JOINT PARLIAMENTARY COMMITTEE ON

FOREIGN AFFAIRS AND DEFENCE

SUB-COMMITTEE ON TERRITORIAL BOUNDARIES

AUSTRALIA, ANTARCTICA AND THE LAW OF THE SEA

INTERIM REPORT AND APPENDICES

VOLUME I

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VOLUME I

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SUB COMMITTEE A - TERRITORIAL BOUNDARIES

REPORT ON AUSTRALIA ANTARCTICA AND THE LAW OF THE SEA

To Senator the Hon. Sir Magnus Cormack K.B.E.,
Chairman,
Joint Committee on Foreign Affairs and Defence

Parliament House Canberra
2 May 1978

Sir

On 15 March 1977 this sub committee was given the following reference

> "To consider investigate and report generally on the effect on Australia's maritime boundaries of current developments of the Law of the Sea including extension of the territorial sea, fishing and/or economic zones including exploitation of resources and particularly how these developments might affect Australia's Antarctic Territory and the problem of pelagic fisheries in the EEZ".

After the reconstitution of the committee on 7 March 1978 following the election of the Thirty First Parliament, the sub committee continued its consideration of this reference.

The sub committee has pleasure in submitting their interim report on this reference.

R.F. Shipton, M.P.
Chairman

LIST OF MEMBERS

Main Committee

Senator the Hon. Sir Magnus Cormack (Chairman)

Senator the Hon. R. Bishop (Deputy Chairman)

Senator D.B. Scott

Senator K.W. Sibraa

Senator J.P. Sim

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Former members in the 30th Parliament, 1976/77

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Mr K.L. Fry, M.P.

Mr D.J. Hamer, D.S.C., M.P.

Mr I.L. Robinson, M.P.

Mr J. Sullivan, M.P.

Territorial Boundaries Sub Committee

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Dr N. Blewett, M.P. (S.A.)

Mr R. Jacobi, M.P. (S.A.)

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Former members in the 30th Parliament, 1976/77

Mr K.L. Fry, M.P.

Mr J. Sullivan, M.P.

Mr N. Brown, M.P.

Secretary

L.O. Goldsmith,
The Senate,
Parliament House,
CANBERRA. A.C.T.

DEFINITIONS

The terms listed below have been employed in the text as having the following meaning:

Coastal State

A sovereign nation with a coastline. The term does not refer to the States forming the Commonwealth of Australia.

Demersal

Bottom dwelling fish species.

Pelagic

Species of fish found on the high seas as distinct from fish living in coastal waters.

EXPLANATORY NOTE

At the time this report was being considered for tabling and publication, the Rt. Hon. Ian Sinclair M.P. Minister for Primary Industry on 13 April 1978, introduced three Bills which will amend the Fisheries, Continental Shelf and the Whaling Acts respectively. When amended these Acts will form the legal basis for the declaration of a 200 mile Fishing Zone in Australian waters. These Bills were still the subject of debate as the report was being cleared for tabling in both Houses.

The Committee feels that there is little conflict between the material in the report and the general tenor and substance of the speech by Mr Sinclair on 13 April. The Committee remains convinced however that more evidence is required on certain aspects, as outlined in the report. Only after this evidence has been received can any firm conclusions be drawn on the effect on Australia and Antarctica of a new Law of the Sea regime and in particular the effect on these two continents of the establishment of full Exclusive Economic Zones in Australian and Antarctic waters.

INTRODUCTION

LAW OF THE SEA REGIME AND ANTARCTICA

This interim report has been prepared in the knowledge that the committee's coverage of this very complex political, social, and economic problem with its many ramifications in the international field, is far from complete. The committee considered, however, that in the absence of any easily available comprehensive document, which gave the history of earlier negotiations on the exploitation of the seas resources, together with the probable effect of the declaration of an Exclusive Economic Zone in Australian waters, the presentation of an interim report was warranted.

The more important gaps in the committee's knowledge, which may be filled by further submissions and evidence are set out below.

I. UN Conference on Law of the Sea

We have a fairly extensive coverage on all of the sessions of the Third UN Conference on the Law of the Sea. "The Informal Composite Negotiating Text" which was agreed to at the Sixth Session (15 July 1977) will in all probability form the basis for all future declarations by countries proclaiming Exclusive Economic Zones (EEZ). It must be remembered however, that no formal resolution has yet been agreed to by the United Nations as a body, and there is considerable doubt if such a resolution will be passed. "The Informal Composite Negotiating Text" thus has no status as an international document and could be subject to change. Australia has announced its intention of declaring a 200 mile Fisheries Zone as a first step toward declaring an Exclusive Economic Zone. For Australia the EEZ is the most important result emerging from the entire Conference. For this reason the evolution of economic zones has been discussed at some length in Chapter I.

II. Current Australian Policy

A generally consistent policy has been followed by Australia at all sessions of the Law of the Sea Conference. This policy has had as its main elements support for the creation of 200 mile Economic Zones and retention of control over continental shelves by coastal States irrespective of the extent of the shelves. The Australian Government has treated Law of the Sea matters as a continuing and serious problem and has diverted considerable political and bureaucratic resources to consideration of these matters. These considerations have not received or been given the publicity they deserve. It cannot be said that the general public or Parliament is as widely informed as it should be on this issue. A comprehensive published statement on the Government's policies and negotiations to date is very necessary to correct this, as an easily available public document is required.

III. Existing Australian Legislation - Seas and Seabed and Antarctica - Possibility of Change or Amendment

There is a considerable body of legislation dealing with this subject and with such Australian Territories as the Coral Sea Islands, Antarctica, Ashmore and Cartier Islands and the three populated Territories of Cocos, Christmas and Norfolk Island. In the absence of a submission from the Attorney-General, and although we had the opportunity to examine one witness of that Department, the committee cannot form an opinion of what amendments will, or should be, made to accommodate the establishment of an EEZ.

IV. Fisheries

We have received some evidence from the Australian Fishing Industry Council and from the Department of Primary Industry. We have not to date had opportunity to receive evidence from any State Department of Fisheries. These

organisations could well be heavily involved in some aspects of the administration of the EEZ relating to fishing research and control. This is particularly true of Queensland and Western Australia.

V. Petroleum and Other Minerals - Seabed Extraction

To date it has not been possible to examine witnesses from the Department of National Resources or witnesses from major oil companies. Some information has been obtained but it is as yet insufficient to form the basis of a reasoned judgement as to what effect the declaration of an EEZ will have on these existing or proposed activities.

VI. Conservation

No evidence has been taken to date from the Department of Environment, Housing and Community Development. This evidence could be most helpful in forming an opinion on control measures on pollution and the conservation aspects of fishing activities within the EEZ.

VII. Antarctica

A considerable amount of published and other material has been obtained but no witnesses have yet been examined. A submission has been sought but as yet not obtained from the Department of Science. Evidence from this Department and from the Department of National Development could considerably expand the committee's knowledge of Australia's current and proposed programmes of scientific research and exploration in that Territory.

VIII. Surveillance and Defence

Evidence has been received from Defence witnesses. Some questions such as the effectiveness of existing

arrangements, including air patrols or the placing of legally qualified officers on board naval vessels to deal with cases of illegal fishing "in situ", remain to be resolved. The Department of Transport remains to be examined on the question of surveillance generally, when further information on these and other points may be elicited. The effectiveness or otherwise of existing and planned surveillance systems is open to question.

IX. Foreign Policy Implications

The proposed declaration of an EEZ around portions of Australia's coastline will require negotiations with a number of nations including Papua New Guinea, Indonesia, France (New Caledonia), New Hebrides, New Zealand and the Solomon Islands. Through the South Pacific Forum and such bodies as the South Pacific Economic Commission Australia will also cooperate with practically all the smaller nations of the South Pacific to as far east as Tahiti. If all these nations declare Exclusive Economic Zones the South Pacific could become one gigantic EEZ from the east coast of Australia to Easter Island. In such a situation Australia will be obliged to act as both a coordinator and perhaps a leader.

Currently the committee has little information on these aspects of what could be a rapidly developing situation. Further evidence on this subject is required, probably from the Department of Foreign Affairs and possibly from representatives of some of the countries involved, e.g. Papua New Guinea, France, New Zealand, Fiji.

X. Quarantine

A submission has been received from the Minister for Health on this subject, since this report was drafted, and will be considered by the committee.

LAW OF THE SEA: CHRONOLOGY

1609	Hugo Grotius puts forward the principle of freedom of the high seas to defend the right of Holland to sail through seas claimed by Spain and Portugal to trade with the Indies.
1635	John Selden defends the principle of closed seas to protect British interests against the more powerful Dutch navy.
1758	Principle of freedom of the seas justified by Emerico de Vattel on the basis that the resources of the seas are inexhaustible.
1793	U.S. President Jefferson proclaims the first three mile territorial waters limit to assert U.S. neutrality in the war between Britain and France.
1920	Svalbard Treaty - of which Australia is a signatory.
Sept 1945	President Truman proclaims United States jurisdiction over the adjacent continental shelf to protect American oil interests in the Gulf of Mexico.
Aug 1947	Peru proclaims as territorial waters a 200-mile wide zone off its coast through which the Humboldt Current flows. 200 nautical miles eventually became commonly accepted as the arbitrary width of the exclusive economic zone.
Aug 1952	Tripartite Declaration of 200-mile territorial waters claim by Peru, Ecuador and Chile.
1955	Inter-American Conference on Conservation of Natural Resources in the Continental Shelf and Oceanic Waters declared that "each state is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological and biological factors, as well as the economic needs of its population, and its security and defence."
1958	First United Nations Conference on the Law of the Sea draws up Conventions on the Territorial Sea and Contiguous Zone; the High Seas; the Continental Shelf; and Fishing and Conservation of the Living Resources of the High Seas.
1959	Antarctic Treaty signed.

1960	Failure of the Second UN Conference on the Law of the Sea to reach agreement on the breadth of the territorial sea and the fisheries jurisdiction of the coastal state.
1966 Dec.	Argentina proclaims sovereignty over seas up to 200 miles from its coasts, and over the adjacent seabed to the limit of exploitability.
Nov 1967	Dr Arvid Pardo, Ambassador of Malta to the United Nations, calls for an international treaty on the exploitation of the deep seabed as the "common heritage of mankind". Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction set up.
June 1972	29 African and Caribbean states at conferences in Yaounde and Santo Domingo endorse economic zone concept.
July 1972	Kenya proposes draft article defining 200-mile exclusive economic zone. 200 miles was settled on because that was the width of the widest zone claimed by any nation at that time.
Dec 1972	First Session of the Third United Nations Conference on the Law of the Sea (UNCLOS III) held in New York.
June-Aug 1974	UNCLOS III Second Session in Caracas: 200-mile EEZ gains overwhelming acceptance.
March-May 1974	UNCLOS III Third Session in Geneva: Informal Single Negotiating Text produced.
Oct 1975	H.S. Amerasinghe, Ambassador of Sri Lanka to the United Nations and President of UNCLOS III, calls for application of "common heritage" principle to Antarctica.
March-May 1976	UNCLOS III Fourth Session in Geneva: Revised Single Negotiating Text issued.
Aug-Sept 1976	UNCLOS III Fifth Session in New York: deadlock on the composition and functions of the Seabed Mining Authority.
Jan-June 1977	Canada, United States, Soviet Union, Japan, European Community proclaim 200-mile zones.
May-July 1977	UNCLOS III Sixth Session in New York: Single Negotiating Text agreed; still no agreement on Seabed Authority.

25 July 1977	C. Pinto, Vice-Chairman of Sri Lanka delegation to UNCLOS III, repeats call for application of common heritage principle to Antarctica.
Aug 1977	South Pacific Forum agree to proclaim 200-mile zones by April 1978.
Jan 1978	Release of Report of the Working Group of the Australian *Fisheries* Council on the Two Hundred Mile Australian Fishing Zone.
Mar-May 1978	UNCLOS Seventh Session held at Geneva.

CHAPTER 1

THE LAW OF THE SEA REGIME - EVOLUTION OF EXCLUSIVE ECONOMIC ZONES

The body of doctrine generally referred to as Law of the Sea has evolved over a number of centuries to reflect generally the interests and concerns of the major shipping and trading nations. Two of the oldest and most generally accepted concepts are freedom of the high seas and territorial waters.

One of the first attempts to codify this concept was made by Grotius, a Dutch lawyer, in 1609 when he put forward the principle of freedom of the high seas. In this case he was defending the right of the Dutch ships to sail through waters claimed by Spain and Portugal to trade with the Indies. This concept - the right of "innocent passage" for ships sailing between two countries on the oceans of the world is still perhaps the most widely accepted doctrine and has remained largely unaltered in recent times, subject only to changes in the concept of territorial waters and newer concepts such as contiguous zones and exclusive economic zones.

The concept of territorial waters, the right of a maritime state to extend and exercise sovereign rights over the waters surrounding the coast line, is as equally well accepted and probably more ancient than the concept of freedom of the high seas. Until comparatively recent times, the common limit to territorial waters claimed by most maritime states was three miles - at one time the range limit of a muzzle loading cannon. The international treaties and conventions negotiated over the last forty years concerning passage on or through the world's seas, and usage of its resources, have basically been concerned with the interaction of these two concepts.

The first attempt in relatively modern times to reconcile conflicting claims regarding the extent of territorial

waters and other claims to partial jurisdiction over areas of the sea greater than the "normal" three mile limit was made under the aegis of the League of Nations at the Hague in 1930. No agreement could be reached due to a fundamental difference of approach between those nations with large shipping fleets wishing to restrict territorial waters to three miles and nations with extensive fishing grounds wishing to reserve coastal and near coastal waters for their own vessels.

The almost world-wide trend towards reserving certain adjacent areas of the seas and seabed, which had formerly been considered high seas, for the exclusive or near exclusive use of nations whose coastlines abutted those areas, commenced in the immediate post-war period. In 1945 the United States announced it reserved the right to declare "conservation zones" beyond territorial waters. The first such declaration was in September 1945 proclaiming jurisdiction over the adjacent continental shelf to protect US oil interests in the Gulf of Mexico. A number of countries proceeded to proclaim 12 mile territorial waters, namely Egypt, Ethiopia, Saudi Arabia and Venezuela. In the Santiago Declaration of 1952 Chile, Ecuador and Peru claimed limits of 200 nautical miles, mainly to preserve rich fishing grounds located off the west coast of Latin America. Argentina made a similar claim and in 1957 Indonesia made claims for territorial waters in areas enclosed by her islands, as did the Philippines.

Geneva Conventions 1958

This welter of conflicting claims to increasingly large territorial waters and to further areas where claims were made to control fishing activities, whilst still permitting normal traffic to continue, that is, the right of innocent passage, resulted in a most confusing situation. In an effort to resolve some of this confusion, the first Law of the Sea Conference was convened at Geneva in 1958 by the International Law Commission. At this Conference four Conventions were passed:

Territorial Sea and the Contiguous Zone; Continental Shelf; Fishing and Conservation of the Living Resources of the High Seas; and the High Seas. Agreement was, however, very limited and ratification has been limited to only about one-third of the world community (Australia ratified the Conventions on 14 May 1963).

Territorial Sea

The Territorial Sea Convention recognised a state's sovereignty over its territorial sea, subject to the right of innocent passage for foreign shipping. No agreement could be reached, however, on the width of territorial waters although it was agreed that the contiguous zone should be limited to twelve miles from the base line used for the measurement of territorial waters. This failure to reach agreement on the width of territorial waters was due to a basic clash between the trading and the fishing nations. All attempts at a compromise between a three-mile and a twelve-mile minimum and maximum failed to win the necessary two-thirds majority.

Continental Shelf Convention

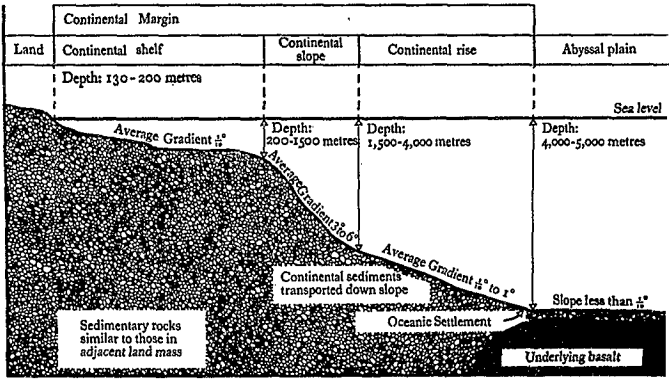
Another quite recent development in international law, which is still evolving and on which complete agreement has yet to be reached, is the control and exploitation of the seabed as distinct from the surface of the sea. To a considerable extent most interest has been and is centred on the scope, extent, and definition of the physical and legal aspects of the concept of the Continental Shelf.[1]

The physical concept is that of the seaward prolongation of the continental land mass. This is in contrast to the deep seabed which lies beyond the two gradients, the

1. The existing "accepted" definition is contained in Article 76, Informal Composite Negotiating Text, Third Conference on the Law of the Sea, Sixth Session, 1977.

PLATE I

Diagrammatic profile of the Continental margin



continental slope and the continental rise which leads the continental shelf to the ocean depths. This is the "normal" situation of gradual slope from the land mass to the ocean depths.[2] In some situations, e.g. islands formed by extinct volcanoes or where there has been massive subterranean land movements off continents, there is practically no continental shelf, so that the ocean depths commence at the extremities of the land mass. Thus the continental shelf can vary in extent from a few miles to several hundred miles from the shoreline of a single continent - this is the situation on the north-west coast of Australia.

From this brief example it is obvious that in many cases the continental shelf will stretch beyond the outer limit of the territorial sea, or contiguous zone of many coastal countries. As awareness increased of the extent of the living and non-living resources of the shelf these countries became concerned that these resources, which they considered were an almost national possession because of "contiguity", were available for exploitation by all nations as a high seas resource.

The first country to express this concern and to take positive steps to reserve these resources for her own use was the United States. In September 1945 the Truman Proclamation was issued, by which the United States asserted it was assuming rights of jurisdiction for purposes of exploration and exploitation in its continental shelf. By this stage US oil companies were already drilling for oil offshore from Texas and California. It was quite obvious that these oilfields extended far beyond the territorial waters limits. The Proclamation claimed the natural resources of the continental shelf as appertaining to the United States. The Proclamation did not specify any outer boundary to the area claimed. At the same time, however, no additional rights were claimed over the

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2. See diagram, Plate 1.

surface of the water; the freedom of the seas was in no way affected by the claim to ownership and control over the seabed resources.

