptance or approval thereof.

7. An amendment that has entered into force pursuant to this Article shall be without prejudice to the provisions of any Management Scheme approved before the date on which the amendment entered into force.

* Article 65.

* WITHDRAWAL

1. Any Party may withdraw from this Convention by giving to the Depositary notice in writing of its intention to withdraw. Withdrawal shall take effect two years after the date of receipt of such notice by the Depositary.

2. Any Party which ceases to be a Contracting Party to the Antarctic Treaty shall be deemed to have withdrawn from this Convention on the date that it ceases to be a Contracting Party to the Antarctic Treaty.

3. Where an amendment has entered into force pursuant to Article 64(5), any Party from which no instrument of ratification, acceptance or approval of the amendment has been received by the Depositary within a period of two years from the date of the
entry into force of the amendment shall be deemed to have withdrawn from this Convention on the date of the expiration of a further two year period.

4. Subject to paragraphs 5 and 6 below, the rights and obligations of any Operator pursuant to this Convention shall cease at the time its Sponsoring State withdraws or is deemed to have withdrawn from this Convention.

5. Such Sponsoring State shall ensure that the obligations of its Operators have been discharged no later than the date on which its withdrawal takes effect.

6. Withdrawal from this Convention by any Party shall not affect its financial or other obligations under this Convention pending on the date withdrawal takes effect. Any dispute settlement procedure in which that Party is involved and which has been commenced prior to that date shall continue to its conclusion unless agreed otherwise by the parties to the dispute.

* Article 66.

* 

NOTIFICATIONS BY THE DEPOSITARY

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

a. signatures of this Convention and the deposit of instruments of ratification, acceptance, approval or accession; b. the deposit of instruments of ratification, acceptance or approval of any amendment adopted pursuant to Article 64; c. the date of entry into force of this Convention and of any amendment thereto; d. the deposit of declarations and notices pursuant to Articles 56 and 58; e. notifications pursuant to Article 18; and f. the withdrawal of a Party pursuant to Article 65.

* Article 67.

* 

AUTHENTIC TEXTS, CERTIFIED COPIES AND REGISTRATION WITH THE UNITED NATIONS

1. This Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the Government of New Zealand which shall transmit duly certified copies thereof to all Signatory and Acceding States.

2. The Depositary shall also transmit duly certified copies to all Signatory and Acceding States of the text of this Convention in any additional language of a Signatory or Acceding State which submits such text to the Depositary.

3. This Convention shall be registered by the Depositary
pursuant to Article 102 of the Charter of the United Nations.

Done at Wellington this second day of June 1988.

In witness whereof, the undersigned, duly authorised, have signed this Convention.

ANNEX FOR AN ARBITRAL TRIBUNAL

* Article 1.

*

The Arbitral Tribunal shall be constituted and shall function in accordance with this Convention, including this Annex.

* Article 2.

*

1. Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of this Convention for that Party. Each Arbitrator shall be experienced in Antarctic affairs, with knowledge of international law and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.

2. Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and shall be eligible for redesignation by that Party for additional five year periods.

3. An Arbitrator may by notice given to the Party which designated that person withdraw his name from the list. If an Arbitrator dies or gives notice of withdrawal of his name from the list or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party which designated the Arbitrator in question shall notify the Executive Secretary promptly. An Arbitrator whose name is withdrawn from the list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before that Arbitral Tribunal.

4. The Executive Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

* Article 3.

*

1. The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:
a. The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article 2 of this Annex. This appointment shall be included in the notification referred to in Article 4 of this Annex.

b. Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article 2 of this Annex.

c. Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article 2 of this Annex. The third Arbitrator shall not be either a national of, or a person designated by, a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairman of the Arbitral Tribunal.

d. If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article 2 of this Annex and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him in this subparagraph, the President of the Court shall consult the parties to the dispute and the Chairman of the Commission.

e. If the President of the International Court of Justice is unable to perform the functions accorded him in subparagraph (d) above or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.

2. Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. In disputes involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1(b) above.

* Article 4.

* The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Executive Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Executive Secretary to
all Parties.

* Article 5.

*

1. Unless the parties to the dispute agree otherwise, arbitration shall take place at the headquarters of the Commission, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.

2. The Arbitral Tribunal may hear and decide counterclaims arising out of the dispute.

* Article 6.

*

1. The Arbitral Tribunal, where it considers that prima facie it has jurisdiction under this Convention, may: a. at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute; b. prescribe any provisional measures which it considers appropriate under the circumstances to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.

2. The parties to a dispute shall comply promptly with any provisional measures prescribed under paragraph 1(b) above pending an award under Article 9 of this Annex.

3. Notwithstanding Article 57(1), (2) and (3) of this Convention, a party to any dispute that may arise falling within the categories specified in Article 58(1)(a) to (g) of this Convention may at any time, by notification to the other party or parties to the dispute and to the Executive Secretary in accordance with Article 4 of this Annex, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article 3 of this Annex, except that the time periods in Article 3(1)(b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairman.

4. Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above, settlement of the dispute shall proceed in accordance with Articles 56 and 57 of this Convention.

* Article 7.
Any Party which believes it has a legal interest, whether
general or individual, which may be substantially affected by
the award of an Arbitral Tribunal, may, unless the Arbitral
Tribunal decides otherwise, intervene in the proceedings.

* Article 8.

*

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 provide it with
all relevant documents and information, and enable it, when
necessary, to call witnesses or experts and receive their
evidence.

* Article 9.

*

If one of the parties to the dispute does not appear before the
Arbitral Tribunal or fails to defend its case, any other party
to the dispute may request the Arbitral Tribunal to continue the
proceedings and make its award.

* Article 10.

*

1. The Arbitral Tribunal shall decide, on the basis of this
Convention and other rules of law not incompatible with it, such
disputes as are submitted to it.

2. The Arbitral Tribunal may decide, ex aequo et bono, a dispute
submitted to it, if the parties to the dispute so agree.

* Article 11.

*

1. Before making its award, the Arbitral Tribunal shall satisfy
itself that it has competence in respect of the dispute and that
the claim or counterclaim is well founded in fact and law.

2. The award shall be accompanied by a statement of reasons for
the decision and shall be communicated to the Executive
Secretary who shall transmit it to all Parties.

3. The award shall be final and binding on the parties to the
dispute and on any Party which intervened in the proceedings and
shall be complied with without delay. The Arbitral Tribunal
shall interpret the award at the request of a party to the
dispute or of any intervening Party.
4. The award shall have no binding force except in respect of that particular case.

5. Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Arbitrators, shall be borne by the parties to the dispute in equal shares.

* Article 12.

* 

All decisions of the Arbitral Tribunal, including those referred to in Articles 5, 6 and 11 of this Annex, shall be made by a majority of the Arbitrators who may not abstain from voting.
Available online at:

PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY (1991)

PREAMBLE

The States Parties to this Protocol to the Antarctic Treaty, hereinafter referred to as the Parties,

Convinced of the need to enhance the protection of the Antarctic environment and dependent and associated ecosystems;

Convinced of the need to strengthen the Antarctic Treaty system so as to ensure that Antarctic shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Bearing in mind the special legal and political status of Antarctic and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctic are consistent with the purposes and principles of the Antarctic Treaty;

Recalling the designation of Antarctic as a Special Conservation Area and other measures adopted under the Antarctic Treaty system to protect the Antarctic environment and dependent and associated ecosystems;

Acknowledging further the unique opportunities Antarctic offers for scientific monitoring of and research on processes of global as well as regional importance;

Reaffirming the conservation principles of the Convention on the Conservation of Antarctic Marine Living Resources;

Convinced that the development of a comprehensive regime for the protection of the Antarctic environment and dependent and associated ecosystems is in the interest of mankind as a whole;

Desiring to supplement the Antarctic Treaty to this end;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Protocol:

(a) "The Antarctic Treaty" means the Antarctic Treaty done at Washington on 1 December 1959;

(b) "Antarctic Treaty area" means the area to which the provisions of
the Antarctic Treaty apply in accordance with Article VI of that Treaty;

(c) "Antarctic Treaty Consultative Meetings" means the meetings referred to in Article IX of the Antarctic Treaty;

(d) "Antarctic Treaty Consultative Parties" means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty;

(e) "Antarctic Treaty system" means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments;

(f) "Arbitral Tribunal" means the Arbitral Tribunal established in accordance with the Schedule to this Protocol, which forms an integral part thereof;

(g) "Committee" means the Committee for Environmental Protection established in accordance with Article 11.

ARTICLE 2

OBJECTIVE AND DESIGNATION

The Parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science.

ARTICLE 3

ENVIRONMENTAL PRINCIPLES

1. The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

2. To this end:

(a) activities in the Antarctic Treaty area shall be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems;

(b) activities in the Antarctic Treaty area shall be planned and conducted so as to avoid:
(i) adverse effects on climate or weather patterns;
(ii) significant adverse effects on air or water quality;
(iii) significant changes in the atmospheric, terrestrial
   (including aquatic), glacial or marine environments;
(iv) detrimental changes in the distribution, abundance or
   productivity of species or populations of species of fauna
   and flora;
(v) further jeopardy to endangered or threatened species or
   populations of such species; or
(vi) degradation of, or substantial risk to, areas of biological,
    scientific, historic, aesthetic or wilderness significance;

(c) activities in the Antarctic Treaty area shall be planned and
conducted on the basis of information sufficient to allow prior
assessments of, and informed judgments about, their possible
impacts on the Antarctic environment and dependent and associated
ecosystems and on the value of Antarctica for the conduct of
scientific research; such judgments shall take full account of:

(i) the scope of the activity, including its area, duration and
   intensity;
(ii) the cumulative impacts of the activity, both by itself and in
    combination with other activities in the Antarctic Treaty
    area;
(iii) whether the activity will detrimentally affect any other
    activity in the Antarctic Treaty area;
(iv) whether technology and procedures are available to provide
    for environmentally safe operations;
(v) whether there exists the capacity to monitor key
    environmental parameters and ecosystem components so as to
    identify and provide early warning of any adverse effects of
    the activity and to provide for such modification of
    operating procedures as may be necessary in the light of the
    results of monitoring or increased knowledge of the Antarctic
    environment and dependent and associated ecosystems; and
(vi) whether there exists the capacity to respond promptly and
    effectively to accidents, particularly those with potential
    environmental effects;

(d) regular and effective monitoring shall take place to allow
assessment of the impacts of ongoing activities, including the
verification of predicted impacts;

(e) regular and effective monitoring shall take place to facilitate
early detection of the possible unforeseen effects of activities
carried on both within and outside the Antarctic Treaty area on
the
Antarctic environment and dependent and associated ecosystems.