By 1958 some twenty countries had made claims to jurisdiction over the continental shelf abutting their coastlines. As with territorial waters there was a considerable degree of disagreement as to the extent of the control individual countries could exercise over these areas. Many experts held the view that whilst countries could have the right to explore and exploit the shelf's resources this right did not extend to jurisdiction. Again as with territorial waters the extent of the continental shelf was at the heart of much of the discussion.

The International Law Commission attempted to reach a definition of the extent of the continental shelf which was acceptable to a majority of countries. The definition as finally accepted at the 1958 Conference (Convention on the Continental Shelf) was based both on depth of the sea and ability to exploit the resources of the seabed thus:

> '"Continental Shelf" is used in referring (a) to the seabed and subsoil of the submarine area 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 superjacent 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 coast of islands.'

Under the Convention coastal states could exercise sovereign rights only for the purpose of exploring and exploiting the resources of their continental shelves.

The Convention is obscurely worded and its meaning is, to say the least, ambiguous. The outer boundary of any continental shelf is not fixed but fluctuates in accordance with latest developments in technology which permit exploitation at

constantly increasing depths. The Convention has not been widely accepted or ratified by a majority of the nations of the world.

Fishing Conservation and High Seas Living Resources Convention

The draft of this Convention was prepared to co-ordinate the existing unilateral attempts at conservation. It was an attempt to reconcile the conflicting interests of the high seas fishers, who wanted maximum freedom, and those of the inshore fishers, particularly developing countries, who wished to preserve what they regarded as "their" national resources.

The Convention, as ratified, failed in its attempts to reconcile the opposing interests. Freedom of fishing on the high seas was reaffirmed, "subject to the interests and rights of coastal states". Coastal states could take unilateral action to introduce conservation methods, but where other nationals were concerned such measures could only be introduced after negotiating with the government concerned. Arbitration was proposed where there was no agreement. Failing resort to arbitration, only non-discriminatory conservation methods could be introduced. These proposed procedures, which are obviously cumbersome and ineffective, attracted little support. Few states (26 by 1974) signed the Convention.

High Seas Convention

This Convention laid down "the high seas, being open to all nations, no State may validly purport to subject any part of them to its sovereignty". These freedoms were said to include:

i. freedom of navigation

ii. freedom of fishing

iii. freedom to lay submarine cables and pipes

iv. freedom to fly over the high seas.

These freedoms were, however, matched by certain responsibilities, e.g. to ensure safety at sea, aid those in distress, prevent slave running and to act "with reasonable regard to the interests of other States in their exercise of the freedom of the high seas".

First United Nations Conference on the Law of the Sea

The First United Nations Conference on the Law of the Sea could perhaps be described as a useful, if not successful, attempt at codifying international rules concerning the use and exploitation of the resources of the sea, and more importantly the seabed. It was also an attempt to accept the fact that modern technology has fundamentally altered the relationship between mankind and the sea. Mankind now has the opportunity to exploit maritime resources on a scale and scope which has been impossible in the past. The Third United Nations Conference on the Law of the Sea, which has not yet held its final session, is the ultimate attempt to reach a degree of unanimity on the form of these rules and the degree of international control which can be exercised over the exploitation of the resources of the sea and the seabed.

Third Conference on the Law of the Sea, 1973 - First and Second Sessions

The genesis of this Conference lay in earlier meetings of United Nations bodies. In 1960 the Second Conference on the Law of the Sea was held with the objective of securing agreement on such issues as the breadth of the territorial sea and the fisheries jurisdiction of coastal States. No agreement could be reached.

In November 1967 Dr Arvid Pardo, Ambassador of Malta to the United Nations, addressed the General Assembly on the subject of reserving for peaceful purposes the seabed and ocean floor beyond national jurisdiction and the use of their

resources in the interests of mankind. The key theme of his address was that the sea and seabed were the common heritage of mankind. To preserve this heritage an effective international control body would have to be established. He recounted the types of exploitation already being conducted, including offshore oil drilling and the possibility of the deep-sea mining of manganese nodules. He urged that a body should be established to draw up a comprehensive treaty to safeguard the international character of the seabed and define the limits of national rights. An international agency could then be established to ensure that national activities on the sea floor conformed with treaty principles. This body could also generally be responsible for administering this area of the seabed. Following Dr Pardo's speech the General Assembly established a Committee on the Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction (Seabed Committee). This Committee held six sessions between 1971 and 1973; Australia was represented at each session. At the end of 1973 the Third United Nations Conference on the Law of the Sea was convened.

The Third United Nations Conference on the Law of the Sea held its first meeting in New York in 1973. This meeting was principally concerned with organisational arrangements; the first substantive session was held in Caracas, Venezuela from June to August 1974. Three committees were appointed to carry out the work of the Conference. In summary, the Committees' responsibilities were as follows: Committee I - the seabed beyond national jurisdiction (the Area); Committee II - territorial seas, exclusive economic zones and the continental shelf; Committee III - preservation of the marine environment, scientific research and transfer of technology.

The International Seabed

At this second session of the Conference the principal achievement made by Committee I was to outline the main points of disagreement: who could or should exploit the Area, under

what terms, and the probable effects of this exploitation on existing mineral producers.

The developed countries, led by the United States, adopted the position that a Seabed Authority should be established with limited powers to control the rate of exploitation of the seabed which would be undertaken by private entrepreneurs. The developing countries proposed that if the "common heritage of mankind" ideal was to be implemented, all exploitation of the Area seabed must be controlled by the Authority. This was to be achieved by the Authority licensing individual exploiters or by the Authority undertaking exploitation itself through its own operating body - the Enterprise. Australia supported a modified version of this position. A report, prepared by the Secretary General on the effects of seabed mining on existing land-based mineral producers, was considered by Committee I. This report suggested the effect on nickel and copper producers would be minimal but there would be a substantial effect on cobalt producers causing, by 1985, a substantial reduction in the price of cobalt. No progress was possible in reconciling these two opposing positions. The various discussions, proposals and amendments had, however, the beneficial effect of defining the opposing attitudes and the reasons for these attitudes. This clarification provided a basis for further future negotiation in the attempts to reach agreement on this very complex and novel issue.

Committee II dealt with some of the most contentious issues before the Conference: exclusive economic zones; fisheries; territorial sea - contiguous zone; continental shelf; and other matters touching on the control to be exercised by nations over areas of the seas adjacent to their coasts.

Exclusive Economic Zone

Perhaps the most important matter discussed by this Committee, certainly in terms of new concepts, was the proposal

to establish Exclusive Economic Zones extending 200 miles from the coast of maritime nations. This concept was accepted by the United States, the USSR and the United Kingdom. It was subject to safeguards regarding navigation rights and the full utilisation of fish stocks. Australia maintained that a coastal State had sovereign rights in relation to natural resources in its economic zone. Coastal States should also have defined jurisdiction and specific rights to enforce international standards. The Land Locked and Geographically Disadvantaged Group of countries tabled proposals that such countries had the right to explore and exploit resources in neighbouring coastal States' economic zones. Most coastal States, including Australia, agreed that the interests of this group of countries must be considered but no specific proposals were put forward.

Fisheries

The Committee had to attempt a compromise between two fundamentally opposing positions, narrow national fishing zones with freedom to fish for all nations as opposed to coastal States having the exclusive fishing rights within their zones. Under a third approach, favoured by Australia, coastal States would have management and conservation rights within the exclusive economic zone. The coastal State would determine the allowable catch and reserve a proportion of the catch for its own fishermen. The fishermen of other States could be licensed to fish for the remainder of the unused allowable catch.

Territorial Sea and Contiguous Zone

Most States in discussion on this question favoured a 12 mile territorial sea although some States, such as Peru, Brazil and Ecuador, insisted on a 200 mile limit with full sovereignty. Generally the right of innocent passage through territorial waters was supported. There was little discussion on contiguous zones; the development of the exclusive economic zone concept made contiguous zones almost redundant.

Continental Shelf

The most important issue debated under this heading was: should a coastal State's control over the adjacent continental shelf extend beyond 200 miles? The land locked countries group generally favoured a limitation of 200 miles. Australia took the position that under existing international law the continental shelf consists of the natural prolongation of the land territory to the outer limit of the continental margin and this rule should be maintained in any new convention. Thirty-three States including the USA generally supported this proposition.

Committee III was concerned with three nebulous but all-embracing concepts: marine environment, scientific research, and transfer of technology. Maritime powers stressed the importance of the freedom of navigation and rejected any undue interference by coastal States with vessels passing through economic zones. Australia's position was that pollution control should be exercised in economic zones but without interfering unduly with shipping. With regard to scientific research there was again a fundamental divergence between those wishing to maintain freedom to conduct research and those wishing to safeguard the interests of coastal States. Australia favoured the latter position. There was no discussion on the transfer of technology.

The major achievement of the second Session was to lay the groundwork for further negotiations and compromise at future meetings. The areas of divergence in attitude to such matters as exploitation of the seabed or the degree of control to be exercised in economic zones showed that significant compromises were a necessity if an effective international agreement was to be reached.

Third Session - Geneva, March-May 1975

The work at this session, although still conducted by the three main committees, was conducted without plenary

meetings with prepared speeches. Instead informal meetings were held, often of small working groups, to consider draft articles on the matters allocated to the three committees and to attempt to achieve a consensus.

The most important result of this Session was the preparation of negotiating texts by the chairmen of each of the committees. Collectively these documents were known as the Informal Single Negotiating Text. In summary this could be described as a document which, without having any binding force on the parties to the Conference, delimited the nature of the subject matter of the Conference and the degree of tentative agreement reached on a number of the matters covered by the articles in the Text.

Generally it could be said that some agreement and progress resulted from this Session. This progress was, however, confined to the definition of such concepts as economic zones, the extent of the continental shelf, and of a Seabed Authority. There was little progress in the much more important area of the degree of control to be exercised by coastal States in and over economic zones, the rights to exploit the resources of the continental shelf beyond 200 miles from a coastline and the powers to be exercised by the Seabed Authority in controlling the exploitation of the resources of the seabed.

The preparation of the Informal Single Negotiating Text was a considerable gain towards the objective of agreement on a new, viable Convention covering the regime of the Law of the Sea. A document had at last been produced which, however imperfectly, incorporated the attitudes of most of the participants to the Conference on a majority of the matters under discussion. This meant that the Fourth Session could use this document as a working paper knowing that a measure of agreement had been reached on the definition of concepts, if not on the degree of control to be exercised by international and other bodies in attempting to utilise these concepts.

Fourth Session - New York, March-May 1976

The most important issues at this Session were:

i. who should have rights to exploit the deep seabed and what should be the terms and conditions of exploitation;

ii. the question of passage through straits used for international navigation;

iii. the balance of rights and duties in the 200 mile exclusive economic zone with particular reference to living resources, the marine environment, scientific research and freedom of navigation;

iv. rights of the coastal State with respect to the continental shelf;

v. the maritime space pertaining to islands;

vi. the need for an adequate disputes settlement system.

Further progress was made at this Session towards a consensus on a Law of the Sea Convention embracing the above points. The most significant development was perhaps the acceptance of such concepts as exclusive economic zones. Once the concept was accepted progress could then be made on such matters as rights and obligations. What powers could coastal States exercise in these areas and what duties would be imposed upon them? How far should the rights of innocent passage be curbed by the establishment of exclusive economic zones?

As with the Third Session the principal result of the Fourth Session was the production of a comprehensive document which embodied the agreement reached to date on the number of

most complex and to a degree, novel, issues which are the subject matter of the Conference. This document, the Revised Single Negotiating Text, was produced by the chairmen of the three main Committees and by working groups. It was this document, a revised and improved version of the Informal Single Negotiating Text, which was proposed as the basis for discussion and negotiation at the Fifth Session.

Fifth Session - New York, August-September 1976

This Session, held only three months after the Fourth Session, commenced with high hopes. There was a general expectation that at the conclusion of the Session agreement would have been reached on the major outstanding issues. These expectations were not realised. Despite devoting the entire Session to discussion of "priority" issues, no definitive agreement could be reached. Also, unlike the Third and Fourth Sessions no document similar to the Single and Revised Negotiating Texts was produced.

In some areas, however, some progress was made. Thus in Committee I in discussions on the operations of the Seabed Authority (Article 22, Revised Single Negotiating Text) the United States offered a compromise. Her position, in common with a majority of the developed nations, irrespective of their form of government, had been that there must be an assured access to such minerals as manganese, copper and cobalt on the seabed. The United States had opposed passing control over these deposits to an International Authority. Dr Kissinger, the U.S. Secretary of State, reiterated this general position but offered U.S. assistance to finance the Enterprise, the operating arm of the Seabed Authority, so that it could conduct operations concurrently with private industry. He also offered U.S.

participation in the transfer of technology to the Enterprise and in a revision of the system after 25 years.[3]

Despite this compromise the gap, which is partly philosophical, between the developed and developing countries on this very important issue of exploitation of the resources of the seabed, remained unresolved. In contradistinction to the attitude of the developed countries set out above, the developing countries favoured a Seabed Authority which has effective control over the Area with the Enterprise carrying out most of the actual exploitation. They were prepared to accept a form of licensing operation under which private industry could operate but they maintained that the Seabed Authority, in order to preserve the principle of the "common heritage of mankind" must have final control. In certain circumstances the Seabed Authority could refuse access by private industry to the Area.

A similar failure to reach a consensus resulted from the discussions in Committee II.

The major questions at issue were:

i. freedom of navigation in exclusive economic zones;

ii. access to the living resources of these zones by land locked States;

iii. the continental shelf;

iv. straits used for international navigation.

In discussion some progress was made towards reaching a solution on all these problems. Thus with regard to economic

3. At the Seventh Session, on 23 April 1978, the United States indicated that it was prepared to ensure that 50 per cent of all profits from seabed mining would go to the proposed Seabed Authority.

zones, attempts were made to define them neither as territorial nor high seas. The living resources question revolves around the rights of land locked States in economic zones, and how these rights should be defined. There was some support for the proposition that the continental shelf should extend beyond the 200 mile limit. Beyond this limit it was proposed that there be revenue sharing of the resources of the continental shelf. Agreement was almost reached with regard to the passage of vessels and aircraft flights in and over straits which are territorial seas. Again the problem was to reconcile the rights of individual countries with those of the international community.

In Committee III the main problems were identified by the Chairman as:

i. marine scientific research in the exclusive economic zone (EEZ);

ii. vessel-sourced pollution in the territorial sea;

iii. transfer of technology.

There was a wide divergence of attitudes on the question of the control to be exercised by coastal States over marine research in their adjacent economic zones. Some progress was made towards a compromise. The question of control of pollution raised the fundamental issues of sovereignty in territorial waters, the rights of innocent passage and the control to be exercised in the EEZ. No consensus was reached. The debate on the transfer of technology and the related question of the role of the Seabed Authority in this activity was also inconclusive.

Disputes Settlement Procedures

Draft articles on this subject were prepared at informal meetings of the entire Conference rather than

allocating the responsibility to a Committee. The most important provision involves a proposed Law of the Sea Tribunal. An important source of dissension was the powers of the Tribunal in the area of the EEZ of a coastal nation. Despite this objection, the view that compulsory settlement of disputes should be part of any Convention gained general acceptance.

In summary the Fifth Session could be described as a period of reconsideration and consolidation of the progress made at the two previous Sessions. Clarification of the priority issues was obtained, and on a few issues some progress was made. Between the developed and developing nations there were, however, some deep philosophical differences, for example, who was to control exploitation of the seabed. These differences, being of a philosophical rather than pragmatic nature, were exceedingly difficult to resolve. A similar disagreement on basic philosophy divided the coastal and maritime, and landlocked nations as to the powers to be exercised in territorial waters and exclusive zones. Thus with some agreements achieved but with a number of fundamental disagreements still remaining on priority issues, the probable penultimate meeting of the Conference, the Sixth Session, was held in New York from May-July 1977.

Sixth Session - New York, May-July 1977

Further progress towards the solution of the outstanding issues was made at this Session. The most important achievement was the production of the Informal Composite Negotiating Text as the main negotiating document and probably, in effect, the basic draft of a new Convention on the Law of the Sea.

Despite the production of this document certain priority issues remained to be resolved at the conclusion of the Session. These were:

i. system of exploitation of the Area, including financial and resources policy;

ii. transfer of technology;

iii. settlement of disputes.

The concept of an EEZ is now firmly established. Where no agreement could be reached was in defining the legal status of these zones. Again no compromise could be reached to meet the demands of the Land Locked and Geographically Disadvantaged States for access to the resources of these zones. General agreement was reached on control of marine pollution and over scientific research in coastal waters.

At the conclusion of this Session it could be said that considerable progress had been made on the very wide range of issues which faced the Conference at its Second Session (and first working meeting) in 1973. New international concepts such as the EEZ and the Seabed Authority have emerged and have become widely accepted. Clarification of objectives and attitudes has been achieved in those areas of negotiation where, after some four years of debate and discussion, no agreement has as yet been reached on some basic issues.

Seventh Session - Geneva, March 1978[4]

At the time this draft report was being prepared (April-May 1978) the Seventh and in all probability the final Session of the Conference was being held. There is a strong probability that some compromise, using the Informal Composite Negotiating Text as a basis, will be achieved in those areas where there are outstanding issues. Failing consensus or sufficient agreement to make a new Convention viable, it is

4. At the initiative of the committee the Australian Government agreed to Mr J. Martyr, MP and Senator Devitt attending some sessions.

probable that a large number of States will implement jointly and severally those portions of the Negotiating Text on which a large measure of agreement has already been reached. This has already occurred with regard to exclusive economic zones. These have already been declared by a large number of countries and generally such declarations have obtained international acceptance. Australia proposes to make such a declaration some time in 1978, the area to be covered by such a declaration remains the subject of some speculation. Whether a new Law of the Sea Convention will result from the Third Conference on the Law of the Sea must at this stage remain a matter of speculation. It can be said, however, that rarely in the international field has a matter been the subject of such intensive investigation and discussion over such a long period of time. The technical advisers have exhausted the subject; if any agreement is now to be reached it must be made on a political basis, bearing in mind the original concept was that the seas and seabed were "the common heritage of mankind".