3. Activities shall be planned and conducted in the Antarctic Treaty
area so as to accord priority to scientific research and to preserve
the
value of Antarctica as an area for the conduct of such research,
including research essential to understanding the global environment.

4. Activities undertaken in the Antarctic Treaty area pursuant to
scientific research programmes, tourism and all other governmental and
non-governmental activities in the Antarctic Treaty area for which advance notice is required in accordance with Article VII (5) of the Antarctic Treaty, including associated logistic support activities, shall:

(a) take place in a manner consistent with the principles in this Article; and

(b) be modified, suspended or cancelled if they result in or threaten to result in impacts upon the Antarctic environment or dependent or associated ecosystems inconsistent with those principles.

ARTICLE 4

RELATIONSHIP WITH THE OTHER COMPONENTS OF THE ANTARCTIC TREATY SYSTEM

1. This Protocol shall supplement the Antarctic Treaty and shall neither modify nor amend that Treaty.

2. Nothing in this Protocol shall derogate from the rights and obligations of the Parties to this Protocol under the other international instruments in force within the Antarctic Treaty system.

ARTICLE 5

CONSISTENCY WITH THE OTHER COMPONENTS OF THE ANTARCTIC TREATY SYSTEM

The Parties shall consult and co-operate with the Contracting Parties to the other international instruments in force within the Antarctic Treaty system and their respective institutions with a view to ensuring the achievement of the objectives and principles of this Protocol and avoiding any interference with the achievement of the objectives and principles of those instruments or any inconsistency between the implementation of those instruments and of this Protocol.

ARTICLE 6

CO-OPERATION

1. The Parties shall co-operate in the planning and conduct of activities in the Antarctic Treaty area. To this end, each Party shall endeavour to:

(a) promote co-operative programmes of scientific, technical and educational value, concerning the protection of the Antarctic environment and dependent and associated ecosystems;

(b) provide appropriate assistance to other Parties in the preparation of environmental impact assessments;
(c) provide to other Parties upon request information relevant to any potential environmental risk and assistance to minimize the effects of accidents which may damage the Antarctic environment or dependent and associated ecosystems;

(d) consult with other Parties with regard to the choice of sites for prospective stations and other facilities so as to avoid the cumulative impacts caused by their excessive concentration in any location;

(e) where appropriate, undertake joint expeditions and share the use of stations and other facilities; and

(f) carry out such steps as may be agreed upon at Antarctic Treaty Consultative Meetings.

2. Each Party undertakes, to the extent possible, to share information that maybe helpful to other Parties in planning and conducting their activities in the Antarctic Treaty area, with a view to the protection of the Antarctic environment and dependent and associated ecosystems.

3. The Parties shall co-operate with those Parties which may exercise jurisdiction in areas adjacent to the Antarctic Treaty area with a view to ensuring that activities in the Antarctic Treaty area do not have adverse environmental impacts on those areas.

ARTICLE 7

PROHIBITION OF MINERAL RESOURCE ACTIVITIES

Any activity relating to mineral resources, other than scientific research, shall be prohibited.

ARTICLE 8

ENVIRONMENTAL IMPACT ASSESSMENT

1. Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having:

   (a) less than a minor or transitory impact;

   (b) a minor or transitory impact; or

   (c) more than a minor or transitory impact.

2. Each Party shall ensure that the assessment procedures set out in
Annex I are applied in the planning processes leading to decisions about any activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.

3. The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise.

4. Where activities are planned jointly by more than one Party, the Parties involved shall nominate one of their number to coordinate the implementation of the environmental impact assessment procedures set out in Annex I.

ARTICLE 9

ANNEXES

1. The Annexes to this Protocol shall form an integral part thereof.

2. Annexes, additional to Annexes I-IV, may be adopted and become effective in accordance with Article IX of the Antarctic Treaty.

3. Amendments and modifications to Annexes may be adopted and become effective in accordance with Article IX of the Antarctic Treaty, provided that any Annex may itself make provision for amendments and modifications to become effective on an accelerated basis.

4. Annexes and any amendments and modifications thereto which have become effective in accordance with paragraphs 2 and 3 above shall, unless an Annex itself provides otherwise in respect of the entry into effect of any amendment or modification thereto, become effective for a Contracting Party to the Antarctic Treaty which is not an Antarctic Treaty Consultative Party, or which was not an Antarctic Treaty Consultative Party at the time of the adoption, when notice of approval of that Contracting Party has been received by the Depositary.

5. Annexes shall, except to the extent that an Annex provides otherwise, be subject to the procedures for dispute settlement set out in Articles 18 to 20.

ARTICLE 10

ANTARCTIC TREATY CONSULTATIVE MEETINGS

1. Antarctic Treaty Consultative Meetings shall, drawing upon the best scientific and technical advice available:
(a) define, in accordance with the provisions of this Protocol, the
general policy for the comprehensive protection of the Antarctic
environment and dependent and associated ecosystems; and

(b) adopt measures under Article IX of the Antarctic Treaty for the
implementation of this Protocol.

2. Antarctic Treaty Consultative Meetings shall review the work of the
Committee and shall draw fully upon its advice and recommendations in
carrying out the tasks referred to in paragraph 1 above, as well as
upon
the advice of the Scientific Committee on Antarctic Research.

ARTICLE 11

COMMITTEE FOR ENVIRONMENTAL PROTECTION

1. There is hereby established the Committee for Environmental
Protection.

2. Each Party shall be entitled to be a member of the Committee and to
appoint a representative who may be accompanied by experts and
advisers.

3. Observer status in the Committee shall be open to any Contracting
Party to the Antarctic Treaty which is not a Party to this Protocol.

4. The Committee shall invite the President of the Scientific
Committee
on Antarctic Research and the Chairman of the Scientific Committee for
the Conservation of Antarctic Marine Living Resources to participate as
observers at its sessions. The Committee may also, with the approval of
the Antarctic Treaty Consultative Meeting, invite such other relevant
scientific, environmental and technical organisations which can
contribute to its work to participate as observers at its sessions.

5. The Committee shall present a report on each of its sessions to the
Antarctic Treaty Consultative Meeting. The report shall cover all
matters considered at the session and shall reflect the views
expressed.
The report shall be circulated to the Parties and to observers
attending
the session, and shall thereupon be made publicly available.

6. The Committee shall adopt its rules of procedure which shall be
subject to approval by the Antarctic Treaty Consultative Meeting.

ARTICLE 12

FUNCTIONS OF THE COMMITTEE

1. The functions of the Committee shall be to provide advice and
formulate recommendations to the Parties in connection with the
implementation of this Protocol, including the operation of its
Annexes,
for consideration at Antarctic Treaty Consultative Meetings, and to
perform such other functions as may be referred to it by the Antarctic Treaty Consultative Meetings. In particular, it shall provide advice on:

(a) the effectiveness of measures taken pursuant to this Protocol;

(b) the need to update, strengthen or otherwise improve such measures;

(c) the need for additional measures, including the need for additional Annexes, where appropriate;

(d) the application and implementation of the environmental impact assessment procedures set out in Article 8 and Annex I;

(e) means of minimizing or mitigating environmental impacts of activities in the Antarctic Treaty area;

(f) procedures for situations requiring urgent action, including response action in environmental emergencies;

(g) the operation and further elaboration of the Antarctic Protected Area system;

(h) inspection procedures, including formats for inspection reports and checklists for the conduct of inspections;

(i) the collection, archiving, exchange and evaluation of information related to environmental protection;

(j) the state of the Antarctic environment; and

(k) the need for scientific research, including environmental monitoring, related to the implementation of this Protocol.

2. In carrying out its functions, the Committee shall, as appropriate, consult with the Scientific Committee on Antarctic Research, the Scientific Committee for the Conservation of Antarctic Marine Living Resources and other relevant scientific, environmental and technical organizations.

ARTICLE 13

COMPLIANCE WITH THIS PROTOCOL

1. Each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol.

2. Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to this Protocol.

3. Each Party shall notify all other Parties of the measures it takes pursuant to paragraphs 1 and 2 above.
4. Each Party shall draw the attention of all other Parties to any activity which in its opinion affects the implementation of the objectives and principles of this Protocol.

5. The Antarctic Treaty Consultative Meetings shall draw the attention of any State which is not a Party to this Protocol to any activity undertaken by that State, its agencies, instrumentalities, natural or juridical persons, ships, aircraft or other means of transport which affects the implementation of the objectives and principles of this Protocol.

ARTICLE 14

INSPECTION

1. In order to promote the protection of the Antarctic environment and dependent and associated ecosystems, and to ensure compliance with this Protocol, the Antarctic Treaty Consultative Parties shall arrange, individually or collectively, for inspections by observers to be made in accordance with Article VII of the Antarctic Treaty.

2. Observers are:

   (a) observers designated by any Antarctic Treaty Consultative Party who shall be nationals of that Party; and

   (b) any observers designated at Antarctic Treaty Consultative Meetings to carry out inspections under procedures to be established by an Antarctic Treaty Consultative Meeting.

3. Parties shall co-operate fully with observers undertaking inspections, and shall ensure that during inspections, observers are given access to all parts of stations, installations, equipment, ships and aircraft open to inspection under Article VII (3) of the Antarctic Treaty, as well as to all records maintained thereon which are called for pursuant to this Protocol.

4. Reports of inspections shall be sent to the Parties whose stations, installations, equipment, ships or aircraft are covered by the reports. After those Parties have been given the opportunity to comment, the reports and any comments thereon shall be circulated to all the Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and thereafter made publicly available.

ARTICLE 15

EMERGENCY RESPONSE ACTION

1. In order to respond to environmental emergencies in the Antarctic Treaty area, each Party agrees to:

   (a) provide for prompt and effective response action to such emergencies which might arise in the performance of scientific research programmes, tourism and all other governmental and
nongovernmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities; and

(b) establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems.

2. To this end, the Parties shall:

(a) co-operate in the formulation and implementation of such contingency plans; and

(b) establish procedures for immediate notification of, and co-operative response to, environmental emergencies.

3. In the implementation of this Article, the Parties shall draw upon the advice of the appropriate international organisations.

ARTICLE 16

LIABILITY

Consistent with the objectives of this Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems, the Parties undertake to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by this Protocol. Those rules and procedures shall be included in one or more Annexes to be adopted in accordance with Article 9 (2).

ARTICLE 17

ANNUAL REPORT BY PARTIES

1. Each Party shall report annually on the steps taken to implement this Protocol. Such reports shall include notifications made in accordance with Article 13 (3), contingency plans established in accordance with Article 15 and any other notifications and information called for pursuant to this Protocol for which there is no other provision concerning the circulation and exchange of information.

2. Reports made in accordance with paragraph 1 above shall be circulated to all Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and made publicly available.

ARTICLE 18

DISPUTE SETTLEMENT

If a dispute arises concerning the interpretation or application of this
Protocol, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means to which the parties to the dispute agree.

ARTICLE 19

CHOICE OF DISPUTE SETTLEMENT PROCEDURE

1. Each Party, when signing, ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, may choose, by written declaration, one or both of the following means for the settlement of disputes concerning the interpretation or application of Articles 7, 8 and 15 and, except to the extent that an Annex provides otherwise, the provisions of any Annex and, insofar as it relates to these Articles and provisions, Article 13:

   (a) the International Court of Justice;

   (b) the Arbitral Tribunal.

2. A declaration made under paragraph 1 above shall not affect the operation of Article 18 and Article 20 (2).

3. A Party which has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.

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

5. If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.

6. A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until three months after written notice of revocation has been deposited with the Depositary.

7. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

8. Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.
ARTICLE 20

DISPUTE SETTLEMENT PROCEDURE

1. If the parties to a dispute concerning the interpretation or application of Articles 7, 8 or 15 or, except to the extent that an Annex provides otherwise, the provisions of any Annex or, insofar as it relates to these Articles and provisions, Article 13, have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to Article 18, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by Article 19 (4) and (5).

2. The Arbitral Tribunal shall not be competent to decide or rule upon any matter within the scope of Article IV of the Antarctic Treaty. In addition, nothing in this Protocol shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or otherwise rule upon any matter within the scope of Article IV of the Antarctic Treaty.

ARTICLE 21

SIGNATURE

This Protocol shall be open for signature at Madrid on the 4th of October 1991 and thereafter at Washington until the 3rd of October 1992 by any State which is a Contracting Party to the Antarctic Treaty.

ARTICLE 22

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Protocol is subject to ratification, acceptance or approval by signatory States.

2. After the 3rd of October 1992 this Protocol shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.

3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of the United States of America, hereby designated as the Depositary.

4. After the date on which this Protocol has entered into force, the Antarctic Treaty Consultative Parties shall not act upon a notification regarding the entitlement of a Contracting Party to the Antarctic Treaty to appoint representatives to participate in Antarctic Treaty
Consultative Meetings in accordance with Article IX (2) of the Antarctic Treaty unless that Contracting Party has first ratified, accepted, approved or acceded to this Protocol.

ARTICLE 23
ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the date on which this Protocol is adopted.

2. For each Contracting Party to the Antarctic Treaty which, subsequent to the date of entry into force of this Protocol, deposits an instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the thirtieth day following such deposit.

ARTICLE 24
RESERVATIONS

Reservations to this Protocol shall not be permitted.

ARTICLE 25
MODIFICATION OR AMENDMENT

1. Without prejudice to the provisions of Article 9, this Protocol may be modified or amended at any time in accordance with the procedures set forth in Article XII (1) (a) and (b) of the Antarctic Treaty.

2. If, after the expiration of 50 years from the date of entry into force of this Protocol, any of the Antarctic Treaty Consultative Parties so requests by a communication addressed to the Depositary, a conference shall be held as soon as practicable to review the operation of this Protocol.

3. A modification or amendment proposed at any Review Conference called pursuant to paragraph 2 above shall be adopted by a majority of the Parties, including 3/4 of the States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

4. A modification or amendment adopted pursuant to paragraph 3 above shall enter into force upon ratification, acceptance, approval or accession by 3/4 of the Antarctic Treaty Consultative Parties, including ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.
5. (a) With respect to Article 7, the prohibition on Antarctic mineral resource activities contained therein shall continue unless there is in force a binding legal regime on Antarctic mineral resource activities that includes an agreed means for determining whether, and, if so, under which conditions, any such activities would be acceptable. This regime shall fully safeguard the interests of all States referred to in Article IV of the Antarctic Treaty and apply the principles thereof. Therefore, if a modification or amendment to Article 7 is proposed at a Review Conference referred to in paragraph 2 above, it shall include such a binding legal regime.

(b) If any such modification or amendment has not entered into force within 3 years of the date of its adoption, any Party may at any time thereafter notify to the Depositary of its withdrawal from this Protocol, and such withdrawal shall take effect 2 years after receipt of the notification by the Depositary.

ARTICLE 26

NOTIFICATIONS BY THE DEPOSITARY

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

(a) signatures of this Protocol and the deposit of instruments of ratification, acceptance, approval or accession;

(b) the date of entry into force of this Protocol and any additional Annex thereto;

(c) the date of entry into force of any amendment or modification to this Protocol;

(d) the deposit of declarations and notices pursuant to Article 19;

and

(e) any notification received pursuant to Article 25 (5) (b).

ARTICLE 27

AUTHENTIC TEXTS AND REGISTRATION WITH THE UNITED NATIONS

1. This Protocol, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to all Contracting Parties to the Antarctic Treaty.
2. This Protocol shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

SCHEDULE TO THE PROTOCOL

ARBITRATION

Article 1

1. The Arbitral Tribunal shall be constituted and shall function in accordance with the Protocol, including this Schedule.

2. The Secretary referred to in this Schedule is the Secretary General of the Permanent Court of Arbitration.

Article 2

1. Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of the Protocol for that Party. Each Arbitrator shall be experienced in Antarctic affairs, have thorough knowledge of international law and enjoy the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.

2. Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and shall be eligible for redesignation by that Party for additional five year periods.

3. A Party which designated an Arbitrator may withdraw the name of that Arbitrator from the list. If an Arbitrator dies or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party which designated the Arbitrator in question shall notify the Secretary promptly. An Arbitrator whose name is withdrawn from the list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before the Arbitral Tribunal.

4. The Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

Article 3

1. The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:

(a) The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article 2. This appointment shall be included in the
notification referred to in Article 4.

(b) Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article 2.

(c) Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article 2.

The third Arbitrator shall not be either a national of a party to the dispute, or a person designated for the list referred to in Article 2 by a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairperson of the Arbitral Tribunal.

(d) If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article 2 and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him or her in this subparagraph, the President of the Court shall consult the parties to the dispute.

(e) If the President of the International Court of Justice is unable to perform the functions accorded him or her in subparagraph (d) above or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.

2. Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. In any dispute involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1 (b) above.

Article 4
The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Secretary to all Parties.

Article 5

1. Unless the parties to the dispute agree otherwise, arbitration shall take place at The Hague, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.

2. The Arbitral Tribunal may hear and decide counterclaims arising out of the dispute.

Article 6

1. The Arbitral Tribunal, where it considers that prima facie it has jurisdiction under the Protocol, may:

   (a) at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute;

   (b) prescribe any provisional measures which it considers appropriate under the circumstances to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.

2. The parties to the dispute shall comply promptly with any provisional measures prescribed under paragraph 1 (b) above pending an award under Article 10.

3. Notwithstanding the time period in Article 20 of the Protocol, a party to a dispute may at any time, by notification to the other party or parties to the dispute and to the Secretary in accordance with Article 4, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article 3, except that the time periods in Article 3 (1) (b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairperson.

4. Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above,
settlement of the dispute shall proceed in accordance with Articles 18, 19 and 20 of the Protocol.

Article 7

Any Party which believes it has a legal interest, whether general or individual, which may be substantially affected by the award of an Arbitral Tribunal, may, unless the Arbitral Tribunal decides otherwise, intervene in the proceedings.

Article 8

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 provide it with all relevant documents and information, and enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 9

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, any other party to the dispute may request the Arbitral Tribunal to continue the proceedings and make its award.

Article 10

1. The Arbitral Tribunal shall, on the basis of the provisions of the Protocol and other applicable rules and principles of international law that are not incompatible with such provisions, decide such disputes as are submitted to it.

2. The Arbitral Tribunal may decide, ex aequo et bono, a dispute submitted to it, if the parties to the dispute so agree.

Article 11

1. Before making its award, the Arbitral Tribunal shall satisfy itself that it has competence in respect of the dispute and that the claim or counterclaim is well founded in fact and law.

2. The award shall be accompanied by a statement of reasons for the decision and shall be communicated to the Secretary who shall transmit it to all Parties.

3. The award shall be final and binding on the parties to the dispute and on any Party which intervened in the proceedings and shall be complied with without delay. The Arbitral Tribunal shall interpret the award at the request of a party to the dispute or of any intervening Party.