CHAPTER II

AUSTRALIAN GOVERNMENT POLICY ON THE LAW OF THE SEA

This subject has been a matter of international negotiation for the entire post 1945 period. As an island continent dependent on trade to exist, Australia has been an active participant in these negotiations. Despite the importance of the matter, particularly as to its effects on future trade negotiations, the subject has aroused little public interest. Similarly there have been few separate debates in Parliament solely devoted to this topic.

Where statements of policy have been made they have generally revealed a bi-partisan political approach by the major Australian political parties. In his statement at the Second Session of the Third Conference on the Law of the Sea at Caracas on July 2, 1974 the Minister for Foreign Affairs, Senator the Hon. Don Willesee, set out Australia's attitude to the various issues. He favoured national control over the continental shelf, establishment of economic zones, conservation and management of fish stocks in these zones to be controlled by coastal States (subject to certain restrictions), protection of the marine environment, control of marine scientific research in territorial waters by coastal States and an international Seabed Authority. This body, in addition to regulatory powers would have the power to undertake exploration and exploitation on its own behalf. These objectives have been pursued by the various Australian delegations at all succeeding Sessions despite the change in Government at the end of 1975.

In a speech outlining the Government's Foreign Policy on March 15, 1977 the present Minister for Foreign Affairs, the Hon. A. Peacock MP, made a reference to the Law of the Sea Conference. He emphasised the tremendous importance of the 200 mile zone concept to Australia in terms of capacity to exploit

the area claimed, agreements with other nations concerning the zone, responsibilities in terms of resource sharing and the problem of surveillance. The Minister went on to emphasise that the Government considered this question an urgent one, involving responsibilities both to the Australian people and to the international community. He said the Government was determined to do everything to avoid a break-down in the Law of the Sea Conference. He considered that to date the Conference had been characterised by an absence of the political will and determination necessary to find an agreed solution. The Minister also made reference to Antarctica and the effect the Law of the Sea Conference could have on the future development of the resources of this region, and on such matters as strategic significance, access and sovereignty.

A further statement of policy was contained in the submission by the Department of Foreign Affairs to the Committee (May 1977)[1]. The submission stated that the Australian Government was committed to working for the successful conclusion of the Law of the Sea Conference culminating in a multilateral Convention. This Convention would include provision for a 200 mile exclusive economic zone (EEZ) around national coastlines, 12 mile territorial seas and coastal States rights to the continental shelf extending to the outer edge of the continental margin (i.e. in some cases beyond the limits of the 200 mile EEZ).

The submission stated that Australia had consistently supported the EEZ concept and expected its implementation in due course around the Australian coastline. Piecemeal implementation of any of the elements of the emerging Law of the Sea Convention was opposed however, on the grounds that this might disrupt the negotiating process. The problem of administering such a large area (some 2.4 million square miles) would also require the maximum international recognition of the extension of coastal State jurisdiction.

1. Evidence, pp.84-89.

The submission points out that the Government is aware of the long drawn out negotiations of the Law of the Sea Conference and that if agreement is not reached in the near future unilateral action will be taken to safeguard national interests. A number of countries have already claimed jurisdiction over 200 miles; in many cases these unilateral declarations have been directed at asserting jurisdiction over fisheries in the 200 mile zone. The submission stated that, if the Sixth Session of the Conference failed to make progress, Australian policy with regard to the unilateral declaration of an EEZ would be reviewed.

The submission outlined at some length the factors which would have to be considered in declaring a 200 mile EEZ (or fishing zone). In summary the more important points listed by the submission are:

i. State of Law of the Sea Negotiations

Account would have to be taken of the likelihood of reaching agreement and the terms of that agreement and, in relation to economic zones, the content and the status of waters enclosed therein. The degree of support for such a zone would be important in determining whether it was part of customary international law.

ii. International Law

The exclusive economic zone concept is relatively modern; it is not as yet recognised in any international instruments or with certainty in the decisions of international tribunals. The general support enjoyed by the EEZ in the Law of the Sea Conference suggests it is becoming part of customary international law. Complete acceptance must wait until the precise content of the EEZ, including rights and duties, has been determined. There is a strong case already, however, for

the recognition of coastal States rights over fisheries resources as these are recognised by international law.

iii. Geographical Extent of Declaration

Consideration will need to be given to whether an Australian declaration should cover the whole or only part of the Australian coastline, and whether it should cover the Australian territories including Antarctica. This latter proposal raises important political, conservation and environmental issues which have not as yet been resolved.

iv. Delimitation

An Australian declaration would require delimitation of overlapping zones with a number of neighbouring countries including Papua New Guinea, France, New Zealand and Indonesia.

v. Responsibilities of Other Departments

Under this heading the submission listed constitutional and legislative requirements (Attorney-General's Department); assessment of living resources and determination of optimum yield in the EEZ and terms and conditions of access by foreign fishing vessels (Department of Primary Industry); surveillance and enforcement matters (Departments of Defence, Transport and Primary Industry).

The committee is not aware of any formal policy statement by the Government on the Law of the Sea Conference later than those mentioned above, with the exception of the answer to a Question without Notice in the House of Representatives on 16 August 1977 from the Member for Leichhardt, Mr. David Thomson, and the Declaration on Law of the Sea and a Regional Fisheries Agency made at the 8th South Pacific Forum, Port Moresby, 29-31 August 1977. The Committee has a copy of this Declaration but only a brief newspaper report

of the 31 August 1977 (Sydney Morning Herald) summarising the proceedings of the Forum in their relationship to Law of the Sea matters.

In reply to Mr Thomson's question the Hon. A. Peacock, Minister for Foreign Affairs, set out at some length the Government's attitude to the declaration of a 200 mile exclusive economic zone. He said the Government had determined that legislation should be drafted to enable the proclamation of a 200 nautical mile Australian fishery zone. This would be the first stage of exercising, in accordance with international law, Australia's 200 mile zone rights around Australia and the Territories. He said no decision had been made regarding the timing of the introduction of the legislation or of its coming into force. Mr Peacock said this aspect would have to be discussed with other countries, particularly with South Pacific Forum countries at the forthcoming Forum meeting.

At the 8th South Pacific Forum meeting held at Port Moresby, 29-31 August 1977 a declaration of intent was made by member countries including Australia, represented for part of the meeting by the Rt. Hon. J.M. Fraser CH, MP, Prime Minister, to establish extended fisheries jurisdiction in accordance with international law, and to establish a South Pacific Regional Fisheries Agency, if possible, by 31 March 1978.[2] Possibly the most important clause of this Declaration is Clause 5 which provides for consultations to seek:

a. agreement on principles and measures to be applied in the establishment of extended fisheries jurisdiction;

b. agreement on a common basis for negotiations with distant water fishing interests in relation to highly migratory species common to the region;

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2. See Appendix III.

c. that agreements made with distant water fishing interests are compatible with these principles.

The establishment of the South Pacific Regional Fisheries Agency is also a significant event. This agency, when fully established will collect statistics and other information on conservation and utilisation of the living resources in the oceans of the region, assist in negotiations with distant water fishing interests, facilitate the development of a regional approach to management and licensing, and of collaboration between coastal governments in surveillance and enforcement.

The committee is satisfied that the Government is treating the question of the Law of the Sea Conference with the degree of seriousness and granting it the degree of priority which this subject deserves. This matter is one of the most contentious long-term international issues to emerge in the post-war period; it has occupied the attention of more than 100 nations for a period in excess of 25 years.

The committee is not convinced, however, that the Government has given this issue the publicity which is necessary if the issues are to be understood by the general public. The committee accepts the fact that this is a most complex and wide ranging issue which is not easy to explain in simple terms. The committee also accepts the fact that negotiations are still (May 1978) proceeding and these details cannot be made public.

Despite these factors the committee feels the Government should, as soon as possible, perhaps at the conclusion of the Seventh Session of the Conference in May or early June 1978, prepare a White Paper which, in addition to stating the Government's policy, will also canvass the entire issue of the Law of the Sea Conference, and the Government's hopes for a new multilateral Convention resulting from the Conference. The issue of such a White Paper would permit a wide ranging and informed debate to be held in Parliament. In this

way the public could be informed of the meaning of the term "Law of the Sea", and how it affects Australia's national interest. The committee noted with approval that Mr R. Jacobi, M.P. and Mr D. Connolly, M.P., Senator the Hon. J.M. Wheeldon, and Senator Townley attended, at the invitation of the Government, meetings of the Special Consultative Meeting of Antarctic Treaty Parties held in Canberra February-March 1978. The committee feels that practice of members of parliament attending international conferences of this type should be extended.

CHAPTER III

FORESEEABLE CHANGES TO AUSTRALIAN LEGISLATION AND RELATED CONSTITUTIONAL PROBLEMS INCLUDING ANTARCTICA

If a Convention on the Law of the Sea does emerge from the various Sessions of the Third Conference on the Law of the Sea it will, if it is to be effective, cover the following basic matters:

i. a 12 mile territorial sea over which the coastal State has sovereignty subject to the right of innocent passage;

ii. unimpeded passage of international straits for vessels and aircraft;

iii. a 200 mile economic zone in which the coastal State exercises sovereign rights over the exploration, exploitation and conservation of living and non-living resources; freedom of navigation for the vessels and aircraft of other States in and over these zones guaranteed; coastal States having sovereign rights over the exploitation of the resources of the margin of the continental shelf where this prolongation extends for more than 200 miles coupled with a duty to make some international contribution from resources extracted beyond the 200 mile limit;

iv. coastal State control of all drilling and economic installations in the economic zone;

v. elaboration of the concept of island nations including a precise definition of archipelagic waters and a regime of unimpeded navigation on and over these waters;

vi. international standards to control and prevent marine pollution with limited coastal State enforcement rights with regard to vessel source pollution in territorial waters;

vii. coastal and flag State rights and duties for scientific research in the economic zone and the continental shelf, and general provisions regarding international cooperation in marine scientific research and transfer of technology;

viii. an international regime and machinery to control exploration and exploitation of the seabed resources beyond the limits of national jurisdiction;

ix. a system for the peaceful settlement of disputes possibly involving reference to such bodies as the International Court of Justice where the dispute cannot be resolved by negotiation between the parties involved.

If a new Convention develops, or alternatively if Australia declares a 200 mile economic zone in the near future, pending the successful negotiation of such a Convention, certain national legislation will be necessary. It is pertinent to list existing Commonwealth legislation in an attempt to determine how effective it would be in achieving the aims of the Convention, summarised above, and what additional legislation may be required. The following Acts, which also apply to the Territories, appear to be those having most relevance in this field:

- Fisheries Act 1952-1975
- Petroleum (Submerged Lands) Act 1967
- Continental Shelf (Living Natural Resources) Act 1968

- Seas and Submerged Lands Act 1973
- Whaling Act 1960
- Coral Sea Islands Act 1969

Fisheries Act 1975

The Fisheries Act (section 4) empowers the Commonwealth to control fishing within the "declared fishing zone", waters within 12 miles of the Australian coast. This power is to some extent limited however by State legislative powers. In 1969[1] it was held that section 51(x) of the Constitution does not empower the Commonwealth to make laws regarding fisheries within 3 miles of the coast. This reasoning was not disputed in the Seas and Submerged Lands Act case.[2] The power in "declared" waters covers all persons and boats including foreigners and foreign owned boats. Section 7 of the Act empowers the Governor-General to declare any Australian waters to be "proclaimed waters" for the purposes of the Act. Such a proclamation was made on 22 August 1968 covering an area of between 200-300 miles around the Australian coastline - varying generally in accordance with the extent of known fishing grounds. Within these proclaimed waters the Commonwealth can exercise power over Australian but not over foreign persons. This control falls far short of the extent of the powers it is proposed should be exercised by coastal States over exclusive economic zones, as summarised on page 27.

Petroleum (Submerged Lands) Act 1967

The Petroleum (Submerged Lands) Act extends Australian control over hydrocarbon deposits to areas well beyond the existing territorial sea limits. These areas are defined in the Second Schedule of the Act as being:

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1. Bonser v. La Macchia 122 CLR 177
2. 1976 50 ALJR 218

a. areas of territorial waters; and

b. areas of superjacent waters of the continental shelf.

In the Second Schedule each area is described as being adjacent to the various States and Territories, including the then Territory of Papua New Guinea. The powers contained in this Act appear to be sufficient to control the exploration and exploitation of hydrocarbon resources within a 200 mile economic zone.

Section 8 of the Act states that it applies to all natural persons whether or not they are Australian citizens, and to all corporations whether incorporated in the Commonwealth or a Territory or not. The Act derives its powers from the 1958 Continental Shelf Convention.

Continental Shelf (Living Natural Resources) Act 1968

This Act, together with the Seas and Submerged Lands Act 1973, is concerned with the resources of the continental shelf. The main purpose of the Act is to control (section 12) the exploitation of sedentary organisms - crayfish and oysters are common examples of such organisms - by the issue of licences under which operators can only fish in certain nominated areas of the continental shelf. Like the Petroleum (Submerged Lands) Act, section 9 extends the application of the Act to all foreign persons and foreign ships. The Act derives its powers (see sections 7 and 8) from the 1958 Continental Shelf Convention.

Seas and Submerged Lands Act 1973

This Act is a very short piece of legislation giving the Governor-General powers of proclamation to declare the limits of the territorial sea and the limits of the continental shelf. The Act also states that the sovereign rights in the

territorial sea and the continental shelf are vested in the Commonwealth. This Act derives its power from the 1958 Convention on the Territorial Sea and the Contiguous Zone.

Whaling Act 1960

The amendment of this Act will be required if control over whaling is to be extended as with other fisheries jurisdiction to the 200 mile limit. Such an extension will also be required as part of Australia's commitment as a signatory to the International Convention for the Regulation of Whaling and as a member of the International Whaling Commission.

Coral Sea Islands Act 1969

The present boundaries as laid down in this Act are north of the median line between Papua New Guinea and Australia. Adjustment of these boundaries could be required following the declaration of a 200 mile fishing zone by Papua New Guinea and the proposed declaration of such a zone by Australia.

The Petroleum (Submerged Lands) Act, the Continental Shelf (Living Natural Resources) Act and the Submerged Lands Act derive their powers from Conventions concerning international law agreed to in 1958. This raises the question whether any legislation concerning fisheries control in the proposed 200 mile EEZ would not also require to be based on an internationally agreed Convention. It would then have the same apparent validity as the legislation referring to petroleum, conservation and sovereign rights. Could such legislation be valid if based merely on a unilateral declaration of a 200 mile EEZ which, whilst having considerable international support does not appear to have the same force in international law as a Convention?

It is quite apparent that the committee requires expert legal advice on these and other constitutional and legal

aspects of the Law of the Sea negotiations. To date, with the exception of Mr E. Lauterpacht QC, whose evidence was on more general lines and who spoke to the Foreign Affairs submission, the committee has not received a submission or evidence on these points.

When the inquiry was originally commenced a submission was sought from the Attorney-General. His reply is printed in full below:

20 July 1977

Dear Mr Shipton,

I refer to your letter dated 22 March 1977 inviting me to make a submission to the Sub-Committee on Territorial Boundaries on 'the effect on Australia's maritime boundaries of current developments of the Law of the Sea including extension of the territorial sea, fishing and/or economic zones including exploitation of resources and particularly how these developments might affect Australia's Antarctic Territory'.

As you will be aware, the Minister for Foreign Affairs recently submitted a full background paper to the Sub-Committee. This should, I think, provide a useful framework for the Sub-Committee's deliberations.

In these circumstances, I am not myself contemplating a general submission to the Sub-Committee. If, however, the Sub-Committee were to let me know of any specific legal issues on which it would like to have my advice, I should be pleased to consider them. In addition, I have asked my Department to provide any assistance that it can properly give to the Sub-Committee should it so request.

Yours sincerely,

R.J. Ellicott, QC
Attorney-General

A submission has now been sought from the present Attorney General. These aspects were specifically excluded from the

Foreign Affairs submission. It has also been requested that an officer from the Attorney-General's Department should appear before the committee to speak to this submission.

Without such a submission and expert witness it is difficult to see how the members of the committee can obtain a proper understanding of the legislative and constitutional issues involved. It will also be an opportunity to determine if the summary provided on pp. 27, 28 is reasonably correct in attempting to outline the possible scope of the Convention.[3]

3. On 12 April, Mr P. Brazil, an officer of the Attorney Generals Department, gave evidence on some constitutional points and evidence of a general nature on Law of the Sea developments to the sub committee.

CHAPTER IV

THE EXCLUSIVE ECONOMIC ZONE AND THE AUSTRALIAN FISHING INDUSTRY

In this chapter consideration of an Exclusive Economic Zone around the Australian coast and its possible effect on the Australian fishing industry has been restricted to continental Australia and does not include Antarctica. All matters affecting Antarctica will be considered in a separate chapter.

In Article 55 of the Informal Composite Negotiating Text the Exclusive Economic Zone is defined as follows:

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

This Article, although expressing only general propositions, is in a sense, perhaps one of the most important Articles in Part V since it announces unequivocally that other States, apart from coastal States, have rights and freedoms in any EEZ.

Articles 61 and 62 covering the conservation and utilization of living resources are the two Articles most directly concerned with the fishing industry. Under Article 61 the coastal State is required to: determine the allowable catch of the living resources; ensure that these resources are not over exploited; maintain stocks to produce maximum sustainable yield; and exchange scientific information, catch and fishing statistics with interested organisations, including States whose nationals are allowed to fish in the exclusive zone.

Article 62 enjoins the coastal State to promote the optimum utilization of the living resources of the zone. The

coastal State is also required to give other States access to the allowable catch of the zone where it does not have the capacity to harvest the catch. Conversely, nationals of other States fishing in the exlusive economic zone are required to comply with the conservation and other regulations of the coastal State. These regulations may cover the following matters:

- licensing of fishermen
- determining species to be caught and quotas
- regulating the seasons, area and type of vessels used
- information and fishing statistics to be supplied
- regulating scientific research and the placing of observers on vessels
- terms and conditions relating to joint ventures
- transfer of fisheries technology
- enforcement procedures.

These two articles to a large degree define the parameters of the exclusive economic zone as it will affect the day to day operations of the fishing industry around the Australian coast and nearby fishing waters.