4. The award shall have no binding force except in respect of that
particular case.

5. Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Arbitrators, shall be borne by the parties to the dispute in equal shares.

Article 12

All decisions of the Arbitral Tribunal, including those referred to in Articles 5, 6 and 11, shall be made by a majority of the Arbitrators who may not abstain from voting.

Article 13

This Schedule may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Schedule which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX I TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

ENVIRONMENTAL IMPACT ASSESSMENT

ARTICLE 1

PRELIMINARY STAGE

1. The environmental impacts of proposed activities referred to in Article 8 of the Protocol shall, before their commencement, be considered in accordance with appropriate national procedures.

2. If an activity is determined as having less than a minor or transitory impact, the activity may proceed forthwith.

ARTICLE 2

INITIAL ENVIRONMENTAL EVALUATION

1. Unless it has been determined that an activity will have less than
minor or transitory impact, or unless a Comprehensive Environmental Evaluation is being prepared in accordance with Article 3, an Initial Environmental Evaluation shall be prepared. It shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact and shall include:

(a) a description of the proposed activity, including its purpose, location, duration, and intensity; and

(b) consideration of alternatives to the proposed activity and any impacts that the activity may have, including consideration of cumulative impacts in the light of existing and known planned activities.

2. If an Initial Environmental Evaluation indicates that a proposed activity is likely to have no more than a minor or transitory impact, the activity may proceed, provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the activity.

ARTICLE 3

COMPREHENSIVE ENVIRONMENTAL EVALUATION

1. If an Initial Environmental Evaluation indicates or if it is otherwise determined that a proposed activity is likely to have more than a minor or transitory impact, a Comprehensive Environmental Evaluation shall be prepared.

2. A Comprehensive Environmental Evaluation shall include:

(a) a description of the proposed activity including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;

(b) a description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;

(c) a description of the methods and data used to forecast the impacts of the proposed activity;

(d) estimation of the nature, extent, duration, and intensity of the likely direct impacts of the proposed activity;

(e) consideration of possible indirect or second order impacts of the proposed activity;

(f) consideration of cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;
(g) identification of measures, including monitoring programmes, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;

(h) identification of unavoidable impacts of the proposed activity;

(i) consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;

(j) an identification of gaps in knowledge and uncertainties encountered in compiling the information required under this paragraph;

(k) a non-technical summary of the information provided under this paragraph; and

(l) the name and address of the person or organization which prepared the Comprehensiv Environmental Evaluation and the address to which comments thereon should be directed.

3. The draft Comprehensive Environmental Evaluation shall be made publicly available and shall be circulated to all Parties, which shall also make it publicly available, for comment. A period of 90 days shall be allowed for the receipt of comments.

4. The draft Comprehensive Environmental Evaluation shall be forwarded to the Committee at the same time as it is circulated to the Parties, and at least 120 days before the next Antarctic Treaty Consultative Meeting, for consideration as appropriate.

5. No final decision shall be taken to proceed with the proposed activity in the Antarctic Treaty area unless there has been an opportunity for consideration of the draft Comprehensive Environmental Evaluation by the Antarctic Treaty Consultative Meeting on the advice of the Committee, provided that no decision to proceed with a proposed activity shall be delayed through the operation of this paragraph for longer than 15 months from the date of circulation of the draft Comprehensive Environmental Evaluation.

6. A final Comprehensive Environmental Evaluation shall address and shall include or summarise comments received on the draft Comprehensive Environmental Evaluation. The final Comprehensive Environmental Evaluation, notice of any decisions relating thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed activity, shall be circulated to all Parties, which shall also make them publicly available, at least 60 days before
the commencement of the proposed activity in the Antarctic Treaty area.

ARTICLE 4
DECISIONS TO BE BASED ON COMPREHENSIVE ENVIRONMENTAL EVALUATIONS

Any decision on whether a proposed activity, to which Article 3 applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the Comprehensive Environmental Evaluation as well as other relevant considerations.

ARTICLE 5
MONITORING

1. Procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the impact of any activity that proceeds following the completion of a Comprehensive Environmental Evaluation.

2. The procedures referred to in paragraph 1 above and in Article 2 (2) shall be designed to provide a regular and verifiable record of the impacts of the activity in order, inter alia, to:

(a) enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(b) provide information useful for minimising or mitigating impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the activity.

ARTICLE 6
CIRCULATION OF INFORMATION

1. The following information shall be circulated to the Parties, forwarded to the Committee and made publicly available:

(a) a description of the procedures referred to in Article 1;

(b) an annual list of any Initial Environmental Evaluations prepared in accordance with Article 2 and any decisions taken in consequence thereof;

(c) significant information obtained, and any action taken in consequence thereof, from procedures put in place in accordance with Articles 2 (2) and 5; and

(d) information referred to in Article 3 (6).

2. Any Initial Environmental Evaluation prepared in accordance with Article 2 shall be made available on request.
ARTICLE 7
CASES OF EMERGENCY

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this Annex.

2. Notice of activities undertaken in cases of emergency, which would otherwise have required preparation of a Comprehensive Environmental Evaluation, shall be circulated immediately to all Parties and to the Committee and a full explanation of the activities carried out shall be provided within 90 days of those activities.

ARTICLE 8
AMENDMENT OR MODIFICATION

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX II TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY
CONSERVATION OF ANTARCTIC FAUNA AND FLORA

Article 1
DEFINITIONS

For the purposes of this Annex:

(a) "native mammal" means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or
occurring there seasonally through natural migrations;

(b) "native bird" means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;

(c) "native plant" means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;

(d) "native invertebrate" means any terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;

(e) "appropriate authority" means any person or agency authorized by a Party to issue permits under this Annex;

(f) "permit" means a formal permission in writing issued by an appropriate authority;

(g) "take" or "taking" means to kill, injure, capture, handle or molest, a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected;

(h) "harmful interference" means:

(i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds and seals;

(ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds and seals;

(iii) using explosives or firearms in a manner that disturbs concentrations of birds and seals;

(iv) wilfully disturbing breeding or moulting birds or concentrations of birds and seals by persons on foot;

(v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and

(vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.

(i) "International Convention for the Regulation of Whaling" means the Convention done at Washington on 2 December 1946.

ARTICLE 2

CASES OF EMERGENCY

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

Article 3

PROTECTION OF NATIVE FAUNA AND FLORA

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.

2. Such permits shall specify the authorized activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
   
   (a) to provide specimens for scientific study or scientific information;
   
   (b) to provide specimens for museums, herbaria, zoological and botanical gardens, or other educational or cultural institutions or uses; and
   
   (c) to provide for unavoidable consequences of scientific activities not otherwise authorized under sub-paragraphs (a) or (b) above, or of the construction and operation of scientific support facilities.

3. The issue of such permits shall be limited so as to ensure that:
   
   (a) no more native mammals, birds, or plants are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
   
   (b) only small numbers of native mammals or birds are killed and in no case more native mammals or birds are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and
   
   (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.

4. Any species of native mammals, birds and plants listed in Appendix A to this Annex shall be designated "Specially Protected Species", and shall be accorded special protection by the Parties.

5. A permit shall not be issued to take a Specially Protected Species unless the taking:
   
   (a) is for a compelling scientific purpose;
   
   (b) will not jeopardize the survival or recovery of that species or local population; and
(c) uses non-lethal techniques where appropriate.

6. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

Article 4

INTRODUCTION OF NON-NATIVE SPECIES, PARASITES AND DISEASES

1. No species of animal or plant not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water in the Antarctic Treaty area except in accordance with a permit.

2. Dogs shall not be introduced onto land or ice shelves and dogs currently in those areas shall be removed by April 1, 1994.

3. Permits under paragraph 1 above shall be issued to allow the importation only of the animals and plants listed in Appendix B to this Annex and shall specify the species, numbers and, if appropriate, age and sex and precautions to be taken to prevent escape or contact with native fauna and flora.

4. Any plant or animal for which a permit has been issued in accordance with paragraphs 1 and 3 above, shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation. Any other plant or animal introduced into the Antarctic Treaty area not native to that area, including any progeny, shall be removed or disposed of, by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna.

5. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol and Appendix C to this Annex.

6. Each Party shall require that precautions, including those listed in Appendix C to this Annex, be taken to prevent the introduction of micro-organisms (e.g., viruses, bacteria, parasites, yeasts, fungi) not present in the native fauna and flora.

Article 5

INFORMATION 436
Each Party shall prepare and make available information setting forth, in particular, prohibited activities and providing lists of Specially Protected Species and relevant Protected Areas to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

ARTICLE 6

EXCHANGE OF INFORMATION

1. The Parties shall make arrangements for:

   (a) collecting and exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird or plant taken annually in the Antarctic Treaty area;

   (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection;

   (c) establishing a common form in which this information shall be submitted by Parties in accordance with paragraph 2 below.

2. Each Party shall inform the other Parties as well as the Committee before the end of November of each year of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.

ARTICLE 7

RELATIONSHIP WITH OTHER AGREEMENTS OUTSIDE THE ANTARCTIC TREATY SYSTEM

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

ARTICLE 8

REVIEW

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

ARTICLE 9

AMENDMENT OR MODIFICATION
1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

APPENDICES TO THE ANNEX

APPENDIX A:

SPECIALLY PROTECTED SPECIES

All species of the genus Arctocephalus, Fur Seals.
Ommatophoca rossii, Ross Seal.

APPENDIX B:

IMPORTATION OF ANIMALS AND PLANTS

The following animals and plants may be imported into the Antarctic Treaty area in accordance with permits issued under Article 4 of this Annex:

(a) domestic plants; and

(b) laboratory animals and plants including viruses, bacteria, yeasts and fungi.