The Australian fishing industry has some 9,000 commercial vessels actively engaged in fishing, employing some 17,000 fishermen. As can be seen from the ratio between the vessels and fishermen the majority of these vessels are small, 70 per cent are less than 22 feet long. These vessels represent a capital value of some $226m. There are 150 registered land-based processing plants, most of which are small, and the majority located in rural areas with an annual throughput of less than 1,000 tons and employing mainly casual labour. The gross value of all fisheries production in 1976-77 was slightly in excess of $200m. The industry in recent times has grown

rapidly, in the last decade the value of fish production has grown annually by some 11 per cent, double that of all other rural industries.

In 1976-77 fish exports were valued at $135m. Two species dominate this market: rock lobster ($59m) sold mainly to the United States; and prawns ($53m) mainly sold to Japan. Annual per capita consumption of fish products in Australia is approximately 15 lbs (7 kg), which is close to the average for other Western countries. In 1976-77 about half this consumption was met by imports, valued at $113m. About 75% of imported fish products, or 60,000 tonnes is considered replaceable by Australian production. This amount would be worth about $30m.

Recent developments in world fishing suggest there could be increasing shortages of many fish species over the next decade. World stocks are declining as a result of over-fishing, and the declaration of 200-mile zones, particularly in the North Atlantic and North Pacific, is expected to lead to increased conservation of fish stocks. At the same time effective demand for fish in developing countries is expected to rise. Declining supplies and increased demand should result in increased prices. There should therefore be good markets for Australian fish, especially in Japan, the United States, Europe and the Soviet Union.

Tuna is the species most likely to have increased overseas markets over the next decade or so. At present all the catch retained domestically (8,000 tonnes) is canned and eaten in Australia. However, the tuna is of high quality, and possibly half of it, with proper handling and transportation, could be sold on the higher priced Japanese market for sashimi and sushi. The Department of Primary Industry Fisheries Division has estimated that up to 25,000 tonnes of skipjack tuna could be caught in Australian waters using appropriate technology. This could result in export earnings on the Japanese market of from $13m to $20m.

Less is known of the demand and availability of other species. There could be increased exports of high value fish such as whiting, snapper and barramundi. However Australian fish stocks are not abundant and thus there is a strict limit on the amount to which total production may be increased. The structure of the Australian fishing industry is the other main constraint on increasing fish production.

When the Australian fishing industry is referred to in this and other chapters it is hoped that the above very brief summary will be of assistance in comprehending the nature of this undertaking. In summary it is a labour intensive, individualistic industry comprised mainly of small enterprises. The processing plants are small and not equipped to handle sudden peaks of supply. There would appear to be scope for significant import replacement in that half the current consumption of fish in Australia is imported.

On 19 January 1978 the Minister for Primary Industry (the Hon. Ian Sinclair) released the report of the Australian Fisheries Council's Working Group on the 200 Mile Australian Fishing Zone. This is a most significant document covering the current activity of the Australian fishing industry, prospects of the industry exploiting the 200 mile zone, foreign participation in this exploitation, administration of the zone and arrangements for development of guidelines and for surveillance of the zone. The Australian Fisheries Council comprises State and Commonwealth Ministers with responsibility for fishing matters. The Working Group was composed of Commonwealth and State officials and a representative from the Australian Fishing Industry Council, Mr A. Connell (who also gave evidence to the committee as a witness representing the Australian Fishing Industry Council). Negotiations for the exploitation of the 200 mile zone, including operations by foreign fishing vessels, joint venture undertakings and by the Australian industry, will in all probability be based on this

report. The report is the basis for much of the material in this chapter.

The Australian fishing industry mainly exploits inshore fisheries, where there is little scope for further expansion. Japanese, Taiwanese and Indonesian fishermen operate in Australian waters both within and outside the 200 mile zone. The Japanese mainly exploit the Southern bluefin tuna with an annual catch of 10,000 tonnes. The Taiwanese operate off the north west coast of Western Australia with an annual catch of 84,000 tonnes. The Indonesians also operate in this area but their catch is almost negligible.

Three main categories of fisheries can be identified: developed; partially developed; and those not currently being exploited by Australian fishermen. In the first category (mainly inshore) are whiting, prawns, lobsters, Juvenile Southern bluefin tuna, scallops, shark, abalone and Barrier Reef fish. The second fisheries category covering the south eastern deep water trawl, Great Australian Bight and pelagic (open sea) fisheries includes skipjack tuna, jack mackerel, snoek, pilchards, anchovy and Spanish mackerel. The third fisheries category, which is currently not exploited by Australian fishermen, covers the north and north west trawl (excluding prawns), southern bluefin tuna (adult stock), the north and north west pelagic fishery including Northern bluefin, yellow fin, lantern and light fish, squid and shark.

Available Resources

Most table fish are taken by trawling; on the east coast of Australia this particular fishery, covering such popular species as flathead and morwong, is almost fully exploited and offers little scope for participation by foreign fleets. The most interesting area for possible future development of fisheries by foreign fleets or joint ventures is from the north west shelf off the Western Australian coast to Cape York. The

southern and western coasts are either being exploited or are unsuitable for trawling operations. The Taiwanese have been operating about 120 vessels in the north west area with a daily catch rate of between 2-4 tonnes per vessel. Given the distance from Australian markets and the species of fish taken (mainly shark, squid, red schnapper, golden thread, lizard fish, porgies, trevally and grunts), it is doubtful if Australian boats could operate economically in this fishery zone.

The Southern bluefin tuna is the primary canning fish in Australia. This species is fully exploited and there appears little scope for expansion. The mobility of the species is such that it takes them outside the 200 mile zone. The skipjack tuna occur along the eastern and southern coast-line. They are sporadically caught by Australian fishermen and they represent one of the best opportunities for an expansion of the tuna fishery (assuming an increase in demand). There appears to be scope for a joint venture operation to develop this fishery.

Apart from tuna, the remaining significant fish resource in the 200 mile zone appear to be sharks, jack mackerel and squid. Sharks in the northern areas are not fished by Australians and this fishery could be made available to joint ventures or to licensed foreign fishermen. Jack mackerel exist in abundance in the southern Australian waters and are suitable for canning or fishmeal. It appears doubtful that this resource can be exploited without foreign participation; at present jack mackerel is imported into Australia both canned and as fishmeal. Squid apparently only occurs in significant quantities in the Gulf of Carpentaria. It could be fished either by Australians or by an approved joint venture.

EXPLOITATION OF THE FISHING ZONE BY AUSTRALIAN INDUSTRY

The views of the Australian fishing industry were sought by the Working Group of the Australian Fisheries Council

on the development of the expanded fishing zone. In summary the industry felt it could develop many of the fisheries in this area given:

- more resource information
- permission to import cheaper fishing boats
- reduction in import duties on fishing and electronic equipment
- easier access to finance
- port development
- improved markets

It is perhaps pertinent at this stage to record the attitude of one industry representative to foreign operators and joint ventures given in evidence to the committee: "We believe that any known fisheries of which we are aware should remain sacrosanct to the Australian fishermen and that foreign interests coming in should be undertaking research work of their own and establishing fisheries of which we are as yet unaware ... in the long term we are quite adamant that whatever developments occur there should be room for the Australian fishing industry to enter them and the developer should move over or at least enter into a joint venture with an Australian company."[1]

FOREIGN PARTICIPATION IN THE FISHING ZONE

The Australian fishing industry is reconciled to some participation by foreign operators in the 200 mile zone. The views expressed by Mr Connell Executive Member, Australian Fishing Industry Council, as recorded earlier, appear to be a

1. F.A. Connell, Executive Member of the Australian Fishing Industry Council, Evidence p.5.

fair summary of this attitude. The industry considered three broad options, namely: licensed fishing by foreign firms operating on their own account; foreign firms operating a joint venture with Australian firms; and feasibility fishing to establish the viability of an unexploited resource. The industry, whilst reconciled to this participation favours fairly wide ranging control on such operations, including:

- a portion of the catch may be required to be channelled through a local processing plant
- no transhipment of catches at sea
- a substantial licence fee to be paid to finance fisheries research
- all information on catch and effort to be supplied
- no interference with established fisheries
- area of operation to be specified.

The options suggested by the industry cover most arrangements for foreign participation in fishing in the 200 mile zone, save that feasibility fishing can be divided into both joint as well as foreign. This operation has thus been considered under the following headings:

- foreign and joint feasibility fishing
- joint venture arrangements

Licensed Fishing Operations

In view of the general desire to exercise a maximum control over foreign fishing in the 200 mile zone any licences issued will have to take into account a number of factors, including:

- use of only selected ports by foreign fishing vessels
- vessels to report their position regularly
- statistics on rate of catch to be supplied
- where practicable transhipment of catches to take place in Australian ports
- licences to be current for only a limited period
- cost of licences to be related to the cost of administration and surveillance.

Before the fee to be charged for a licence is determined, the increased economic burden on the operator must be considered - will the cost of the licence make fishing in the 200 mile zone an uneconomic proposition? In this regard it is essential that Australia must operate in coordination with its neighbours in the waters off the eastern coast. Too high a licence fee or other stringent conditions could force foreign operators to fish in Papua New Guinea waters or waters claimed by colonial and newly independent emerging nations in the South Pacific. The new agreements must be negotiated with a number of these authorities in the South Pacific area if control of the 200 mile zone is to be made fully effective. Some aspects of this problem are also examined in Chapters II and IX.

Foreign and Joint Feasibility Fishing

Given the current lack of interest by the Australian industry towards the exploitation of offshore fish resources due in part to lack of knowledge of the resource, it is probable that this resource can only be evaluated and developed by feasibility fishing. With the current world surplus of large fishing vessels, foreign interests could well be interested in this activity as a method of absorbing overhead costs of vessels which would otherwise be under-utilised. Such an operation could either be undertaken solely by a foreign operator or in

conjunction with an Australian partner as a joint venture. Whatever manner of organisation is used to undertake feasibility fishing it is imperative that areas to be fished, gear to be used and conditions as to marketing and access to ports must be clearly determined and agreed to by all parties before permission to undertake fishing is granted.[2]

Joint Venture Arrangements

The basic objective of any joint venture is the ultimate mutual advantage of both parties. In any joint fishing venture participation by Australian interests could result in increased expertise in both the catching and marketing of fish and an opportunity to control, in part, the exploitation of new fisheries. Any agreement permitting joint ventures would cover such aspects as the fishery to be exploited, the training of personnel in fishing and processing techniques and such aspects as the involvement of local shipbuilding firms in the construction, repair and maintenance of the vessels employed. To encourage such undertakings the existing shipbuilding policy inhibiting the use of foreign built fishing vessels has been relaxed. On 12 April, 1978, the Government announced a relaxation of this policy. Twenty second hand fishing vessels may be imported up to 31 March, 1980. They may remain in Australia for a period of five years.

ADMINISTRATION OF THE ZONE - GOVERNMENT-INDUSTRY LIAISON

If foreigners and foreign vessels are to be permitted to fish in the Australian fishing zone after its declaration such operations should be covered by bi-lateral agreement between Australia and the relevant foreign State or States. In

2. On 30 March 1978, the Prime Minister, Mr M. Fraser, M.P. issued a statement. He said the interests of local fishermen would be protected before the Russians were permitted to trawl the waters off Southern Australia.

general the agreement would state that foreign nationals of the countries concerned would be subject to Australian fisheries law when operating in the Australian zone.

New regulations will have to be promulgated to cover the situation of foreigners fishing in Australian waters covering all aspects of foreign participation including:

- issuing of licences covering all aspects of fishing, processing, repairs, unloading of fish at Australian ports and entry into Australian ports
- payment of licence fees
- inspection and general control of foreign fishing vessels by Australian officials.

If foreign fishermen are permitted to operate in a particular fishery, a plan will have to be prepared covering conservation measures and such aspects as limitations on size of vessels employed, limitation of catch and of species taken, use of ports and limitation on gear to be used.

Turning from the control aspects of foreign participation, another factor which is of fundamental and increasing importance is the relationship between the Australian industry and government. Currently, there is no government/industry committee established on a permanent basis to provide for continuing consultations on issues arising from the introduction of a 200 mile zone. The Working Group of the Australian Fisheries Council has a limited life and has only one industry representative. What is required is a committee with equal representation from the Commonwealth, the States and the industry. This committee could constantly review guidelines, management and research plans for the more effective utilization of the 200 mile zone. With the aid of such a body, all major institutions with a considerable interest in the management and

development of the fishing zone, could be kept informed of the current situation. Changes in the existing control regime can then be examined and implemented as necessary after full discussion and, if possible, with general support of all parties.

The establishment of such a committee could be of considerable immediate assistance to the Government as decisions must shortly be taken on a number of major policy aspects concerning the 200 mile zone including:

- guidelines for foreign fishermen proposing to fish in the 200 mile zone
- establishment of management plans for fisheries where foreign participation is to be permitted
- decisions on applications involving participation by foreign fishermen.

The Report of the Working Group of the Australian Fisheries Council, as has been seen, covers many of the problems and new aspects which must be considered when Australia declares a 200 mile EEZ. The Report does not, however, completely cover some issues, including cooperation with the nations of the South Pacific through the South Pacific Fisheries Agency and the question of surveillance. The ability of the Australian fishing industry to enter and contribute to joint venture operations also requires further elucidation.

The twelve member nations of the South Pacific Forum have already indicated (31 August 1977) that they will declare exclusive economic zones around their coastlines. This will mean the creation of an enormous "lake" of some millions of square miles to the north-east and east of Australia where some of the more easily exploited "third category" fisheries are located. It seems essential that arrangements for uniformity in any management and conservation proposals including the licensing of

foreign fishermen should be proceeded with as a matter of priority particularly as some of the species in this area are migratory. Without such arrangements foreign fishermen will obviously play one nation off against another, fishing where licence fees are lowest and in areas where surveillance is at a low level of effectiveness. These negotiations may be already proceeding but to date the committee has no knowledge as to their progress or when such agreements will be made public. By April 1978 Fiji, Papua New Guinea and New Zealand had made declarations of fishing zones.

Surveillance, both to ensure that licences to fish in certain areas are held and are current, and that correct management practices as specified in the licences are being followed appears to be an essential part of any proposal to control fishing in the 200 mile zone. The Working Group did not consider that surveillance would pose many problems. "The Working Group was of the view that it should not be taken as a factor which could prevent the proper management, rational utilisation and early development of the fisheries of the Australian Fishing Zone."[3] The committee has as yet not heard evidence from the Department of Transport on this subject and cannot at this stage pass a judgement on this matter.

The Report discussed at some length the question of joint ventures and appeared to accept the view put forward by the industry that it was willing and capable to enter such undertakings. The committee proposes to hear further evidence from the industry and hopes to receive evidence of the capacity of the industry to participate in these enterprises. As so much of the industry is comprised of small firms operating mainly in inshore waters where foreign or joint ventures will not be permitted, it would seem that only a minority of the industry would be interested in such undertakings. The committee would

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3. Report of the Working Group, Australian Fisheries Council, November 1977, p.76.

also like to be enlightened as to the form such participation will take. As the foreign partners will presumably provide the vessel, crew and gear, the Australian participation will apparently be limited to victualling, processing of the catch and assistance with administrative matters including the issuing of a licence. Arrangements will also presumably be made for Australian crews to be trained in these new deep water fishing techniques.

Even this brief outline of what participation in a joint venture could entail implies long term commitment and possibly a considerable capital investment. The committee would wish to be informed as to how many firms are in a position to enter such long term commitments. A further question is the disposal of the products of these joint ventures. Are they to enter the Australian market, presumably displacing imported products; to be processed in Australia for disposal abroad, or exported directly to the foreign partners' home country without processing in Australia? At further hearings the committee hopes to receive answers to at least some of these queries.

The declaration of an Australian 200 Mile Fishing Zone will open a new chapter for both the Australian and the international fishing industry. The great majority of the Australian industry will not be affected by the declaration. For a small minority of firms an opportunity will be provided to participate in joint venture fishing and possibly to have access to a wider range of capital resources and fishing technology than has been possible in the past. This in turn could lead to some import replacement of fish products at present imported from overseas countries. The Australian Government appears to be taking the necessary action in both the fields of domestic legislation and foreign negotiation to cope with and control this new development within the general principles of the proposed new Convention on the Law of the Sea. The committee wishes to receive further evidence before it can express an opinion on the adequacy of this action in both of these fields.

CHAPTER V

PETROLEUM AND OTHER MINERALS

This chapter has been prepared without the benefit of hearing evidence from either privately owned exploration firms such as Woodside Petroleum Development or from the Bureau of Mineral Resources of the Department of National Development. A submission has been received from the Department of National Development. This is very brief and general and, as it has not been tested by oral evidence, is not a significant source of information. No submission was received from Woodside Petroleum Development Ltd. or any other privately owned oil exploration corporation, but the sub-committee will take evidence on this aspect. Lacking oral evidence, the material in this chapter has therefore been prepared from a number of background resources including published and unpublished material.

Configuration of the Seabed

Appendix I shows, in a simplified form, the configuration of the seabed from the shore to the sea depths. There are four conventional divisions: the continental shelf, continental slope, continental rise and abyssal plain. The true edge of the continental shelf is usually taken to be the central depth of the continental slope, which in most cases is around the 2,000 metre isobath. However the ICNT (art. 76) defines the edge of the continental shelf as "the outer edge of the continental margin", an ambiguous and un-geological definition. Given the state of existing geological knowledge of the subject it would appear that most mineral deposits of commercial significance in Australian waters are confined to and located in the continental shelf. Article 77 of the Informal Composite Negotiating Text states in relation to rights over the continental shelf: "The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring

it and exploiting its natural resources."[1] Australia would thus appear to have a fairly strong claim to mineral resources discovered in the continental shelf area. Generally, however, with the important exception of the Exmouth Plateau and parts of the North West Shelf field, most of the significant mineral deposits so far located on the continental shelf around Australia are within the limits of the proposed 200 mile Exclusive Economic Zone.

Petroleum

There are four areas in Australian waters where significant hydrocarbon deposits have either been discovered or where exploratory work has been or will be carried out. These areas (Bass Strait, North West Shelf, Exmouth Plateau and the Coral Sea) are, with the possible exceptions of parts of the North West Shelf and the Exmouth Plateau,[2] situated on the continental shelf within the 200 mile EEZ.

Currently, the only major producing field is the series of wells in the Bass Strait and Barrow Island. These are located at relatively shallow depths and in comparison with the cost of current or future offshore projects were relatively cheap to exploit. Currently the Bass Strait field supplies about 70% of Australia's petroleum needs.[3] Production will probably peak in 1990 and by 1985 this field will probably be supplying only about 45% of total domestic requirements. The Bass Strait field has been and is, if only in the short term, a most significant energy source for Australia. It is unlikely that a similar such low cost offshore energy source will be discovered in the foreseeable future.