APPENDIX C:

PRECAUTIONS TO PREVENT INTRODUCTION OF MICRO-ORGANISMS

1. Poultry. No live poultry or other living birds shall be brought into the Antarctic Treaty area. Before dressed poultry is packaged for shipment to the Antarctic Treaty area, it shall be inspected for evidence of disease, such as Newcastle's Disease, tuberculosis, and yeast infection. Any poultry or parts not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates risks to native flora and fauna.

2. The importation of non-sterile soil shall be avoided to the maximum
extent practicable.

ANNEX III TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO
THE ANTARCTIC TREATY
WASTE DISPOSAL AND WASTE MANAGEMENT

ARTICLE 1
GENERAL OBLIGATIONS

1. This Annex shall apply to activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and nongovernmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.

2. The amount of wastes produced or disposed of in the Antarctic Treaty area shall be reduced as far as practicable so as to minimise impact on the Antarctic environment and to minimise interference with the natural values of Antarctica, with scientific research and with other uses of Antarctica which are consistent with the Antarctic Treaty.

3. Waste storage, disposal and removal from the Antarctic Treaty area, as well as recycling and source reduction, shall be essential considerations in the planning and conduct of activities in the Antarctic Treaty area.

4. Wastes removed from the Antarctic Treaty area shall, to the maximum extent practicable, be returned to the country from which the activities generating the waste were organized or to any other country in which arrangements have been made for the disposal of such wastes in accordance with relevant international agreements.

5. Past and present waste disposal sites on land and abandoned work sites of Antarctic activities shall be cleaned up by the generator of such wastes and the user of such sites. This obligation shall not be interpreted as requiring:

(a) the removal of any structure designated as a historic site or monument; or

(b) the removal of any structure or waste material in circumstances where the removal by any practical option would result in greater adverse environmental impact than leaving the structure or waste material in its existing location.

ARTICLE 2
WASTE DISPOSAL BY REMOVAL FROM THE ANTARCTIC TREATY AREA
1. The following wastes, if generated after entry into force of this Annex, shall be removed from the Antarctic Treaty area by the generator of such wastes:

(a) radio-active materials;
(b) electrical batteries;
(c) fuel, both liquid and solid;
(d) wastes containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;
(e) poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products which contain additives that could produce harmful emissions if incinerated;
(f) all other plastic wastes, except low density polyethylene containers (such as bags for storing wastes), provided that such containers shall be incinerated in accordance with Article 3 (1);
(g) fuel drums; and
(h) other solid, non-combustible wastes;

provided that the obligation to remove drums and solid non-combustible wastes contained in subparagraphs (g) and (h) above shall not apply in circumstances where the removal of such wastes by any practical option would result in greater adverse environmental impact than leaving them in their existing locations.

2. Liquid wastes which are not covered by paragraph 1 above and sewage and domestic liquid wastes, shall, to the maximum extent practicable, be removed from the Antarctic Treaty area by the generator of such wastes.

3. The following wastes shall be removed from the Antarctic Treaty area by the generator of such wastes, unless incinerated, autoclaved or otherwise treated to be made sterile:

(a) residues of carcasses of imported animals;
(b) laboratory culture of micro-organisms and plant pathogens; and
(c) introduced avian products.

ARTICLE 3

WASTE DISPOSAL BY INCINERATION

1. Subject to paragraph 2 below, combustible wastes, other than those referred to in Article 2 (1), which are not removed from the Antarctic Treaty area shall be burnt in incinerators which to the maximum extent practicable reduce harmful emissions. Any emission standards and equipment guidelines which may be recommended by, inter alia, the Committee and the Scientific Committee on Antarctic Research shall be taken into account. The solid residue of such incineration shall be removed from the Antarctic Treaty area.

2. All open burning of wastes shall be phased out as soon as practicable, but no later than the end of the 1998/1999 season. Pending the completion of such phase-out, when it is necessary to dispose of
wastes by open burning, allowance shall be made for the wind direction and speed and the type of wastes to be burnt to limit particulate deposition and to avoid such deposition over areas of special biological, scientific, historic, aesthetic or wilderness significance including, in particular, areas accorded protection under the Antarctic Treaty.

ARTICLE 4

OTHER WASTE DISPOSAL ON LAND

1. Wastes not removed or disposed of in accordance with Articles 2 and 3 shall not be disposed of onto ice-free areas or into fresh water systems.

2. Sewage, domestic liquid wastes and other liquid wastes not removed from the Antarctic Treaty area in accordance with Article 2, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or the grounded ice-sheet, provided that such wastes which are generated by stations located inland on ice shelves or on the grounded ice-sheet may be disposed of in deep ice pits where such disposal is the only practicable option. Such pits shall not be located on known ice-flow lines which terminate at ice-free areas or in areas of high ablation.

3. Wastes generated at field camps shall, to the maximum extent practicable, be removed by the generator of such wastes to supporting stations or ships for disposal in accordance with this Annex.

ARTICLE 5

DISPOSAL OF WASTE IN THE SEA

1. Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment and provided that:

(a) such discharge is located, wherever practicable, where conditions exist for initial dilution and rapid dispersal; and

(b) large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration.

2. The by-product of sewage treatment by the Rotary Biological Contracter process or similar processes may be disposed of into the sea provided that such disposal does not adversely affect the local environment, and provided also that any such disposal at sea shall be in accordance with Annex IV to the Protocol.

ARTICLE 6
STORAGE OF WASTE

All wastes to be removed from the Antarctic Treaty area, or otherwise disposed of, shall be stored in such a way as to prevent their dispersal into the environment.

ARTICLE 7

PROHIBITED PRODUCTS

No polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, chips or similar forms of packaging, or pesticides (other than those required for scientific, medical or hygiene purposes) shall be introduced onto land or ice shelves or into water in the Antarctic Treaty area.

ARTICLE 8

WASTE MANAGEMENT PLANNING

1. Each Party which itself conducts activities in the Antarctic Treaty area shall, in respect of those activities, establish a waste disposal classification system as a basis for recording wastes and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and associated logistic support. To that end, wastes produced shall be classified as:

   (a) sewage and domestic liquid wastes (Group 1);

   (b) other liquid wastes and chemicals, including fuels and lubricants (Group 2);

   (c) solids to be combusted (Group 3);

   (d) other solid wastes (Group 4); and

   (e) radioactive material (Group 5).

2. In order to reduce further the impact of waste on the Antarctic environment, each such Party shall prepare and annually review and update its waste management plans (including waste reduction, storage and disposal), specifying for each fixed site, for field camps generally, and for each ship (other than small boats that are part of the operations of fixed sites or of ships and taking into account existing management plans for ships):

   (a) programmes for cleaning up existing waste disposal sites and abandoned work sites;

   (b) current and planned waste management arrangements, including final disposal;
(c) current and planned arrangements for analysing the environmental effects of waste and waste management; and

(d) other efforts to minimise any environmental effects of wastes and waste management.

3. Each such Party shall, as far as is practicable, also prepare an inventory of locations of past activities (such as traverses, fuel depots, field bases, crashed aircraft) before the information is lost, so that such locations can be taken into account in planning future scientific programmes (such as snow chemistry, pollutants in lichens or ice core drilling).

ARTICLE 9

CIRCULATION AND REVIEW OF WASTE MANAGEMENT PLANS

1. The waste management plans prepared in accordance with Article 8, reports on their implementation, and the inventories referred to in Article 6 (3), shall be included in the annual exchanges of information in accordance with Articles III and VII of the Antarctic Treaty and related Recommendations under Article IX of the Antarctic Treaty.

2. Each Party shall send copies of its waste management plans, and reports on their implementation and review, to the Committee.

3. The Committee may review waste management plans and reports thereon and may offer comments, including suggestions for minimising impacts and modifications and improvement to the plans, for the consideration of the Parties.

4. The Parties may exchange information and provide advice on, inter alia, available low waste technologies, reconversion of existing installations, special requirements for effluents, and appropriate disposal and discharge methods.

ARTICLE 10

MANAGEMENT PRACTICES

Each Party shall:

(a) designate a waste management official to develop and monitor waste management plans; in the field, this responsibility shall be delegated to an appropriate person at each site;

(b) ensure that members of its expeditions receive training designed to limit the impact of its operations on the Antarctic environment and to inform them of requirements of this Annex; and
(c) discourage the use of poly-vinyl chloride (PVC) products and ensure that its expeditions to the Antarctic Treaty area are advised of any PVC products they may introduce into that area in order that these products may be removed subsequently in accordance with this Annex.

ARTICLE 11

REVIEW

This Annex shall be subject to regular review in order to ensure that it is updated to reflect improvement in waste disposal technology and procedures and to ensure thereby maximum protection of the Antarctic environment.

ARTICLE 12

CASES OF EMERGENCY

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value or the protection of the environment.

2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

ARTICLE 13

AMENDMENT OR MODIFICATION

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the amendment.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX IV TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION

TO THE ANTARCTIC TREATY

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PREVENTION OF MARINE POLLUTION

ARTICLE 1

DEFINITIONS

For the purposes of this Annex:

(a) "discharge" means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;

(b) "garbage" means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship, except those substances which are covered by Articles 3 and 4;

(c) "MARPOL 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto and by any other amendment in force thereafter;

(d) "noxious liquid substance" means any noxious liquid substance as defined in Annex II of MARPOL 73/78;

(e) "oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined oil products (other than petrochemicals which are subject to the provisions of Article 4);

(f) "oily mixture" means a mixture with any oil content; and

(g) "ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

ARTICLE 2

APPLICATION

This Annex applies, with respect to each Party, to ships entitled to fly its flag and to any other ship engaged in or supporting its Antarctic operations, while operating in the Antarctic Treaty area.

ARTICLE 3

DISCHARGE OF OIL

1. Any discharge into the sea of oil or oily mixture shall be prohibited, except in cases permitted under Annex I of MARPOL 73/78. While operating in the Antarctic Treaty area, ships shall retain on board all sludge, dirty ballast, tank washing waters and other oily residues and mixtures which may not be discharged into the sea. Ships shall discharge these residues only outside the Antarctic Treaty area, at
reception facilities or as otherwise permitted under Annex I of MARPOL 73/78.