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1. See Appendix II, p.16.

2. See attached map showing putative location of the boundary of the 200 mile Exclusive Economic Zone.

3. The Victorian Government on 9 May 1978 issued a permit to a consortium comprising the Gas and Fuel Corporation of Victoria and Beach Petroleum N.L. to explore for oil and gas in the Bass Strait.

The North West Shelf field located in the North West Cape-Timor Sea area off the north west coast of Western Australia, is one of the most significant offshore natural gas deposits discovered since offshore drilling commenced off the Australian coast. With a daily flow rate of 1300 million cubic feet and an estimated life of at least 20 years this field is seen as a potential supplier of markets in Japan, the West Coast of the United States and in Western Australia. Some consideration has been given to constructing a pipeline from this field to the industrial areas of Western Australia. To date no commercially significant oil deposits have been located in this field, but exploration is continuing.

The Exmouth Plateau field is located off the coast from Port Hedland and Exmouth Gulf and lies partly outside the 200 mile zone. This area may be regarded by the industry as the most important future possible source of oil discovered since the Bass Strait field. When production of oil commences, assuming that the early indications are correct and that oil is present in commercially significant quantities, the field will replace Bass Strait as a major oil supply source for Australia. The depth of the Exmouth Plateau field, in excess of 6000 feet, will present the developers, who include: Woodside Petroleum Development; Hud Bay Oil Aust. Ltd., Canadian Superior Oil, Pan Canadian Petroleum Ltd. and Australia Oil and Gas Corporation; Phillips Aust. Oil Co, Australian Gulf Oil, M.I.M. Investments B.P. Petroleum Development Limited and Mobil; Esso Exploration and Hematite Petroleum, with tremendous technological problems. If oil in commercial quantities is discovered and exploitation of the field commences it will be one of the deepest operating offshore oil fields in the world. Currently it is not anticipated that commercial production could commence from this field before about 1990.

The Coral Sea Plateau, off the north Queensland coast and lying to the east of the Barrier Reef, is located within the

200 mile Zone. This area has been the scene of offshore exploration but currently no such exploration is taking place.

A factor which may have to be included in any cost estimates for the development of either the North West Shelf field or any discoveries on the Exmouth Plateau field is the payment of "royalties" to an international body. Article 77 of the Informal Composite Negotiating Text gives the right of exploitation of the continental shelf resources to the adjacent coastal State; Article 82, however, makes provision for the payment of royalties for the exploitation of resources beyond the 200 mile Zone. Thus Article 82, para. 1 states:

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

Another paragraph makes provision for these payments, which eventually can equal 5% of the value at the production site, to be paid to the Sea Bed Authority to distribute to developing countries.

Agreement has not yet been reached on this most important Article (82). The consequences for countries like Australia with significant exploitable resources located on the continental shelf but outside the 200 mile Zone could be of some importance. If this Article is accepted in its present form by Australia, it would seem to imply a commitment to make significant payments in the future to an international organisation for the right to develop the resources of the continental shelf not contained within the Exclusive Economic Zone.

Other Minerals

The sea contains all the natural elements dissolved in it. The seabed from the continental shelf to the deeps or

abyssal plain contains deposits of all known minerals. Before these deposits can become of economic significance, they must be present at a particular location and be of a sufficient concentration so that their extraction is commercially feasible.

Concentrations of mineral deposits ranging from rutile and ilmenite, phosphates, tin, coal and ferromanganese nodules are known to exist at various locations around the Australian coastline. The relative abundance of these minerals on the land surface of Australia has to date inhibited any serious exploration of these seabed deposits with a view to exploitation. Given the current depressed nature of the mining industry, and in particular nickel mining, it seems improbable that even the nodules which, because they have been formed at such deep levels have a very high mineral content, will be mined in the foreseeable future.

CHAPTER VI

ENVIRONMENT AND POLLUTION CONTROL

The most significant environmental feature of the Informal Composite Negotiating Text is that for the first time obligations are placed on States to take measures to protect the marine environment from all sources of marine pollution. As far as Australia is concerned, these measures are to apply to all Australian activities, including the activities of Australian ships wherever they may be. They also apply to the activities of foreigners in areas under Australian jurisdiction, except that, with particular reference to foreign ships, there are certain rights (such as the right of innocent passage) that must be observed.

In the ICNT a fairly complex balance has been struck between the rights of ships of another flag State sailing in the territorial sea and economic zone of a coastal State and the rights of coastal States to protect these areas. This is an important issue for Australia as we have, on the one hand, one of the longest coastlines and largest economic zones in the world but, on the other hand, are heavily dependent on sea trade and would not want coastal States to unduly interfere with shipping.

The ICNT provides for a coastal State to control polluting activities of foreigners as follows:

1) Territorial Sea

In the territorial sea extending 12 miles from the coast the coastal State has complete sovereignty, except that it may not hamper innocent passage of foreign vessels and should not impose regulations in certain matters (e.g. ship construction) that are stricter than internationally agreed regulations.

2) Continental Shelf

A coastal State has complete control over any activities relating to the exploration and exploitation of resources on or in the seabed either of the economic zone or out to the edge of the continental margin where this extends beyond 200 nautical miles. This control includes "environmental" control.

3) Exclusive Economic Zone

As far as activities on the seabed of the EEZ are concerned, the coastal state has the same complete control as mentioned in the preceding paragraph on the continental shelf.

As far as the activities of foreign ships are concerned, the pollution control powers of the coastal State are limited to national laws implementing international agreements.[1] It can prosecute a foreign ship for a pollution offence in its EEZ when that ship comes into its port, or it can require the flag State to take action in regard to such an offence. As a general rule, a coastal State may not interfere with a foreign ship in the EEZ except to obtain information relating to a pollution offence. It may not arrest a foreign vessel in the EEZ except in the case of flagrant or gross violations. In the event of a major pollution casualty (e.g. Amoco Cadiz), a coastal State can intervene to take any measures necessary to protect itself.

"Environmental" jurisdiction extends to any area in which the Commonwealth Government exercises jurisdiction for any purpose. The Environment Protection (Impact of Proposals) Act applies, inter alia, to any decision of the Australian Government which affects the environment to a significant extent.

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1. The House of Representatives Standing Committee on Environment and Conservation has a reference 'Marine Oil Spills'. That Committee is currently taking evidence on this reference.

In addition to the Environment Protection Act, there are a number of specific laws dealing with marine pollution control. Some of these relate to shipping, such as the Pollution of the Sea by Oil Act and the Navigation Act. They reflect in part the provisions of international marine pollution conventions such as the 1954 (as amended) Convention for the Prevention of Pollution of the Sea by Oil, and it is expected that they would be dealt with by the Department of Transport.

"Environmental" conventions and related legislation for which the Minister for Environment, Housing and Community Development has responsibility are: the 1972 Intergovernmental Maritime Consultative Organisation (IMCO) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, for which immplementing legislation is being developed, and a number of nature conservation conventions. He also has responsibity for the Great Barrier Reef Marine Park Act and the National Parks and Wildlife Conservation Act. Other Conventions which are his responsibility include: the Convention on the Conservation of Antarctic Seals 1972, the Convention on Wetlands of International Importance Especially as Waterfowl Habitat 1972, the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973, and the Japan/Australia Migratory Birds Agreement.

Implications of UNCLOS Developments

The most significant implication for Australia is the vast increase in sea area over which Australia may or, in some cases, must (e.g. in relation to the dumping of waste at sea) exercise control over activities that could harm the marine environment.

To some extent, basic legislation in relation to the above matters already exists in Australia. There is a range of State Government legislation relating to land-based marine pollution. The Seas and Submerged Lands Act and the Petroleum

(Submerged Lands) Act in combination with the Environment Protection (Impact of Proposals) Act, cover pollution from seabed activities. The Pollution of the Sea by Oil Act and the Navigation Act administered by the Minister for Transport cover pollution from ships. However, some new marine protection legislation will be necessary. The Minister for Environment, Housing and Community Development has initiated discussions with the State Governments on proposed marine protection legislation which would, inter alia, implement the provisions of the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. Existing legislation relating to the other sources of marine pollution (from land runoff, from ships and from seabed activities) may need to be amended to reflect international agreements on environmental standards which are referred to in the ICNT. The new or amended legislation will also need to take into account the differing regimes of the territorial sea and the economic zone, that is, coastal State legislation applying in the economic zone will need to be framed in accordance with limitations imposed by international law.

While it is clear that some legislative action will be required, a precise statement of the legislative implications cannot be made before a clearer picture emerges on the extent to which the specific environmental rights and duties set out in the recently compiled ICNT command wide support in the UNCLOS negotiations.

Great Barrier Reef[2]

The Great Barrier Reef area, consisting of a chain of islands, cays, coral reefs and areas of sea, covers a distance of about 1000 miles from Swains Reef in the south to Bramble Cay in the north. The distance of the seaward edge of the Outer Barrier from the mainland varies from about 150 miles in the

2. At the date of publication the committee had not had the opportunity to take evidence affecting the Great Barrier Reef.

south to 10 miles in the north. In this area between the Outer Barrier and the mainland are located international shipping routes. The special status of the Great Barrier Reef is already formally recognised internationally in the 1971 Amendments to the IMCO Convention on the Prevention of Pollution of the Sea by Oil and the 1973 IMCO Convention on Pollution from Ships. These Conventions prohibit discharges from ships within a certain distance from the nearest land (e.g. 50 miles for oil). Under these Conventions, the "nearest land" off the eastern coast of Australia is defined as the outer edge of the Great Barrier Reef.

Under the provisions of the ICNT there would be a substantial increase in the extent of control which Australia can exercise over the Great Barrier Reef. The extension of Australia's territorial sea to 12 miles off the mainland and around offshore islands would bring most of the Barrier Reef area waters under Australian sovereignty. In particular, it would bring the international shipping lanes in the Reef area almost wholly within Australian territorial waters, which would increase the control Australia could exert over foreign shipping.

The entire Reef area would be included in an Australian EEZ. Coastal State rights relating to preservation of the marine environment in the EEZ would apply in the Reef area. In particular, the provisions for protection of special areas from vessel-sourced pollution could be invoked to protect the Reef: Article 212(5) of the ICNT provides for the protection of special areas within the EEZ where "for recognised technical reasons in relation to oceanographical and ecological conditions, as well as its utilization or the protection of its resources, and the particular character of its traffic", the adoption of special mandatory methods for the prevention of pollution from vessels is required.[3]

3. All the islands in the Barrier Reef are part of Queensland, but outside 3 miles the surrounding seas are international waters. The creation of an EEZ would establish Australian jurisdiction over these waters.

Antarctica

1) International Conventions

The major international convention relating to Antarctica is the Antarctic Treaty (1959). Article IX of the Treaty refers to "preservation and conservation of living resources in Antarctica". This Article is the basis of the Agreed Measures for Conservation of Antarctic Fauna and Flora approved by all the Treaty consultative parties at their 3rd Consultative Meeting in June 1964 but not yet ratified. There is also the Convention for the Conservation of Antarctic Seals (adopted 1972, not yet ratified).[4] In addition to this the various conventions relating to pollution from ships and dumping of waste at sea and also living resources conservation conventions referred to above apply in Antarctica.

2) Australian Legislation

Australian legislation reflecting the above international agreements includes Australian Antarctic Treaty Acceptance Act 1933-73, Australian Antarctic Territory Act 1954-73, and Antarctic Treaty Act 1960. Relevant legislation for which the Minister for Environment, Housing and Community Development is responsible, such as the Environment Protection (Impact of Proposals) Act, the National Parks and Wildlife Conservation Act and also the proposed marine protection legislation, would apply in the Territory. As far as the Department of Environment, Housing and Community Development is concerned the existing Treaty arrangements and the application of domestic environmental legislation provide a satisfactory framework for protection of the Antarctic environment. There is no certainty that internationalization of the Antarctic would enhance protection of the environment. It is possible that it

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4. Ratification must await promulgation of regulations, which are still being drafted.

could lead to a "free for all" grab for resources (so far avoided in the Treaty arrangement) which could have harmful consequences.

The Law of the Sea requirement to cooperate to conserve marine living resources gives added weight to existing concerns of the Treaty Parties for adequate conservation measures in Antarctica. A number of important conservation programs have been initiated by the Treaty Parties on a national and international basis. The Scientific Committee for Antarctic Research has been charged to report on the likely impact of exploitative activities in Antarctica. It also established a group of specialists on the living resources of the Southern Ocean in 1972. The question of a convention for the conservation of all Antarctic marine living resources was discussed at the Special Meeting of the Antarctic Treaty Consultative Parties in Canberra, February-March 1978. A further meeting of consultative parties will be held in Buenos Aires in July 1978, and subsequently in Canberra.

CHAPTER VII

ANTARCTICA

Evidence has yet to be heard from the Department of Science, the Department of Environment, Housing and Community Development and the Bureau of Mineral Resources on various aspects of the administration, conservation and development of Antarctica. In the absence of such evidence, this chapter has been prepared from published sources, plus material received from the Departments of Environment, Housing and Community Development and National Resources.

With the commencement of settlement in 1788, exploration of the South Seas was expanded, leading eventually to exploration of the Antarctic continent. Australia's claim to the Antarctic Territory is based on these British and, after 1901, Australian explorations. In 1909 Sir Ernest Shackleton claimed possession of King Edward VII Plateau, in the same year Professor Edgeworth David took possession of the South Magnetic Pole for the British Empire. The Australasian Antarctic Expedition of 1911-14 under Sir Douglas Mawson took possession of King George V Land, Queen Mary Land and Mac.Robertson Land. The boundaries of the Australian Antarctic Territory were fixed in 1929-31 by the British, Australian and New Zealand Antarctic Research Expedition led by Sir Douglas Mawson. The area was annexed in the name of King George V.[1]

CLAIMS OVER ANTARCTICA

The Australian Antarctic Territory, comprising areas of the Antarctic continent explored by British and Australian explorers and previously proclaimed as having been annexed in the name of the then reigning monarch, was established by an Order-in-Council of 7 February 1933, placing this region under

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1. See Appendix IV.

the authority of the Commonwealth. Following the enactment of the Australian Antarctic Territory Acceptance Act of 13 June 1933 the Territory was proclaimed on 24 August 1936. The Territory, of 2,472,000 square miles, covers almost half of the land surface of the Antarctic continent and is almost equal to the area of Australia. The Territory lies immediately south and south west of Australia, comprising: "all the islands and territory other than Adelie Land situated south of 60° south latitude and lying between the 160°E longitude and 45°E longitude".

Areas Claimed by Other Nations

The Ross and Falklands Islands Dependencies were proclaimed following British explorations in the Antarctic. The Ross Dependency has been administered by New Zealand since 1923. Both Argentina and Chile lay claim, as successors to the Spanish Empire, to a sector consisting principally of the Antarctic Peninsula. In 1924 the French Governor of Madagascar proclaimed Adelie Land, situated in the middle of the Australian Antarctic Territory. The area between the Falkland Islands Dependency and the Australian Antarctic Territory was claimed, in 1939, by Norway based on exploration of the area by Norwegians. The area of the Antarctic between 90°W and 150°W remains unclaimed; this area has been explored mainly by the United States.

Two nations, the United States and Russia, have refused to recognise the claims of other nations to sovereignty over portions of the Antarctic continent. This refusal of recognition is based on the general principle of international law and custom that there can be no claim to sovereignty where there has been no permanent occupation and settlement. Neither nation, although they have both conducted extensive explorations in the Antarctic, has ever made any territorial claims on the basis of previous explorations and discoveries. This policy of non-recognition and no territorial claims has enabled both these countries to pursue an active programme of scientific research

and exploration over the entire Antarctic without regard to the so-called internal boundaries delineating the various national territories.

THE ANTARCTIC TREATY

In the post-war period considerable pressure developed to ensure that the Antarctic, the last untouched and undeveloped continent, was spared some of the grosser ravages suffered by other continents in the name of "development". In 1947 the United Nations Trusteeship Council was urged by the Women's International League for Peace and Freedom to take control of, and administer, the region. In 1948 the United States proposed to the seven claimant States (Australia, Argentina, Britain, Chile, France, New Zealand, and Norway) that a multiple condominium be established to govern the Antarctic. Little interest was expressed by the claimant States, including Australia.

In 1957-58 the International Geophysical Year led to the establishment of bases for scientific research in the Antarctic by a number of States including Russia and the United States. Although originally intended as temporary establishments it became clear by the end of 1958 that some of these bases were to be permanent fixtures. Some Russian bases were established in Australian Antarctica. A modus vivendi was necessary if the fiction of sovereignty over the area was to be preserved in the face of the fact of the establishment and retention of these bases by a foreign power.

In 1958 the Prime Minister of Britain, Mr Harold McMillan announced, after consultations with Australia and New Zealand, that the three countries had agreed on certain principles to ensure that the Antarctic did not remain as a possible source of international friction. Basically these principles were: free scientific development in Antarctica and the banning of all military activity from the region. On 3 May

1958 President Eisenhower invited eleven States having an interest in Antarctica (Australia, Argentina, Britain, Belgium, Chile, France, Japan, New Zealand, Norway, Russia and South Africa) to a conference. This meeting led, after a year's negotiation, to the Antarctic Treaty Conference in October 1959 and the signing in Washington on 1 December 1959 of the Antarctic Treaty.

The three objectives of the Treaty were:

i. the area of the Antarctic south of 60°S to be reserved for peaceful purposes, all military activity to be banned;

ii. cooperation in scientific activities by the original signatories and by those nations which subsequently accede to the Treaty;

iii. the status quo to be preserved regarding claims to territorial sovereignty (Article IV).

To date (early 1978) these three main objectives appear to have been achieved and maintained to a surprising degree despite developments in other parts of the world. As far as is known no military bases or exercises have been maintained or conducted in the area. Cooperation between the various groups of operatives of a number of nations maintaining stations in the region for scientific research has, on a personal basis, been excellent. No overt challenge has been made to test the claims of sovereignty over various portions of the area made by a number of nations. For how long this situation will continue is open to question. A number of factors has led to a much more intensive examination of both the living and non living resources of the Antarctic with a view to their commercial exploitation. The Antarctic Treaty was not designed to cover such a situation, particularly such developments as offshore oil exploration and exploitation, and the possible exploitation of

the marine resource, "krill". These activities would raise the sovereignty issue in a most acute form as would such action as the declaration of a 200 mile economic zone around the coastline of territory over which a claim of sovereignty has been made.