2. This Article shall not apply to:

(a) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

(i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and

(ii) except if the owner or the Master acted either with intent to cause damage, or recklessly and with the knowledge that damage would probably result; or

(b) the discharge into the sea of substances containing oil which are being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution.

ARTICLE 4

DISCHARGE OF NOXIOUS LIQUID SUBSTANCES

The discharge into the sea of any noxious liquid substance, and any other chemical or other substances, in quantities or concentrations that are harmful to the marine environment, shall be prohibited.

ARTICLE 5

DISPOSAL OF GARBAGE

1. The disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets, and plastic garbage bags, shall be prohibited.

2. The disposal into the sea of all other garbage, including paper products, rags, glass, metal, bottles, crockery, incineration ash, dunnage, lining and packing materials, shall be prohibited.

3. The disposal into the sea of food wastes may be permitted when they have been passed through a comminuter or grinder, provided that such disposal shall, except in cases permitted under Annex V of MARPOL 73/78, be made as far as practicable from land and ice shelves but in any case not less than 12 nautical miles from the nearest land or ice shelf. Such comminuted or ground food wastes shall be capable of passing through a screen with openings no greater than 25 millimeters.

4. When a substance or material covered by this article is mixed with other such substance or material for discharge or disposal, having different disposal or discharge requirements, the most stringent disposal or discharge requirements shall apply.
5. The provisions of paragraphs 1 and 2 above shall not apply to:

(a) the escape of garbage resulting from damage to a ship or its equipment provided all reasonable precautions have been taken, before and after the occurrence of the damage, for the purpose of preventing or minimising the escape; or

(b) the accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.

6. The Parties shall, where appropriate, require the use of garbage record books.

ARTICLE 6
DISCHARGE OF SEWAGE

1. Except where it would unduly impair Antarctic operations:

(a) each Party shall eliminate all discharge into the sea of untreated sewage ("sewage" being defined in Annex IV of MARPOL 73/78) within 12 nautical miles of land or ice shelves;

(b) beyond such distance, sewage stored in a holding tank shall not be discharged instantaneously but at a moderate rate and, where practicable, while the ship is en route at a speed of no less than 4 knots. This paragraph does not apply to ships certified to carry not more than 10 persons.

2. The Parties shall, where appropriate, require the use of sewage record books.

ARTICLE 7
CASES OF EMERGENCY

1. Articles 3, 4, 5 and 6 of this Annex shall not apply in cases of emergency relating to the safety of a ship and those on board or saving life at sea.

2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

ARTICLE 8
EFFECT ON DEPENDENT AND ASSOCIATED ECOSYSTEMS

In implementing the provisions of this Annex, due consideration shall be given to the need to avoid detrimental effects on dependent and associated ecosystems, outside the Antarctic Treaty area.

ARTICLE 9
SHIP RETENTION CAPACITY AND RECEPTION FACILITIES
1. Each Party shall undertake to ensure that all ships entitled to fly its flag and any other ship engaged in or supporting its Antarctic operations, before entering the Antarctic Treaty area, are fitted with a tank or tanks of sufficient capacity on board for the retention of all sludge, dirty ballast, tank washing water and other oily residues and mixtures, and have sufficient capacity on board for the retention of garbage, while operating in the Antarctic Treaty area and have concluded arrangements to discharge such oily residues and garbage at a reception facility after leaving that area. Ships shall also have sufficient capacity on board for the retention of noxious liquid substances.

2. Each Party at whose ports ships depart en route to or arrive from the Antarctic Treaty area undertakes to ensure that as soon as practicable adequate facilities are provided for the reception of all sludge, dirty ballast, tank washing water, other oily residues and mixtures, and garbage from ships, without causing undue delay, and according to the needs of the ships using them.

3. Parties operating ships which depart to or arrive from the Antarctic Treaty area at ports of other Parties shall consult with those Parties with a view to ensuring that the establishment of port reception facilities does not place an inequitable burden on Parties adjacent to the Antarctic Treaty area.

ARTICLE 10

DESIGN, CONSTRUCTION, MANNING AND EQUIPMENT OF SHIPS

In the design, construction, manning and equipment of ships engaged in or supporting Antarctic operations, each Party shall take into account the objectives of this Annex.

ARTICLE 11

SOVEREIGN IMMUNITY

1. This Annex shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Annex.

2. In applying paragraph 1 above, each Party shall take into account the importance of protecting the Antarctic environment.

3. Each Party shall inform the other Parties of how it implements this provision.
4. The dispute settlement procedure set out in Articles 18 to 20 of the Protocol shall not apply to this Article.

ARTICLE 12

PREVENTIVE MEASURES AND EMERGENCY PREPAREDNESS AND RESPONSE

1. In order to respond more effectively to marine pollution emergencies or the threat thereof in the Antarctic Treaty area, the Parties, in accordance with Article 15 of the Protocol, shall develop contingency plans for marine pollution response in the Antarctic Treaty area, including contingency plans for ships (other than small boats that are part of the operations of fixed sites or of ships) operating in the Antarctic Treaty area, particularly ships carrying oil as cargo, and for oil spills, originating from coastal installations, which enter into the marine environment. To this end they shall:

(a) co-operate in the formulation and implementation of such plans; and

(b) draw on the advice of the Committee, the International Maritime Organization and other international organizations.

2. The Parties shall also establish procedures for co-operative response to pollution emergencies and shall take appropriate response actions in accordance with such procedures.

ARTICLE 13

REVIEW

The Parties shall keep under continuous review the provisions of this Annex and other measures to prevent, reduce and respond to pollution of the Antarctic marine environment, including any amendments and new regulations adopted under MARPOL 73/78, with a view to achieving the objectives of this Annex.

ARTICLE 14

RELATIONSHIP WITH MARPOL 73/78

With respect to those Parties which are also Parties to MARPOL 73/78, nothing in this Annex shall derogate from the specific rights and obligations thereunder.

ARTICLE 15

AMENDMENT OR MODIFICATION

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be
deemed to have been approved, and shall become effective, one year after
the close of the Antarctic Treaty Consultative Meeting at which it was
adopted, unless one or more of the Antarctic Treaty Consultative
Parties
notifies the Depositary, within that time period, that it wishes an
extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective
in accordance with paragraph 1 above shall thereafter become effective as
to any other Party when notice of approval by it has been received by the
Depositary.
The Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland-Albania) arose from incidents that occurred on October 22nd 1946, in the Corfu Strait: two British destroyers struck mines in Albanian waters and suffered damage, including serious loss of life. The United Kingdom first seized the Security Council of the United Nations which, by a Resolution of April 9th, 1947, recommended the two Governments to submit the dispute to the Court. The United Kingdom accordingly submitted an Application which, after an objection to its admissibility had been raised by Albania, was the subject of a Judgment, dated March 25th, 1948, in which the Court declared that it possessed jurisdiction. On the same day the two Parties concluded a Special Agreement asking the Court to give judgment on the following questions:

1. Is Albania responsible for the explosions, and is there a duty to pay compensation?

2. Has the United Kingdom violated international law by the acts of its Navy in Albanian waters, first on the day on which the explosions occurred and, secondly, on November 12th and 13th, 1946, when it undertook a sweep of the Strait?

In its Judgment the Court declared on the first question, by 11 votes against 5, that Albania was responsible.

In regard to the second question, it declared by 14 votes against 2 that the United Kingdom did not violate Albanian sovereignty on October 22nd; but it declared unanimously that it violated that sovereignty on November 12th/13th, and that this declaration, in itself, constituted appropriate satisfaction.

The facts are as follows. On October 22nd, 1946, two British cruisers and two destroyers, coming from the south, entered the North Corfu Strait. The channel they were following, which was in Albanian waters, was regarded as safe: it had been swept in 1944 and check-swept in 1945. One of the destroyers, the Saumarez, when off Saranda, struck a mine and was gravely damaged. The other destroyer, the Volage, was sent to her assistance and, while towing her, struck another mine and was also seriously damaged. Forty-five British officers and sailors lost their lives, and forty-two others were wounded.

An incident had already occurred in these waters on May 15th, 1946: an Albanian battery had fired in the direction of two British cruisers. The United Kingdom Government had protested, stating that innocent passage through straits is a right recognized by international law; the Albanian Government had replied that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without prior authorization; and on August 2nd, 1946, the United Kingdom Government had replied that if, in the future, fire was opened on a British warship passing through the channel, the fire would be returned. Finally, on September 21st, 1946, the Admiralty in London had cabled to the British Commander-in-Chief in the Mediterranean to the following effect: "Establishment of diplomatic relations with Albania is again under consideration by His Majesty's Government who wish..."
to know whether the Albanian Government have learnt to behave themselves. Information is requested whether any ships under your command have passed through the North Corfu Strait since August and, if not, whether you intend them to do so shortly."

After the explosions on October 22nd, the United Kingdom Government sent a Note to Tirana announcing its intention to sweep the Corfu Channel shortly. The reply was that this consent would not be given unless the operation in question took place outside Albanian territorial waters and that any sweep undertaken in those waters would be a violation of Albania's sovereignty.

The sweep effected by the British Navy took place on November 12th/13th 1946, in Albanian territorial waters and within the limits of the channel previously swept. Twenty-two moored mines were cut; they were mines of the German GY type.

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The first question put by the Special Agreement is that of Albania's responsibility, under international law, for the explosions on October 22nd, 1946.

The Court finds, in the first place, that the explosions were caused by mines belonging to the minefield discovered on November 13th. It is not, indeed, contested that this minefield had been recently laid; it was in the channel, which had been previously swept and check-swept and could be regarded as safe, that the explosions had taken place. The nature of the damage shows that it was due to mines of the same type as those swept on November 13th; finally, the theory that the mines discovered on November 13th might have been laid after the explosions on October 22nd is too improbable to be accepted.

In these circumstances the question arises what is the legal basis of Albania's responsibility? The Court does not feel that it need pay serious attention to the suggestion that Albania herself laid the mines: that suggestion was only put forward pro memoria, without evidence in support, and could not be reconciled with the undisputed fact that, on the whole Albanian littoral, there are only a few launches and motor boats. But the United Kingdom also alleged the connivance of Albania: that the mine laying had been carried out by two Yugoslav warships by the request of Albania, or with her acquiescence. The Court finds that this collusion has not been proved. A charge of such exceptional gravity against a State would require a degree of certainty that has not been reached here, and the origin of the mines laid in Albanian territorial waters remains a matter for conjecture.

The United Kingdom also argued that, whoever might be the authors of the mine laying, it could not have been effected without Albania's knowledge. True, the mere fact that mines were laid in Albanian waters neither involves prima facie responsibility nor does it shift the burden of proof. On the other hand, the exclusive control exercised by a State within its frontiers may make it impossible to furnish direct proof of facts which would involve its responsibility in case of a violation of international law. The State which is the victim must, in that ease, be allowed a more liberal recourse to inferences of fact and circumstantial evidence; such
indirect evidence must be regarded as of especial weight when based on a series of facts, linked together and leading logically to a single conclusion.

In the present case two series of facts, which corroborate one another, have to be considered.

The first relates to the Albanian Government's attitude before and after the catastrophe. The laying of the mines took place in a period in which it had shown its intention to keep a jealous watch on its territorial waters and in which it was requiring prior authorization before they were entered, this vigilance sometimes going so far as to involve the use of force: all of which render the assertion of ignorance a priori improbable. Moreover, when the Albanian Government had become fully aware of the existence of a minefield, it protested strongly against the activity of the British Fleet, but not against the laying of the mines, though this act, if effected without her consent, would have been a very serious violation of her sovereignty; she did not notify shipping of the existence of the minefield, as would be required by international law; and she did not undertake any of the measures of judicial investigation which would seem to be incumbent on her in such a case. Such an attitude could only be explained if the Albanian Government, while knowing of the mine laying, desired the circumstances in which it was effected to remain secret.

The second series of facts relates to the possibility of observing the mine laying from the Albanian coast. Geographically, the channel is easily watched: it is dominated by heights offering excellent observation points, and it runs close to the coast (the nearest mine was 500 m. from the shore). The methodical and well-thought-out laying of the mines compelled the minelayers to remain from two to two-and-a-half hours in the waters between Cape Kiephali and the St. George's Monastery. In regard to that point, the naval experts appointed by the Court reported, after enquiry and investigation on the spot, that they considered it to be indisputable that, if a normal look-out was kept at Cape Kiephali, Denta Point, and St. George's Monastery, and if the lookouts were equipped with binoculars, under normal weather conditions for this area, the mine-laying operations must have been noticed by these coastguards. The existence of a look-out post at Denta Point was not established; but the Court, basing itself on the declarations of the Albanian Government that look-out posts were stationed at other points, refers to the following conclusions in the experts' report: that in the case of mine laying 1) from the North towards the South, the minelayers would have been seen from Cape Kiephali; if from South towards the North, they would have been seen from Cape Kiephali and St. George's Monastery.

From all the facts and observations mentioned above, the Court draws the conclusion that the laying of the minefield could not have been accomplished without the knowledge of Albania. As regards the obligations resulting for her from this knowledge, they are not disputed. It was her duty to notify shipping and especially to warn the ships proceeding through the Strait on October 22nd of the danger to which they were exposed. In fact, nothing was attempted by Albania to prevent the disaster, and these grave omissions involve her international responsibility.

The Special Agreement asks the Court to say whether, on this ground, there is "any duty" for Albania "to pay compensation" to the United Kingdom. This text gave
rise to certain doubts: could the Court not only decide on the principle of compensation but also assess the amount? The Court answered in the affirmative and, by a special Order, it has fixed dine-limits to enable the Parties to submit their views to it on this subject.

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The Court then goes on to the second question in the Special Agreement: Did the United Kingdom violate Albanian sovereignty on October 22nd, 1946, or on November 12th/13th, 1946?

The Albanian claim to make the passage of ships conditional on a prior authorization conflicts with the generally admitted principle that States, in time of peace, have a right to send their warships through straits used for international navigation between two parts of the high seas, provided that the passage is innocent. The Corfu Strait belongs geographically to this category, even though it is only of secondary importance (in the sense that it is not a necessary route between two parts of the high seas) and irrespective of the volume of traffic passing through it. A fact of particular importance is that it constitutes a frontier between Albania and Greece, and that a part of the strait is wholly within the territorial waters of those States. It is a fact that the two States did not maintain normal relations, Greece having made territorial claims precisely with regard to a part of the coast bordering the strait. However, the Court is of opinion that Albania would have been justified in view of these exceptional circumstances, in issuing regulations in respect of the passage, but not in prohibiting such passage or in subjecting it to the requirement of special authorization.

Albania has denied that the passage on October 22 was innocent. She alleges that it was a political mission and that the methods employed - the number of ships, their formation, armament, manoeuvres, etc. - showed an intention to intimidate. The Court examined the different Albanian contentions so far as they appeared relevant. Its conclusion is that the passage was innocent both in its principle, since it was designed to affirm a right which had been unjustly denied, and in its methods of execution, which were not unreasonable in view of the firing from the Albanian battery on May 15th.

As regards the operation on November 12th/13th, it was executed contrary to the clearly expressed wish of the Albanian Government; it did not have the consent of the international mine clearance organizations; it could not be justified as the exercise of the right of innocent passage. The United Kingdom has stated that its object was to secure the mines as quickly as possible for fear lest they should be taken away by the authors of the mine laying or by the Albanian authorities: this was presented either as a new and special application of the theory of intervention, by means of which the intervening State was acting to facilitate the task of the international tribunal, or as a method of self-protection or self-help. The Court cannot accept these lines of defence. It can only regard the alleged right of intervention as the manifestation of a policy of force which cannot find a place in international law. As regards the notion of self-help, the Court is also unable to accept it: between independent States the respect for territorial sovereignty is an essential foundation for international relations. Certainly, the Court recognises the
Albanian Government's complete failure to carry out its duties after the explosions and the dilatory nature of its diplomatic Notes as extenuating circumstances for the action of the United Kingdom. But, to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty. This declaration is in accordance with the request made by Albania through her counsel and is in itself appropriate satisfaction.

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To the Judgment of the Court there are attached one declaration and the dissenting opinions of judges Alvarez, Winiarski, Zoricic, Badawi Pasha, Krylov and Azevedo, and also that of Dr. Ecer, Judge ad hoc.
Resolution A.1002(25)
Adopted on 29 November 2007
(Agenda item 19(a))

PIRACY\(^1\) AND ARMED ROBBERY AGAINST SHIPS\(^2\)
IN WATERS OFF THE COAST OF SOMALIA

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING ALSO article 1 of the Charter of the United Nations, which includes, among the purposes of the United Nations, the maintenance of international peace and security,

ALSO RECALLING article 100 of the United Nations Convention on the Law of the Sea (UNCLOS), which requires all States to 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,

FURTHER RECALLING article 105 of UNCLOS which, *inter alia*, provides that, 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,

BEARING IN MIND article 110 of UNCLOS which, *inter alia*, enables warships, military aircraft, or other duly authorized ships or aircraft clearly marked and identifiable as being on government service to board any ship, other than a ship entitled to complete immunity in accordance with article 95 and article 96 of UNCLOS, when there are reasonable grounds for suspecting that the ship is, *inter alia*, engaged in piracy,

REAFFIRMING resolution A.545(13) on “Measures to prevent acts of piracy and armed robbery against ships”, adopted on 17 November 1983; resolution A.683(17) on “Prevention and suppression of acts of piracy and armed robbery against ships”, adopted on 6 November 1991;

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1  “Piracy” is defined in article 101 of the United Nations Convention on the Law of the Sea as follows:

“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 inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

2  “Armed robbery against ships” is defined in the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (resolution A.922(22), annex, paragraph 2.2), as follows:

“Armed robbery against ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of “piracy”, directed against a ship or against persons or property on board such ship, within a State’s jurisdiction over such offences.”
and resolution A.738(18) on “Measures to prevent and suppress piracy and armed robbery against ships”, adopted on 4 November 1993,

BEARING IN MIND resolution A.922(22), through which the Assembly adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (“the Code”) and which, inter alia, urges Governments to take action, as set out in the Code, to investigate all acts of piracy and armed robbery against ships occurring in areas or on board ships under their jurisdiction; and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts,

BEARING IN MIND ALSO resolution A.979(24) on “Piracy and armed robbery against ships in waters off the coast of Somalia”, by means of which the Assembly, inter alia:

- recommended a number of measures to protect ships from piracy and armed robbery attacks in waters off the coast of Somalia and by means of which the situation was brought to the attention of the Security Council of the United Nations (“the Security Council”);

- requested the Secretary-General to continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and to report to the Council, as and when appropriate, on developments and any further actions which might be required; and

- requested the Council to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and to initiate any actions it might deem necessary to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia,

NOTING WITH SATISFACTION the actions taken by the Council and the Secretary-General pursuant to resolution A.979(24),

CONSIDERING that the Maritime Safety Committee has approved MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships and has established a special signal for use by ships under attack or threat of attack,

NOTING that the General Assembly of the United Nations, at its sixty-first session, by resolution A/RES/61/222 on “Oceans and the law of the sea”, adopted on 20 December 2006, inter alia:

.1 encourages States to co-operate to address threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats;

.2 urges all States, in co-operation with the Organization, to combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by
adopting national legislation, as well as providing enforcement vessels and
equipment and guarding against fraudulent ship registration; and