The Antarctic Treaty Powers meet at approximately biennial intervals. At the Seventh Antarctic Treaty Consultative Meeting in Wellington in 1972 New Zealand suggested that the question of exploitation be placed on the agenda for the next meeting. In February 1973, the Glomar Challenger found traces of methane and ethane at three drilling sites in the Ross Sea. A subsequent estimate, issued by the US Geological Survey, of a resources estimate of 45,000 million barrels, was widely misinterpreted in the world oil crisis of 1973-74.

The Eighth Meeting of the Treaty Powers held at Oslo in 1975 considered the question of resources exploitation at great length. It was agreed that the problem should be approached by the means of three separate inquiries, namely:

- possible ecological effects of mineral exploitation
- legal and political aspects of mineral exploitation
- conservation aspects of sealing and whaling in Antarctica.

Whilst these inquiries were being conducted, all States and peoples, the Treaty Powers recommended, were to refrain from commercial exploration and exploitation.

The Ninth Antarctic Treaty Consultative Meeting was held at London in September 1977. This meeting agreed that a convention should be drafted on the exploitation of the living natural resources of the continent and protection of the environment for consideration at the next full meeting of the

Treaty nations in 1979. A drafting session of representatives of the Treaty Powers was held in Canberra at the end of February 1978.[2]

The inexorable increase in world demand for certain raw materials, particularly in the energy field, combined with the suggestion that the Antarctic contains significant exploitable resources of these raw materials, are new factors of immense significance. Whether the Treaty and the Treaty Powers can so direct and control these new factors that exploitation, if it takes place, will not cause irreparable damage to the fragile ecology of the Antarctic, is a question to which there is at present no answer. The following section sets out the present state of knowledge of the mineral and other resources of the Antarctic and the prospects for their commercial exploitation.

ANTARCTIC RESOURCES

Hydrocarbons

Currently (May 1978), there is insufficient information on which to base a realistic evaluation of the hydrocarbon potential of the Antarctic. As most of the Antarctic is composed of rock formations where petroleum and gas deposits are not usually found, the prospects for locating significant commercial deposits do not appear to be promising. The "Glomar Challenger" did establish by its drilling, however, that the continental shelf, in certain places, was composed of unmetamorphosed sedimentary rock, the normal "residential" rock formation in which oil and gas deposits are found.

The US Geological Survey, on the basis of somewhat scanty research, issued a statement that the recoverable oil

2. Senator the Hon. J.M. Wheeldon, Senator M. Townley, Mr. R. Jacobi, M.P., and Mr. D.M. Connolly, M.P. attended the conference as observers.

reserves of the Ross, Weddell and Bellingshausen Seas was 45,000 million barrels (equal to about 6% of the present known world oil deposits). This forecast was based mainly on the volume of sediment, and assumed that this is all of a uniform quality. A more recent estimate by the United States spoke more realistically of recoverable reserves as being possibly "tens of millions of barrels". The Soviet Union has made similarly optimistic and vague forecasts. Until a serious programme of exploratory drilling is undertaken, it will not be possible to talk about the hydrocarbon resources of the Antarctic in any reasonably informed manner.

Assuming that significant oil deposits do exist in the Antarctic, their exploitation will be no easy matter. Excluding the incredibly harsh climate with almost permanent winds and basically sub-zero temperatures, the presence of icebergs and the great depth of the continental shelf pose considerable difficulties. With an average displacement of 100,000 tonnes and a length of 500 feet, icebergs when drifting gouge trenches up to 40 feet in depth. The effect of a collision of just one iceberg and an oil drilling installation could be catastrophic. Currently existing offshore oil wells have not been drilled to the depths that would be required in the Antarctic. This technology is still being developed and will probably first be utilised in the North West Shelf development. Here, whilst having to conquer unknown problems of very deep offshore drilling, the developers will not have to face the perpetual problem of Antarctic development - that all exposed structures will be almost permanently frozen.

Given the present state of knowledge it appears that parts of the Antarctic continental shelf may contain significant deposits of hydrocarbons. The existence of these deposits can only be proven by undertaking an extensive, and expensive, exploratory drilling programme. Even if significant deposits can be proven the exploitation of these deposits may prove to be technically extremely difficult, and may have to await the

refinement of existing technology concerned with the exploitation of deep water offshore drilling. Another factor must also be cost. Despite the world's undoubtedly diminishing oil resources, it seems unlikely that the oil resources of the Antarctic, if they exist, can be exploited economically whilst the generally accepted world well head crude oil price is about $12 a barrel.

Other Minerals

As the Antarctic is the last unexplored continent, the prospects for the discovery of significant mineral deposits is high. No other continent of a similar size lacks such deposits. The permanent ice cap, apart from the extremely harsh climate, makes exploration for and the location of these deposits more difficult than in other continents.

Coal forms probably the largest and certainly the most easily identifiable mineral resource. Coal beds located, usually accidentally, vary in thickness from less than one inch up to about 13 feet in thickness. Deposits explored to date tend to be localised and to be of low thermal ranking with a relatively high ash content. The relatively low quality and quantity of the known deposits as compared with known reserves in Australia makes it most unlikely that these deposits will ever be exploited. The only possibility could be for use almost in situ in an electricity power station. This possibility must remain remote given the limited demand for electrical energy and the difficulties of transmitting power any distance in the Antarctic.

Significant deposits of iron ore, some of high quality, have been found throughout Antarctica, particularly in the Australian Antarctic Territory. As there is a relative abundance of good to high quality iron ore deposits in much more easily accessible locations in, for instance, Australia and Brazil, the likelihood of these deposits being exploited within

the foreseeable future appears remote. Some traces of other minerals including copper, silver and uranium have been located in the area but no reserves have been proved.

Any proposal to exploit any known mineral resource in Antarctica must, at the present stage of knowledge, be regarded as a most speculative venture. All facilities from transport and housing of labour to harbour facilities for the export of the mined minerals, would have to be provided. Some estimate of costs might be obtained from the establishment and maintenance costs for existing research establishments. These costs would not be of great utility for comparative purposes, however, since the personnel and purposes of a research centre would differ markedly from those of a mining venture. Judged on experience gained in Arctic regions where large-scale developments have been undertaken it would seem any such attempt at exploitation would be enormously costly. To justify such a venture the mineral sought would have to have a high and increasing value in economic terms. No such high value mineral deposits have been as yet located in the Antarctic. It is unlikely therefore that, in the foreseeable future, any large-scale mineral exploitation, with the possible exception of oil, will be undertaken in the Antarctic.

Living Resources

The waters around the Antarctic, generally referred to as the Southern Ocean, are a potentially extremely rich resource of food, in the form of protein which, to date, with the exception of whales, has not been exploited.

Krill is, after whales, probably the best known resource. It is the basis of a food chain, feeding on phyto plankton and being itself the main source of food for whales, seals, fish, squid and other marine life. Krill is a small pelagic (deep sea living) crustacean with an average length of about three inches and with a high protein value. Krill is

distributed in a roughly circumpolar location between the Antarctic convergence (50^{o}-60^{o}S) and the Antarctic continent. In common with many other Antarctic resources little is known of the exact annual production of krill although one estimate suggests it is in excess of 100 million tonnes.[3] Again, because of lack of knowledge, the safe sustainable yield can only be estimated, and is put at between 100-200 million tonnes.[4] The present annual world total fish catch is about 70 million tonnes. A number of countries (Russia, Japan, Poland, Taiwan) have for the last decade been assessing the commercial potential of krill. Compared with the krill mass the annual catches have been minute: the peak has never exceeded 40,000 tonnes.

Harvesting, processing and marketing krill economically involves a number of technical problems. Krill has a very short "spoilage" time. Processing must take place within three hours after catching. This means that fishing must be conducted by a vessel large enough to contain processing machinery. The possible fishing season is limited to about seven months from November to May. The market for human consumption of krill (which is very salty even after processing) will probably at least initially, be limited to sale as "snacks". There would appear to be a considerable market for krill as fish meal.

At this stage the economics of large-scale krill harvesting or fishing are difficult. The existence of a very large protein source has been proven but whether this resource can be utilised given existing costs and systems of distribution is still a matter of speculation.

Whales have been the main resource harvested in the Antarctic. Between 1930-1960 about 1.5 to 2 million tonnes of whale products was produced each year. As a result a number of

3. Paper delivered by K.R. Kerry "Living Resources of the Southern Ocean". ANZAAS Symposium "The Exploitation of Antarctic Resources", Melbourne, 1977.

4. Ibid.

whale species, including White, Blue and Humpback, are now close to extinction. With the exception of Russia and Japan, all other nations have ceased whaling operations in the Antarctic. This near cessation of whaling could lead to a substantial increase in the number of whales which again could affect the supply of krill, the main food source for a number of whale species.

Some 12 species of fish are at present fished or will shortly be fished in Antarctic waters and off nearby islands. Blue whiting and Antarctic cod are the main species taken, although there is little reliable information on this subject and on annual tonnages taken. Russia is the major fishing nation in this area. Some of the fish are used for human consumption, the remainder for fish meal.

As has been stated, the waters of the Southern Ocean are potentially very large in living resources and exceed, in a sense, those of some continents such as Australia. To date these resources have not, for a variety of reasons, been exploited. This is a most unusual situation in that man has been provided with an opportunity to gain full scientific information of a resource and prepare a management plan before exploitation takes place. Normally such knowledge and plans follow, rather than lead, exploitation. Given the existing and no doubt future pressures to develop both the living and non living resources of the area with or without regard to the fragile Antarctic ecosystem, it seems essential that international agreement be obtained as to methods and limits before such development proceeds. Environmental problems and consequences are considered at some length in the next section.

ENVIRONMENT AND THE ANTARCTIC

As has been outlined, the Antarctic ecosystem contains relatively few species, all living on the shores or in the surrounding seas of the continent. Krill is the main link in this system feeding on the phytoplankton and in turn forming the

main source of food for whales and fish. The fish in turn sustain seals and penguins. Any decline in the size of the krill population would have an effect on other members of the ecosystem. A committee of SCAR - Scientific Committee on Antarctic Research (an international scientific body) - recommended in May 1974:

> "Because of the significant role played by krill in the Antarctic marine ecosystem and because of our concern for the wide management of krill stocks, we recommend that efforts be made to continue and expand investigations of biology, ecology and population dynamics of krill and the distribution of its swarms."

Antarctica has a critical influence on the global climate. The continental ice sheet and surrounding sea ice comprise a most significant climate-influencing factor. The Antarctic ice fluctuates between 8 million square miles in winter to 1.5 million in summer - when icebergs drift within 250 miles of the southern coastline of Australia. This ice sheet is the principal factor in controlling the level of the world's oceans. Were the ice to melt entirely the sea level would be raised by some 200 feet.

Any attempt to exploit possible oil resources in the Antarctic must have regard to the climate-influencing role of the Antarctic. A substantial oil spillage could alter the radiation balance - because of the intense cold the oil would not degrade for possibly 50 years - thus the rates of ice formation and melting could be affected. Because temperatures in the Antarctic rarely rise above freezing the normal biodegrading of human and other waste either does not take place or only occurs very slowly. The impact of tourism, or an oil or mineral exploitation undertaking, or any large scale onshore activity which increases the human population, could have a considerable impact on the existing ecosystem - the most obvious effect being an ever-increasing accumulation of waste products.

Antarctica, like other barren areas of the world, including central Australia, has been suggested as a possible repository for radio-active waste. One scheme proposes that containers housing radio-active waste be allowed to melt through the ice cap to the bed rock to be contained for 250,000 years. The other proposal, concerning shorter-lived waste, is to dump it in the fissures of the Antarctic mountains. The first proposal assumes the ice sheet is firmly anchored to the bedrock. This is erroneous. Recent investigations have shown that at places the ice sheet at its bedrock contact point is fluid. Thus containers reaching this point from the top of the ice sheet could well be in a state of motion rather than permanently frozen. Should any containers leak, their contents could well reach the Southern Ocean and contaminate areas of that and other oceans.

Human occupation of the Antarctic and attempts to develop its resources, as distinct from exploration, is a very recent phenomenon. What effect these attempts will have on that continent and, through its effects on climate, on other continents is not as yet known. From the brief experience already gained it would seem essential that any proposed development, including long-term settlement, must be carefully considered, having regard to the fragility of the existing ecosystem. In the Antarctic environment any attempts at short-term exploitation for quick commercial gain would almost certainly guarantee long-term environmental problems, possibly of a global nature.

AUSTRALIAN ANTARCTIC TERRITORY - THE FUTURE

In 1936 Australia asserted control over an area of some 2,400,000 square miles of the Antarctic as, in effect, a successor nation to the British Empire. This control was asserted at a time when claims of imperial powers were beginning to be questioned. The great age of nineteenth century imperialism had been terminated some decades earlier.

Irrespective of the sophistries of international lawyers and the fact that other countries were making similar claims at a similar time, the claim of sovereignty over this Territory does not have the comfortable authenticity of age. Nor, since there is no permanent human population resident in the Territory, can it be claimed that sovereignty, along with all other such claims, is maintained with the consent of the resident population.

To give the claim for sovereignty over the area of the Antarctic Territory greater international validity, Australia must obviously demonstrate a greater interest in the Territory. To date basic communications by ship have been through the use of two chartered vessels, although an Australian replacement vessel is planned for the early 1980's. No attempt has been made to construct an airfield so that permanent communications could be established between the Antarctic bases and Australia. Annual expenditure on the Territory and associated research programmes has been miniscule, much less than the cost of one F111 fighter bomber.

A challenge to Australia's sovereignty to the Territory by an individual nation is probably unlikely - no country has a better claim if based on early exploration activities. Where the challenge might come from is from the Third World countries questioning the concept of the right of one country to control such an enormous area of an empty continent, particularly as the claim to exercise such control is based neither on occupation nor development but on past historical events. Should Australia lay claim to a 200 mile Economic or Fishing Zone around the coastline of the Antarctic Territory it is possible that such a claim could be contested by countries in the Geographically Disadvantaged group on the grounds that this is making further inroads on resources which should rightfully belong to "the common heritage of mankind".

CHAPTER VIII

SURVEILLANCE AND DEFENCE

Proclamation of a 200 mile Exclusive Economic Zone (EEZ) without an adequate enforcement capability will be an open invitation to foreign vessels to flout Australia's sovereignty, disregard our laws and poach our resources.

The sub committee received a submission from the Minister for Defence and, as well, observed the problems of surveillance and defence at first hand during a visit to northern Australia in July 1977. A valuable submission was also made by Hawker de Havilland Australia Pty Limited. Officers of the Defence Department were concerned to show that the Services could carry out the task, however that might be defined by the Government, but all the information indicates that Australia's capability to maintain surveillance is already inadequate, and will become increasingly so unless improved. Surveillance is the first line of defence, and the two cannot be separated.

The Australian EEZ, exclusive of Antarctica, will cover about 2.4 million square miles, an area almost as large again as the Australian continent itself. Surveillance over such a large area will be a formidable task, but it is important not to be misled into believing that continuous, twenty-four hour coverage of every square centimetre of the EEZ will be necessary. Surveillance will mean, mainly, surveillance of fishing vessels and, even more, of fishing vessels actually at work in fishing areas. Most of the fishing areas are within about twelve miles of the shore or, more specifically, in waters less than 200 metres deep. The most valuable fisheries are the so-called demersal fisheries, that is, those comprising bottom-dwelling species of fish. The demersal fisheries most vulnerable to foreign encroachment are those of western and northern Australia, in waters off the coast between Geraldton and Townsville. These fisheries are closest to Taiwan, South

Korea, Indonesia, Japan, and the Maritime Province of the Soviet Union, where the foreign fishers come from, and they are almost completely unused by Australian fishers. The waters to be kept under surveillance, therefore, are basically those within twelve miles of the coast, between Geraldton and Townsville. This is still a formidable task. The arrest on 6 February 1978 of the Japanese squid trawler "Eikyu Maru" for operating within the twelve mile limit off the northern coast of Tasmania, indicates that some kind of a presence must be maintained all around Australia.

Some measure of surveillance will also have to be undertaken to detect and control pollution from vessels and aircraft travelling through or over the Exclusive Economic Zone.

Prevention of landings by smugglers and illegal immigrants also calls for surveillance, but of a slightly different nature. Smugglers and illegal immigrants, unlike fishers who will be operating in the EEZ for relatively long periods, will pass through the EEZ as quickly as possible. Also, in most cases smugglers apparently use aircraft, not boats, and therefore control of their movements would depend more on ground radar stations and liaison with air traffic controllers in Indonesia and the Philippines. The Vietnamese "boat people" have shown that it is possible to make landings undetected on the Australian coast, but this again is a problem of controlling transit, not of controlling operations over a period of days in the same area of sea, as is the case with fishing.

The degree of surveillance required will depend to a large extent on the degree of cooperation obtained from foreign governments. Although not yet formally embodied in an international treaty, the 200 mile EEZ has now gained almost universal de facto recognition. In proclaiming a 200 mile EEZ, Australia is merely doing what most other countries have already done, and therefore may expect a minimum of opposition from other countries. A certain amount of difficulty may be

experienced with Taiwan, in view of Australia's lack of diplomatic relations with that country. Taiwanese vessels may ignore Australia's proclamation and continue to operate in the north-west fishing grounds as they have been doing since 1971. If Australian conditions of access to the EEZ prove too restrictive for other countries they, too, may be tempted to test Australia's willingness and ability to maintain the exclusiveness of the Zone.

Surveillance of foreign fishing vessels operating within the Australian EEZ would be greatly assisted by notification of the vessels' intentions regarding the specific area they intend fishing, and how long they intend fishing, before they leave their home ports. Presumably, conditions similar to these will be imposed under the fishing licensing agreements to be worked out between Australia and foreign fishing States.

The case of the "Eikyu Maru", referred to above, is probably a good example of the type of incident likely to occur after the establishment of the 200 mile EEZ. The master and fishing master of the Japanese squid boat both pleaded guilty in the Devonport Court to deliberately intruding within the 12 mile limit. They were fined the relatively small sums of $300 and $200, plus $320 interpreter's expenses. All fishing equipment and fish on board were confiscated. The magistrate said that confiscation of the vessel itself would be an effective deterrent, but declined to impose such an "extreme penalty".