.3 calls upon States to become parties to the Convention for the Suppression of
Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the
Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on
the Continental Shelf; invites States to consider becoming parties to the 2005
Protocols amending those instruments; and also urges States parties to take
appropriate measures to ensure the effective implementation of those instruments,
through the adoption of legislation, where appropriate,

NOTING ALSO, with great concern, the increasing number of incidents of piracy and
armed robbery against ships occurring in waters off the coast of Somalia, some of which have
reportedly taken place more than 200 nautical miles from the nearest land,

MINDFUL OF the grave danger to life and the serious risks to navigational safety and the
environment to which such incidents may give rise,

BEING PARTICULARLY CONCERNED that the Monitoring Group\(^3\) on Somalia, in its
report\(^4\) of 27 June 2007 to the Security Council, confirmed, \textit{inter alia}, that piracy and armed
robbery against ships in waters off the coast of Somalia, unlike in other parts of the world, is
caused by the lack of lawful administration and inability of the authorities to take affirmative
action against the perpetrators, which allows the “pirate command centres” to operate without
hindrance at many points along the coast of Somalia,

BEING AWARE of the serious safety and security concerns the shipping industry and the
seafaring community continue to have as a result of the attacks against ships sailing in waters off
the coast of Somalia referred to above,

BEING CONCERNED at the negative impact such attacks continue to have on the
prompt and effective delivery of food aid and of other humanitarian assistance to Somalia and the
serious threat this poses to the health and well-being of the people of Somalia,

NOTING, with appreciation, the “Sub-regional seminar and workshop on piracy and
armed robbery against ships” held by IMO in Sana’a, Yemen, from 9 to 13 April 2005, for
countries in the Red Sea and Gulf of Aden region; and the follow-up meeting held in Muscat,
Oman, from 14 to 18 January 2006,

BEING AWARE that the Security Council has, through resolution S/Res/1425(2002),
adopted on 22 July 2002, stipulated that the arms embargo on Somalia prohibits the direct or
indirect supply to Somalia of technical advice, financial and other assistance, and training related
to military activities,

on 23 July 2007, decided, \textit{inter alia}, to re-establish the Monitoring Group on Somalia and
directed it to continue to investigate, in coordination with relevant international agencies, all
activities, including in the financial, maritime and other sectors, which generate revenues used to

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\(^3\) Established by the Security Council through resolution S/Res/1519(2003) and its mandate was renewed and

commit violations of the embargo on all delivery of weapons and military equipment to Somalia, which the Security Council had established by resolution S/Res/733(1992),

NOTING ALSO that the Security Council, being concerned at the continuing incidence of acts of piracy and armed robbery against ships in waters off the coast of Somalia:

.1 on 15 March 2006, in response to resolution A.979(24), through a Statement\(^5\) by the President of the Security Council, \textit{inter alia}, encouraged Member States of the United Nations, whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia, to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law and further urged co-operation among all States, particularly regional States, and active prosecution of piracy offences; and

.2 on 20 August 2007, in operative paragraph 18 of resolution S/Res/1772(2007) encouraged Member States of the United Nations, whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia, to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law,

NOTING WITH APPRECIATION the action taken by the Secretary-General of the United Nations in response to the request of the Council, at its ninety-eighth session, in particular, to bring the Organization’s concerns to the President of the Security Council with a request to bring them to the attention of the members of the Security Council,

RECOGNIZING that the particular character of the present situation in Somalia requires an exceptional response to safeguard the interests of the maritime community making use of the sea off the coast of Somalia,

RECOGNIZING ALSO the strategic importance of the navigational routes along the coast of Somalia for regional and global seaborne trade and the need to ensure that they remain safe at all times,

RECOGNIZING FURTHER, in view of the continued situation in Somalia giving rise to grave concern, the need for the immediate establishment of appropriate measures to protect ships sailing in waters off the coast of Somalia from piracy and armed robbery attacks,

APPRECIATING the efforts of those who have responded to calls from, or have rendered assistance to, ships under attack in waters off the coast of Somalia; acknowledging the efforts of a number of international organizations in raising awareness amongst, and providing guidance for, their respective memberships and reporting to the Organization in relation to this issue; and noting with appreciation the work done by the International Maritime Bureau of the International Chamber of Commerce in providing the industry with warnings in relation to incidents occurring in waters off the coast of Somalia and assistance in resolving cases where ships have been hijacked and the seafarers on board have been held hostage,

RESPECTING FULLY the sovereignty, sovereign rights, jurisdiction and territorial integrity of Somalia and the relevant provisions of international law, in particular UNCLOS,\(^5\)

HAVING CONSIDERED the actions taken, following the adoption of resolution A.979(24), by the Council, at its ninety-eighth regular and twenty-fourth extraordinary sessions, and by the Secretary-General in the light of the prevailing situation in the waters off the coast of Somalia,

1. CONDEMNS AND DEPLORES all acts of piracy and armed robbery against ships irrespective of where such acts have occurred or may occur;

2. APPEALS to all parties which may be able to assist to take action, within the provisions of international law, to ensure that:

   .1 all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith and any plans for committing such acts are abandoned; and

   .2 any hijacked ships, seafarers serving in them and any other persons on board are immediately and unconditionally released and that no harm is caused to them;

3. STRONGLY URGES Governments to increase their efforts to prevent and suppress, within the provisions of international law, acts of piracy and armed robbery against ships irrespective of where such acts occur and, in particular, to co-operate with other Governments and international organizations, in the interests of the rule of law, safety of life at sea and environmental protection, in relation to acts occurring or likely to occur in the waters off the coast of Somalia;

4. ALSO STRONGLY URGES Governments to promptly:

   .1 issue, to ships entitled to fly their flag, as necessary, specific advice and guidance on any appropriate additional precautionary measures ships may need to put in place when sailing in waters off the coast of Somalia to protect themselves from attack, which may include, inter alia, areas to be avoided;

   .2 issue, to ships entitled to fly their flag, as necessary, advice and guidance on any measures or actions they may need to take when they are under attack, or threat of attack, whilst sailing in waters off the coast of Somalia;

   .3 encourage ships entitled to fly their flag to ensure that information on attempted attacks or on acts of piracy or armed robbery committed whilst sailing in waters off the coast of Somalia is promptly conveyed to the nearest most appropriate Rescue Coordination Centre;

   .4 provide a point of contact through which ships entitled to fly their flag may request advice or assistance when sailing in waters off the coast of Somalia and to which such ships can report any security concerns about other ships, movements or communications in the area;

   .5 bring to the attention of the Secretary-General information on attempted attacks or on acts of piracy or armed robbery committed against ships entitled to fly their flag whilst sailing in waters off the coast of Somalia for him to take appropriate action in the circumstances;

   .6 encourage ships entitled to fly their flag to implement expeditiously, for the ship’s protection and for the protection of other ships in the vicinity, any measure or
advice the nearby coastal States or any other State or competent authority may have provided;

.7 establish, as necessary, plans and procedures to assist owners, managers and operators of ships entitled to fly their flag in the speedy resolution of hijacking cases occurring in the waters off the coast of Somalia;

.8 investigate all acts or attempted acts of piracy and armed robbery against ships entitled to fly their flag occurring in the waters off the coast of Somalia and to report to the Organization any pertinent information;

.9 take all necessary legislative, judicial and law enforcement action so as to be able, subject to national law, to receive and prosecute or extradite any pirates or suspected pirates and armed robbers arrested by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service; and

.10 with respect to ships entitled to fly their flag employed by the World Food Programme for the delivery of humanitarian aid to Somalia, where such ships are to be escorted by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, to conclude, taking into account operative paragraph 6.4, any necessary agreements with the State(s) concerned;

5. REQUESTS Governments to instruct national Rescue Coordination Centres or other agencies involved, on receipt of a report of an attack, to promptly initiate the transmission of relevant advice and warnings, through the World-Wide Navigation Warning Service, the International SafetyNet Service or otherwise, to ships sailing in the waters off the coast of Somalia so as to warn shipping in the immediate area of the attack;

6. REQUESTS ALSO the Transitional Federal Government of Somalia to:

.1 take any action it deems necessary in the circumstances to prevent and suppress acts of piracy and armed robbery against ships originating from within Somalia and thus depriving them of the possibility of using its coastline as a safe haven from where to launch their operations;

.2 take appropriate action to ensure that all ships seized by pirates and armed robbers and brought into waters within its territory are released promptly and that ships sailing off the coast of Somalia do not henceforth become victims of acts of piracy or armed robbery;

.3 advise the Security Council that, in response to the pressing request of the Council of the International Maritime Organization, it consents to warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, operating in the Indian Ocean, entering its territorial sea when engaging in operations against pirates or suspected pirates and armed robbers endangering the safety of life at sea, in particular the safety of crews on board ships carrying, under the World Food Programme, humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo, together with any conditions attached to the consent given; and
advise also the Security Council of its readiness to conclude, taking into account operative paragraph 4.10, any necessary agreements so as to enable warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service to escort ships employed by the World Food Programme for the delivery of humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo;

7. CALLS UPON Governments in the region to conclude, in co-operation with the Organization, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships;

8. ALSO CALLS UPON all other Governments, in co-operation with the Organization and as requested by those Governments in the region, to assist these efforts;

9. REQUESTS FURTHER the Secretary-General to:

.1 transmit a copy of the present resolution to the Secretary-General of the United Nations for consideration and any further action he may deem appropriate;

.2 continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and to report to the Council, as and when appropriate, on developments and any further actions which may be required;

.3 establish and maintain co-operation with the Monitoring Group on Somalia; and

.4 consult with interested Governments and organizations in establishing the process and means by which technical assistance can be provided to Somalia and nearby coastal States to enhance the capacity of these States to give effect to the present resolution as appropriate;

10. REQUESTS the Maritime Safety Committee to review and update, as a matter of urgency, MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22), taking into account current trends and practices;

11. ALSO REQUESTS the Council to continue to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and to initiate any actions which it may deem necessary to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia;

12. REVOKES resolution A.979(24).