The reason for such a relatively light penalty being imposed was because the Japanese Government had informed the Australian Government that further action would be taken against the guilty parties in Japan, and had further given an assurance that all operators would be expressly warned against any further breaches. This was the first instance of a Japanese ship being apprehended.

Most foreign fishing vessels operating in northern Australian waters pass through either the Makassar or Manipa Straits, and it would appear obvious that cooperation with the Indonesian marine traffic authorities in keeping track of the movements of these vessels would be very valuable. The committee has not yet determined whether in fact there is already such cooperation.

Australia will proclaim an Exclusive Economic Zone in conjunction with other members of the South Pacific Forum.[1] The French, United States and Chilean Governments will also proclaim EEZs around their Pacific territories, and will cooperate with the South Pacific Regional Fisheries Agency set up by the Forum. The capability presently available for policing the huge area of the Pacific thus converted into an EEZ is very limited, especially among the independent micro-states of the South Pacific. The major naval powers of the region are the United States and France. Australia has committed itself to supporting a regime in the Pacific which, in the opinion of the committee, will require some highly imaginative surveillance and defence planning. The committee has not yet heard any evidence on this aspect of its inquiry.

With regard to the Australian Antarctic Territory, the Defence Department frankly admitted in its submission:

> While some limited air surveillance capability exists within the Defence Force in respect of Antarctic waters, no specifically defence-related requirement has been identified for the Defence Force to acquire ships and aircraft for operation in Antarctic conditions or to establish the requisite physical facilities in relevant locations.[2]

The Defence Department places its principal reliance on continued international acceptance of the Antarctic Treaty,

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1. Member States which have already declared Fishing Zones are: Fiji, Papua New Guinea, New Zealand and the Solomon Islands.

2. Evidence, p.128.

with its provisions guaranteeing that the Antarctic should "not become a scene or object of international discord". The Antarctic Treaty embodies a status quo which is very favourable to Australia and the other twelve Treaty parties, and this is why, now that the potential exploitability of Antarctica's resources is becoming recognized, the Treaty is starting to be challenged in the United Nations.

Since 1975 the overall responsibility for the organization and coordination of civil coastal surveillance rested with an inter-departmental Coastal Surveillance Standing Committee responsible to the Minister for Transport. The committee has received a submission from the Minister for Transport detailing the structure and functions of this Standing Committee.

Patrolling programs and routing of information are decided on by a subordinate Working Committee of the Coastal Surveillance Standing Committee. The Departments of Primary Industry (Fisheries), Business & Consumer Affairs (Customs), Defence and Transport are represented on the Working Committee. Other Departments, for example Health, Immigration & Ethnic Affairs, Finance, are co-opted onto the Working Committee as required.

Day-to-day coordination, including the collection of data and dissemination of surveillance reports, is the responsibility of the Marine Operations Centre of the Department of Transport. The Marine Operations Centre is located in Canberra, and the committee visited it on 7 September 1977.

In addition to coordinating surveillance, the Marine Operations Centre also performs several other major functions. These are:

1) coordination of marine search and rescue.

2) operation of the Australian Ship Reporting System: a System whereby all ships in Australian waters report their positions every twenty-four hours. Australian waters are so delimited as to be almost coterminous with the old Australian Naval Station, that is, from waters south of the Indonesian archipelago in the vicinity of Cocos Island southward to the Antarctic, from the Antarctic to the Equator in the vicinity of Nauru, westward to Longitude 140°E (the Papua New Guinea/Indonesian border), southward along that Longitude to the Arafura Sea, then westward to the vicinity of Cocos Island. This zone is now referred to as NAVAREA 10.

3) origination and promulgation of navigational warnings within NAVAREA 10.

4) provision of alerting action in oil pollution and marine dumping incidents.

The main surveillance effort is provided by the aircraft and ships of the Defence Force, but this effort is supplemented to an important extent by other observers such as merchant ships and fishermen, air traffic controllers and public employees such as lighthouse keepers, crews of navigational aid vessels, and crews of vehicles under the control of State Governments. Monitoring of radio transmissions from foreign vessels and aircraft in Australia's vicinity by Defence Signals could also be an important element in surveillance. The possibility of reconnaissance satellites being used for surveillance of the 200-mile zone was raised by the committee, but the Defence Department put forward the view that the cost of such satellites (plus or minus $350m.), their limited durability (one year), and their limited scanning ability (for example, they could not read the names of the vessels) would make their

employment highly inadvisable. The United States does not use satellites for fisheries surveillance.[3]

In 1976/77 the Defence Force contributed an estimated 2,700 aircraft flying hours to civil coastal surveillance, using ten P3 B Orions from Edinburgh, twelve Neptunes from Townsville, one Douglas DC 3 Dakota from Darwin, three Grumann S2E Trackers from Broome and a variety of other available aircraft such as Kiowa helicopters, Winjeel trainers, Caribou, and any aircraft in transit. Seven of the RAN's total of twelve Attack Class patrol boats were assigned to civil coastal surveillance. In addition, on 18 October 1977 the Minister for Defence announced that for the six months November to May 1977/78, close inshore surveillance in cooperation with the Darwin-based RAN Third Patrol Boat Squadron would be carried out by three RAN Trackers and the RAAF Dakota. The area covered would be the coast between Broome and Darwin.

The monitoring of Australia's area of maritime jurisdiction for civil purposes is not regarded as a direct Defence Department responsibility but, since 1968, when Australia proclaimed a twelve mile exclusive fishing zone, the RAAF and RAN have performed fisheries patrols, and now perform a variety of tasks assigned by the Working Committee of the Coastal Surveillance Standing Committee. An important corollary of this essentially ad hoc arrangement is that the Defence Force employs equipment which is not primarily designed for civil surveillance but which is designed for purposes such as anti-submarine warfare or commando raids. For instance, acquisition of the Orions was planned and justified between 1969 and 1975 on the basis of strictly military considerations: requirements of civil coastal surveillance were not taken into account. Therefore using the Orions for fisheries and other civil surveillance detracts from their ability to carry out their primary task of anti-submarine surveillance.

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3. The committee intends to take more evidence on this matter.

The committee visited No. 10 Squadron, RAAF at Townsville on 18 July 1977. The Squadron was equipped with twelve Neptunes, but by 1980 will be re-equipped with ten P3 C Orions, and re-located to Edinburgh, South Australia. The Squadron operated in conjunction with three RAN Attack Class patrol boats based in Cairns. The area covered was coastal waters from the vicinity of Coolangatta to midway across the Gulf of Carpentaria. At that time there was not a great degree of encroachment by foreign fishing vessels into this area, the main activity being the taking of giant clams from the Great Barrier Reef by Taiwanese fishermen, plus some trawling by them in the Gulf.

The main instrument used for surface surveillance is the naked human eye: radar is used, but its effectiveness is greatly reduced by high seas. The smoke haze which covers most of northern Australia during much of the dry season (April to November) seriously restricts vision, as does cloud cover during the monsoon. Development is proceeding of over-the-horizon ("Jindalee") type radar which could in the future be utilised for surveillance purposes.[4]

The P3 C Orions with which No. 10 Squadron will be re-equipped, are an improved version of the P3 B Orion, which is a military version of the Lockheed Electra. Briefly, the P3 C is:

> "a land based, four engine, turbo prop patrol aircraft. Its primary mission is antisubmarine warfare: to detect, classify, track, localize and destroy conventional and high performance submarines of the 1970-1980 period; to conduct long range patrols, convoy escort, hold down, hunter-killer operations and area search in all weather conditions; and to act as in-flight area coordinator at a scene of action."

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4. Sub committee C of the Joint Committee on Foreign Affairs and Defence is examining this question. Their terms of reference, given on 10 May 1978, are: "The capacity of the three services to meet requests for assistance by the civil authorities, such as for coastal surveillance.

The aircraft, costing around $20m. each, are fitted with highly sophisticated, computer-integrated, electronic sensor, display, navigation, communication and armament equipment. For civil maritime surveillance, however, the best instrument is still the naked human eye, particularly when high seas restrict the scope of radar scanning.

No. 11 Squadron, RAAF based at Edinburgh, South Australia, is equipped with ten P3 B Orions. The committee visited No. 11 Squadron on 22 July 1977. The Squadron is responsible for anti-submarine and other surveillance from Learmonth to the Gulf of Carpentaria, and works in conjunction with four RAN Attack Class patrol boats stationed at Darwin. This area has been subject to a high degree of encroachment by foreign (mainly Taiwanese) fishing vessels. The committee visited Darwin on 20-21 July 1977, and received a Joint Services briefing on the surveillance problem in northern Australia.

Most of the infringements of Australia's 12 mile fishing zone are made by Taiwanese fishing boats. An average of two per month are detected. At the time of the committee's visit 12 Taiwanese fishing boats were operating off the Monte Bello Islands, and 37 were operating in the Gulf of Carpentaria. The trawling grounds are all within the sixty fathom line, which is why the fishing is done so close to the coast. The Taiwanese have gradually been coming further and further south, and are now beginning to encroach on the areas fished by Western Australian fishermen operating out of Learmonth, Carnarvon and Dongara. The Taiwanese boats are present in Australia waters all year round, even during the typhoon season. Each boat usually visits Australian waters three times a year. The recent loan of $400m. by the World Bank to the Taiwanese fishing industry is likely to lead to an increase in Taiwanese operations off the Australian coast. The coastal waters of North and N.W. Australia are now providing about half the total catch of the entire Taiwanese trawl fishing fleet.

The number of patrol boats at the disposal of the RAN is inadequate to prevent encroachments. At the briefing in Darwin on 21 July referred to earlier, the committee was told that fifteen patrol boats, operating in conjunction with aerial surveillance, and based at Learmonth (or Carnarvon), Broome, Darwin, Thursday Island, and Cairns, would be sufficient for the task. *Refuelling, maintenance and accommodation facilities* would have to be developed at Carnarvon (or Learmonth), Broome and Thursday Island. The Attack Class patrol boats are too small to be able to operate effectively in the open sea. They are also too small to be able to tow arrested fishing boats. A patrol boat of about 45 metres length is required. Fifteen new fast patrol boats have been ordered and will come into service between 1979 and 1984.

The Taiwanese trawlers operate in pairs, and keep every fish caught in their nets: they have no limitation on size or species. They are also able to carry large quantities, as they use empty fuel tanks as extra holds. The Western Australian fishing authorities have already voiced concern on depletion of stocks. As well as trawlers, gill-net fishing boats, operating singly, have begun to appear recently.

Indonesian fishermen at present pose no threat to stocks, as they are small scale subsistence fishermen sailing in perahus from Sulawesi, the Lesser Sundas and Madura. The only problem they have caused is their unauthorized use of Australian territory, the Ashmore and Cartier Islands, as bases for drying and preparing their catches. Whilst the sub-committee was in Darwin in July 1977, a press report in the Melbourne Age indicated that Indonesia may be intending to dispute Australia's claim to "Pasir" (Cartier Island). Indonesians are permitted to land on Cartier Island only for the purpose of taking on water.

At present Taiwanese and Indonesians are the only foreign nationals fishing in waters off northern Australia.

Controlling Taiwanese operations is made difficult by the absence of diplomatic relations with Taiwan.

It is probable that Taiwanese fishing boats are able to evade RAN patrol boats by tracking the patrol boats' radio signals, and by simple observation of patrol boats in harbour. The RAN can track the fishing boats similarly to an undisclosed extent, as the Taiwanese are required to communicate daily with 'fishing radio station' on Taiwan, to report their trawling position, haul numbers, and catch.

Arrest of a fishing boat takes the arresting RAN patrol boat out of patrol duty whilst escorting the fishing boat to the nearest port where there is a magistrate and for the duration of the court proceedings. The commander of the patrol boat is required to give evidence in person in N.T. and W.A. courts, though in Queensland a written deposition is sufficient. All arrests except one have so far resulted in conviction, but the tying up of patrol boats in harbour for long periods naturally causes a serious reduction in patrol activity. The practice of selling forfeited fishing boats back to Taiwanese owners at low prices lessens the deterrent effect of arrest.

Imposition of a 200 mile exclusive zone would assist control of illegal fishing, immigration and smuggling by giving the RAN a greater area of jurisdiction. Foreign vessels within the zone would presumably be required to display prominently markings identifying home port and authorized activity.

Prevention of smuggling and illegal immigration is rendered especially difficult in north-west Australia by almost total lack of resident population, a deeply indented coastline punctuated by large navigable rivers, and the presence of scores of small airstrips, many dating from World War II. There is need for greater cooperation with Indonesian authorities to control air or marine traffic from Indonesia to north-west Australia. Bali and Timor have been used as bases by aircraft employed in

drug and animal smuggling. Kupang in West Timor is usually the last port of call for illegal immigrants attempting a crossing of the Timor Sea to Australia. So far only one boatload of Vietnamese refugees has been known to have landed on the Australian coast without having previously been detected at sea, but others may have passed undetected up one of the many rivers and large creeks flowing into the Timor Sea.

Northern Australia is highly vulnerable to introduced animal pests and diseases. The uncounted numbers of feral buffalo, cattle and pigs make the danger from foot and mouth disease particularly serious.

There has been a certain amount of criticism of the present surveillance and policing arrangements, and a number of proposals have been put forward for a different form of organization, for new equipment, and even for the establishment of a special coastguard service like the US Coastguard. It should be enough to indicate that the US Coastguard requires a force of 40,000 personnel to patrol an EEZ which is not as large as that of Australia, and that even with this force, equal in terms of manpower to the whole of the Australian Army, the US Coastguard is barely able to carry out its task. In 1974, the Australian Government did consider the feasibility of establishing a coastguard service, but concluded that the cost could not be justified. It was decided to make better use of the Defence Force to perform surveillance and sovereignty enforcement. A consequence of this decision is that the equipment used is primarily designed for other, military, purposes, and the Defence Force personnel rightly regard such duties as a diversion from the role for which they are primarily trained.

The Defence Department declined to give an evaluation of Australia's present surveillance and policing capability:

> "What new measures are needed, will depend on future decisions concerning maritime boundaries, the division

> of jurisdiction between state and federal governments, and on such factors as the level of foreign interest in fishing within those boundaries, the resource management regimes adopted, and judgements regarding the value, both immediate and long term, of the resources being managed."[5]

The Department of Transport made a similar guarded statement:

> "The Standing IDC on Coastal Surveillance has carried out a study of the implications of extended boundaries ... In essence, the report indicates that the amount of surveillance and policing effort within such a zone will clearly depend on the management regime to be applied in relation to the extent of the resources ... In any event, the extent of any increase in surveillance and policing effort would be determined as a result of the stated requirements of the various responsible departments."[6]

It is obvious from these statements that the Government has not yet developed a coordinated policy, or if such a policy has been developed, it has not yet been stated publicly.

Until the nature of the fishing regime is decided, and an assessment made of the likely level of foreign activity within the EEZ, and of the degree to which the regime might be challenged by foreign fishers, no decisions can be made regarding equipment, personnel, interception procedures or bases. In this context it should be remembered that the fifteen new fast patrol craft which will enter service between 1979 and 1984, have not been ordered specifically for civil coastal surveillance, but for the RAN's other defence commitments.

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5. Evidence, Defence Department Submission p.127.

6. Evidence, Department of Transport Submission, para 11.

CHAPTER IX

FOREIGN POLICY IMPLICATIONS

For Australia the most significant contemporary development in the Law of the Sea is international acceptance of the concept of the 200-mile Exclusive Economic Zone (EEZ). It is only because of this development that Australia itself is contemplating proclamation of a 200-mile EEZ: Australia is a follower, even a reluctant follower, not a leader in this area. Australia will proclaim a 200-mile EEZ simply to remain in harmony with the rest of the world community in international law.

The resources of the seas around Australia have always been available to Australians for exploitation. They have also been available to the nationals of any other state who might have wished to exploit them. That they have remained relatively unexploited so far is a function of the distance which separates Australia from the major world markets, of the small size of the domestic markets, and of the high cost of exploitation. Unlike the offshore petroleum deposits of the Gulf of Mexico, which prompted the Truman Proclamation of 28 September 1945, or the fisheries of the Humboldt Current, which prompted the Peruvian declaration of 1 August 1947, the Australian continental shelf and superjacent seas are not, generally speaking, easily susceptible to encroachment by foreign States. By proclaiming an EEZ, Australia is assuming responsibility for resources which are at present greatly underexploited, and which Australian nationals may never be able to exploit. Australia is, in effect, warning other countries to stay away, or at least imposing restrictions on them, at a time when the world's fishery resources, in particular, are the subject of unprecedented attention.

Australia does not often make the headlines of overseas newspapers, but on the rare occasions when Australia is

discussed, it is usually in terms of a very rich country with a small population and abundant natural resources. Australian proclamation of an EEZ which will rank among the world's largest, together with maintenance of the claim to the Australian Antarctic Territory, will reinforce this image. Proclamation is, however, unlikely to meet with any international opposition as it is in accordance with current international law.

The foreign relations problems raised by proclamation of an Australian EEZ fall into two broad categories: 1) definition of boundaries with neighbouring States and territories; 2) access by nationals of foreign States to the resources of the EEZ.

The problem of boundaries definition involves Australia and five other States, namely, Papua New Guinea, Indonesia, Solomon Islands, France and New Zealand.

The Joint Committee on Foreign Affairs and Defence has already reported (in December 1976) on the problems of boundary definition in the Torres Strait between Australia and Papua New Guinea. The question is complicated by the fact that the Torres Strait Islanders have always regarded the waters and reefs in the Strait as their territory, and strongly object to a Papua New Guinean EEZ which would encroach south of Boigu, Dauan and Saibai islands. So long as Papua New Guinea maintains a claim to the northern islands of Torres Strait and/or their adjacent waters, definition of boundaries in the area is unlikely to be achieved.

Eastward of Torres Strait, the boundary of the Papua New Guinean EEZ will abut that of the Australian Coral Sea Islands Territory. None of the islands of this Territory, except Willis Island, are permanently inhabited, but the boundary of the Territory as defined by the Australian Coral Sea Islands Territory Act (1969) encroaches well within 200 nautical miles

of Papua New Guinean territory, and well beyond any median line between Australia and Papua New Guinean territory. There may be a need to negotiate a boundary between Australia and Papua New Guinea regarding changes to the Coral Sea Islands Territory Act.

In the Gulf of Papua, the final boundary will be settled only after the status of Bramble Cay and East Cay as generators of base lines is agreed upon. Papua New Guinea does not allow them this status at present. Exploration for hydrocarbons is under way in the Gulf of Papua, so the boundary is this area may not be settled for some time. If Australia is interested in seeing a prosperous and friendly Papua New Guinea there may be a case for making concessions in this area.

Westward of Torres Strait, Papua New Guinea is entitled to a small segment in the interstice between the Australian and Indonesian EEZs. The location of the boundary line will not be settled until the status of Boigu and Deliverance Islands as generators of base lines is agreed upon. The area in question probably contains good prawning grounds.

It can be seen from the foregoing that the border dispute in Torres Strait impedes the settlement of the whole of the EEZ boundary between Papua New Guinea and Australia.

An EEZ boundary between Indonesia and Australia has also to be agreed upon. In 1972 Australia and Indonesia agreed on a seabed boundary, and this would most likely form the basis of an EEZ boundary. This boundary runs somewhat north of the median line between the two countries, and was a compromise between the Australian position, based on the 1958 Law of the Sea Convention, that there are in fact two distinct continental shelves divided by the Timor Trough, and the Indonesian position that the Trough is merely an indentation in a common shelf and that the median line would be the appropriate boundary. Between East Timor and Australia, a seabed boundary was not negotiated before the Portuguese left the region.

To the west, between Roti, Sawu and Sumba, and Australian territory, an EEZ boundary must be negotiated. Agreement in this area may be complicated by the question of the status to be awarded the Ashmore and Cartier Islands, South Reef and Hibernia Reef as generators of base lines. Cartier Island, known in the Malay Language as Pulau Pasir, has been used for at least three hundred years as a way station by Indonesian fishers from Sulawesi and Madura, and Indonesia might claim traditional rights in the area as allowed by the Informal Composite Negotiating Text.

An EEZ boundary must also be negotiated between Indonesia and the Australian territory of Christmas Island. There appears to be no reason why a boundary between Christmas Island and Indonesia could not be agreed to which would simply follow the median line. For most of the distance between the two islands the sea is more than 2,000 metres deep.

Negotiation of an Australia/Solomon Islands EEZ boundary along the median line between Mellish Reef and Rennell Island would appear to be an uncomplicated matter. There is nothing but deep water between the two territories.

The Australian EEZ will abut on two widely separated French territories, namely, Kerguelen Island and New Caledonia. No difficulties are likely to be encountered in either of these areas.

There appears to be no obstacle to settling on an EEZ boundary between Kerguelen and the Heard and McDonald Islands on the basis of the median line.

Likewise, an EEZ boundary on the median line between New Caledonia and the Australian Coral Sea Islands Territory could presumably be agreed upon without argument. If so, then the existing boundary of the Territory would have to be redefined where it encroaches on the New Caledonian side of the

median line. As the distance between New Caledonia and Norfolk Island is somewhat less than 400 nautical miles, a median line boundary would have to be agreed upon in this area also. The only possible complicating factor in the situation is the New Caledonian independence movement which, in spite of French opposition, is likely to grow stronger after the New Hebrides becomes independent. A strongly contested independence movement could lead to governmental instability which, as in East Timor, could prevent negotiations on a boundary.

New Zealand's EEZ will adjoin Australia's at two points: between the North Island and Norfolk Island, between Campbell and the Auckland Islands and Macquarie Island. No difficulties can be envisaged in establishing these boundaries to the satisfaction of both countries, on the basis of the median line principle.

The definition of the boundaries of the Australian Exclusive Economic Zone will probably be difficult in relation to Papua New Guinea, but otherwise no great obstacles are foreseen in the way of settlement satisfactory to Australia and her contiguous neighbours.

Leaving the problems of boundaries definition, the other broad category of problems raised by proclamation of an EEZ, as mentioned above, is that of access by foreign nationals.

Australia will declare an EEZ around the Australian mainland, the Coral Sea Islands and Norfolk Island in conjunction with the other member States of the South Pacific Forum. Conditions of access, licensing arrangements, surveillance and policing, will be coordinated with the other States of the area. Presumably these measures will be based on the Informal Composite Negotiating Text, adapted to local conditions.

The twelve member States of the South Pacific Forum (Australia, New Zealand, Papua New Guinea, Solomon Islands, Fiji, Cook Islands, Niue, Gilbert Islands, Western Samoa, Nauru, Tuvalu, and Tonga) have already indicated their intention of declaring EEZs, which will adjoin and form a single huge contiguous zone. France and the United States have signified their intention of declaring EEZs around their Pacific territories and of cooperating with the arrangements agreed upon by the Forum. Adherence by the United States may be complicated by the provisions of the US Fisheries Act which forbid recognition of the rights of coastal States over migratory fish such as tuna. The resulting South-West Pacific EEZ will stretch from Australia in the West to the Marquesas in the East, and from the Northern Marianas in the North to New Zealand in the South.

The resources of this area consist of fisheries of all kinds, of which currently the most valuable are the tuna and squid fisheries. The value of the tuna and other highly migratory fish taken in the South Pacific in 1977 totalled an estimated $US350 million according to the Director of the South Pacific Economic Cooperation Bureau (SPEC). Eighty-five per cent of this catch is taken by the fishing fleets of non-regional States, principally those of Japan and the Soviet Union. As nations all around the Pacific are increasing the size of their fishing fleets, it is probable that the number of countries seeking access to the South West Pacific EEZ will also increase. None of the South Pacific Forum countries, or the neighbouring French or United States territories, are at present significant fishers or consumers of fish by world standards.

It may be observed from the above that a very large number of States may be interested when it comes to formulating the rules and conditions of access to the proposed South Pacific EEZ. So far the committee has taken no evidence on this aspect of its inquiry.

The rich fishing grounds off the north and west coasts of Australia are also attractive to foreign fishers, while they are hardly exploited at all by the Australian fishing industry. The annual Taiwanese catch from this area is already more than 80,000 tonnes, and thus exceeds by a considerable amount the total Australian fish catch from the entire coast (52,000 tonnes). Other South-East Asian countries are developing their fishing industries, and may in time become interested in gaining access to fishing grounds located within such convenient distance to their own ports. Even India, a large fishing state, may not be too far away to be interested. Regulation and policing of foreign fleets operating off Australia's virtually unpopulated north and west costs would seem to present problems worthy of consideration by the committee.

The question of whether Australia should extend its offshore territorial jurisdiction in the Australian Antarctic Territory must be influenced by a number of factors. One of the most important of these will be whether the consultative parties can reach agreement on a conservation regime covering the living marine resources in the Antarctic region.

Adelie Land is a wedge of French territory between the two sectors of the Australian Antarctic Territory and like the latter, its northern boundary is defined in the Presidential Decree proclaiming French sovereignty as 60°S Latitude, a boundary which is over four hundred miles north of the Antarctic coast. At present the waters between the coast and 60°S are considered high seas and, to create an EEZ, presumably the waters within 200 miles of the coast would be proclaimed as such. There is also the possibility that in Antarctica all waters south of 60°S may be proclaimed and EEZ, or its equivalent, by the Antarctic Treaty parties. In any case, the boundary with an Australian EEZ will clearly lie along Longitudes 136°E and 142°E, the present borders of Adelie Land with the Australian Antarctic Territory.

Australia's proclamation of an Exclusive Economic Zone, and participation in cooperative regimes of administration and control in the South Pacific and Antarctica, are likely to involve Australia in a series of negotiations almost as complex as those of the Third Law of the Sea Conference itself. A very large number of states is interested, representing rich and poor nations ranging from the superpowers to micro-states like Niue and Tuvalu. Unprecedented international attention will be called to Australia's Antarctic territorial claims, and to the capacity of Australia's small, rich population to exploit the resources of the Australian continent and adjacent seas. Although incapable of exploiting themselves more than a small fraction of the fisheries enclosed within the EEZ, Australians will seek to impose limitations on the access of fishing fleets of countries like Japan, the USSR, Poland, Taiwan, South Korea, Thailand and the Philippines. Australia's declaration of an EEZ is unlikely to be opposed by any country except by Papua New Guinea in the Torres Strait area, but there is a real possibility that the conditions of access which Australia may seek to impose might be challenged by major fishing nations. The committee requires more specific information in this regard.

CHAPTER X

CONCLUSION

Due to lack of evidence from a number of potential sources and witnesses it is felt that this Report has not been developed to a stage where final recommendations can be made. However sufficient examination of available material has been made to draw certain tentative and to some degree, interim, conclusions.

There has been a general acceptance by the world community, as represented by the United Nations, that some form of international control over the seas and seabed is desirable and necessary. The attempt to convert this mutual desire from wish to reality has been made through the various sessions of the Third Law of the Sea Conference commencing in 1973. The key proposals which have emerged at this Conference are:

- the breadth of the territorial sea, over which full sovereignty is to be exercised by coastal States, subject to the right of innocent passage, to be 12 miles;
- acceptance of the right of coastal States to declare 200 mile Exclusive Economic Zones over the seas adjacent to their coastlines;
- the coastal States to have the right to explore and exploit their continental shelves even where these extend beyond the 200 mile limit;
- general international control over seabed mining where this takes place outside the limits of the 200 mile zone;
- arrangements to be made for the transfer of seabed mining technology from advanced to developing nations and for international

cooperation in the study of the marine environment and scientific research in marine subjects.

By July 1977 general agreement had been reached by the participating countries, with some most important exceptions, on these proposals. The exceptions mainly concern the extent to which seabed mining is to be controlled by an international body, settlement of international disputes concerning marine and maritime problems and control over continental shelves projecting beyond the 200 mile limit.

Since the commencement of the Conference Australia has maintained a consistent policy generally favouring the above proposals. To date, however, no full scale policy statement or White Paper solely devoted to the Law of the Sea Conference has been made or issued by an Australian Government. On 13 April 1978 the Government introduced three bills to amend the Fisheries, Continental Shelf and Whaling Acts, so as to provide the legal basis for the declaration of a 200 mile Australian Fishing Zone. Certain waters, namely "excepted waters" and "treaty waters" may be excluded from the Zone: the committee has not received information regarding where or when these terms might be invoked to reduce a claim which Australia would otherwise be entitled to make.

Australia is to participate with other Pacific Forum countries in the establishment of a South Pacific Fishing Agency. The degree to which Australia is to cooperate with other member countries to ensure that a uniform regime is established throughout the South Pacific in contiguous Exclusive Economic Zones has not been revealed to the committee. Some negotiations with distant fishing nations, fishing in what will be the Australian Zone, have apparently been conducted but the result of these discussions, or the stage they have reached is also not known.

The declaration of a 200 mile Fishing or Economic Zone around portions of the Australian coast will have considerable effect on the Australian fishing industry. The industry is generally concentrated in the inner coastal waters where foreign operators are prohibited from fishing. Most fishing undertakings including processing plants, are small with limited capital resources or access to new capital. Australian participation will, in all probability, be limited to joint ventures with overseas owned firms, the supply of stores, and possibly the provision of repair and maintenance facilities. A joint Commonwealth-State-Industry Committee would be an advantage in preparing guidelines on both foreign and Australian participation and fishing management techniques, and in preparing a programme on possible conservation requirements in the area covered by the Zone.

The only known mineral deposits of commercial significance located to date on the Australian continental shelf are hydrocarbon deposits. One of these deposits, the North West Shelf, is approaching the point of commercial development. The other, the Exmouth Plateau, has deposits which could replace the Bass Strait wells as the major petroleum source for Australia. The majority of these possible deposits are located within the 200 mile zone. Should the deposits at the outer edge of the continental shelf be exploited there is a possibility that "royalty" payments would be payable to an international Seabed Authority if such a body is created. Given the general lack of other known mineral resources in commercially significant quantities within the Zone and nearby waters it appears most unlikely that seabed mining will be undertaken in Australian waters in the foreseeable future.

The Antarctic Treaty of 1959 prohibited military activity in the Antarctic, "reserved" the question of sovereignty and encouraged cooperation in scientific research. The Treaty did not, however, cover exploitation of resources. The most important resource which may be present is

hydrocarbons. Fish and krill are also present in abundance. Given the fragile ecology of the Antarctic, it is essential that some international agreement should be reached on how, or if, these resources are to be exploited. Failing such agreement uncontrolled exploitation could, as has happened in other areas of the world, cause serious and perhaps irreparable environmental damage.

In the event of Australia declaring a 200 mile Fishing or Exclusive Economic Zone around parts of the Australian coastline, this will immediately raise the question of effective policing of the Zone and the associated question of surveillance. Currently surveillance of fishing vessels of foreign nations and general sea surveillance is carried out by the Defence Forces with some, mainly voluntary, civilian assistance. From recent press reports of the arrival of refugees from Vietnam, and reported drug smuggling by air and sea, this surveillance and policing action does not appear to be effective.

To the best of the committee's knowledge no coordinated policy has as yet been developed on future surveillance arrangements of a proposed 200 mile Fishing or Economic Zone. On the information available it would seem existing resources are either inadequate or not correctly employed to provide both effective surveillance and policing. It would seem that to achieve effective coverage a large additional number of patrol boats will be required together with some aircraft much less sophisticated and expensive than the aircraft at present used for this purpose.

In the event of Australia declaring a 200 mile Fishing or Economic Zone around all or parts of the Australian coast no new resources will immediately become available. This truism needs to be stated in view of the somewhat euphoric press statements on the issue. Australia will assume responsibility for control over the resources of the seas and continental shelf of up to 2.4 million square miles. Negotiations will have to be

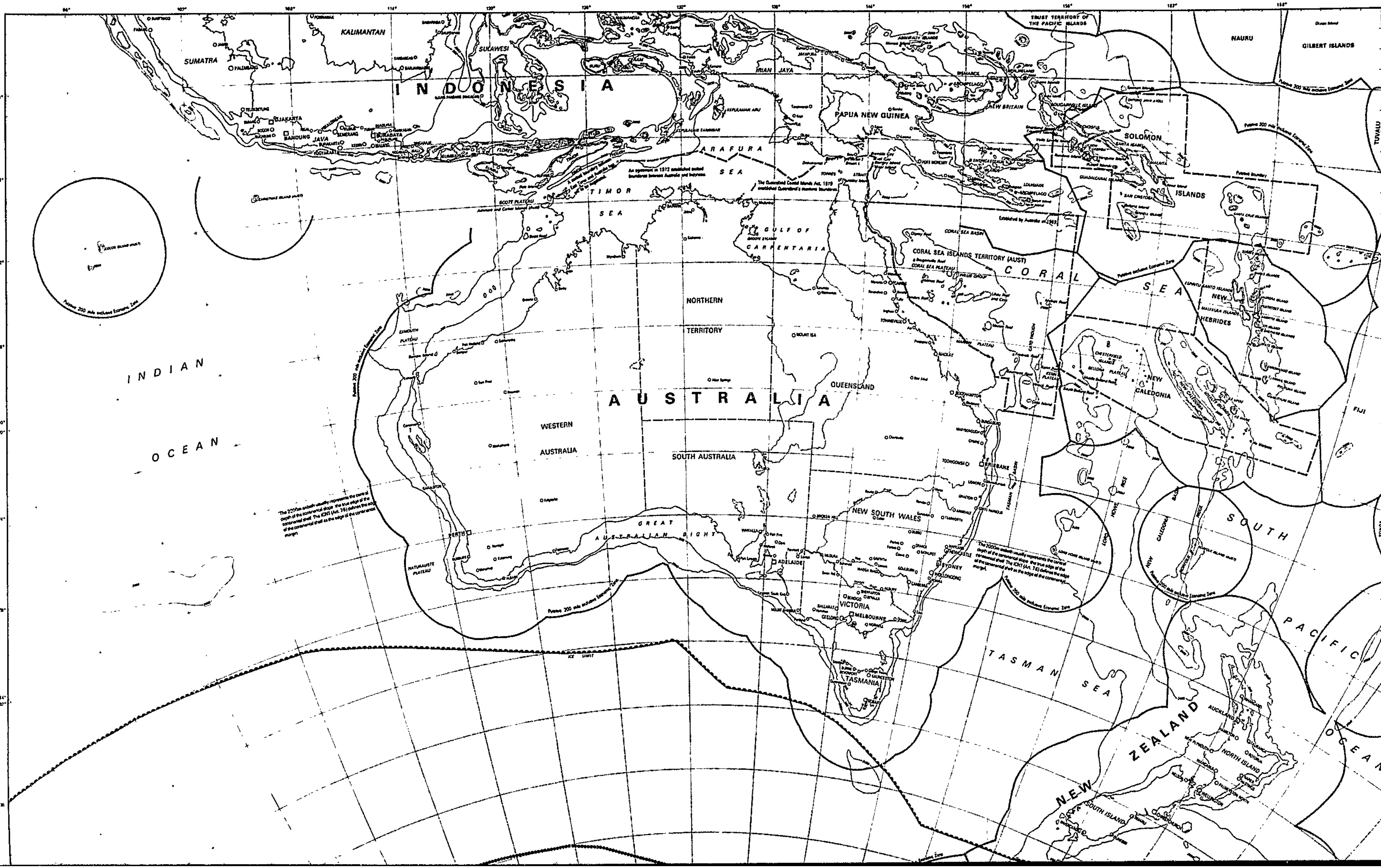
commenced or continued with nations who fish this area or whose own Zone boundaries are either adjacent or overlap. Because of non-recognition of the Taiwan Government by Australia, negotiations with this country may raise some difficulties.

The declaration of a 200 mile Fishing Zone will give the Australian fishing industry an opportunity to enter into joint ventures with overseas nationals and require nations at present fishing the declared waters to pay licence fees. A condition of the joint venture or licence may be that under certain conditions stores must be obtained from Australian ports and part of the catch handled or processed in Australia. Such a declaration could also have important long-term conservation effects and preserve the position of the Australian fishing industry should it ever wish to extensively fish this area. These are the known benefits of the declaration. The unknown costs will be a probable sharp long term increase in expenditure on surveillance and policing which will escalate as more areas are declared part of the Zone. On the evidence available the establishment of a Fishing Zone or Exclusive Economic Zone will create great challenges and new opportunities as they relate to the exploitation of living and non-living resources. But the costs and difficulties cannot be ignored.

By order of the Committee.

Magnus Cormack, Senator
Chairman

1 June 78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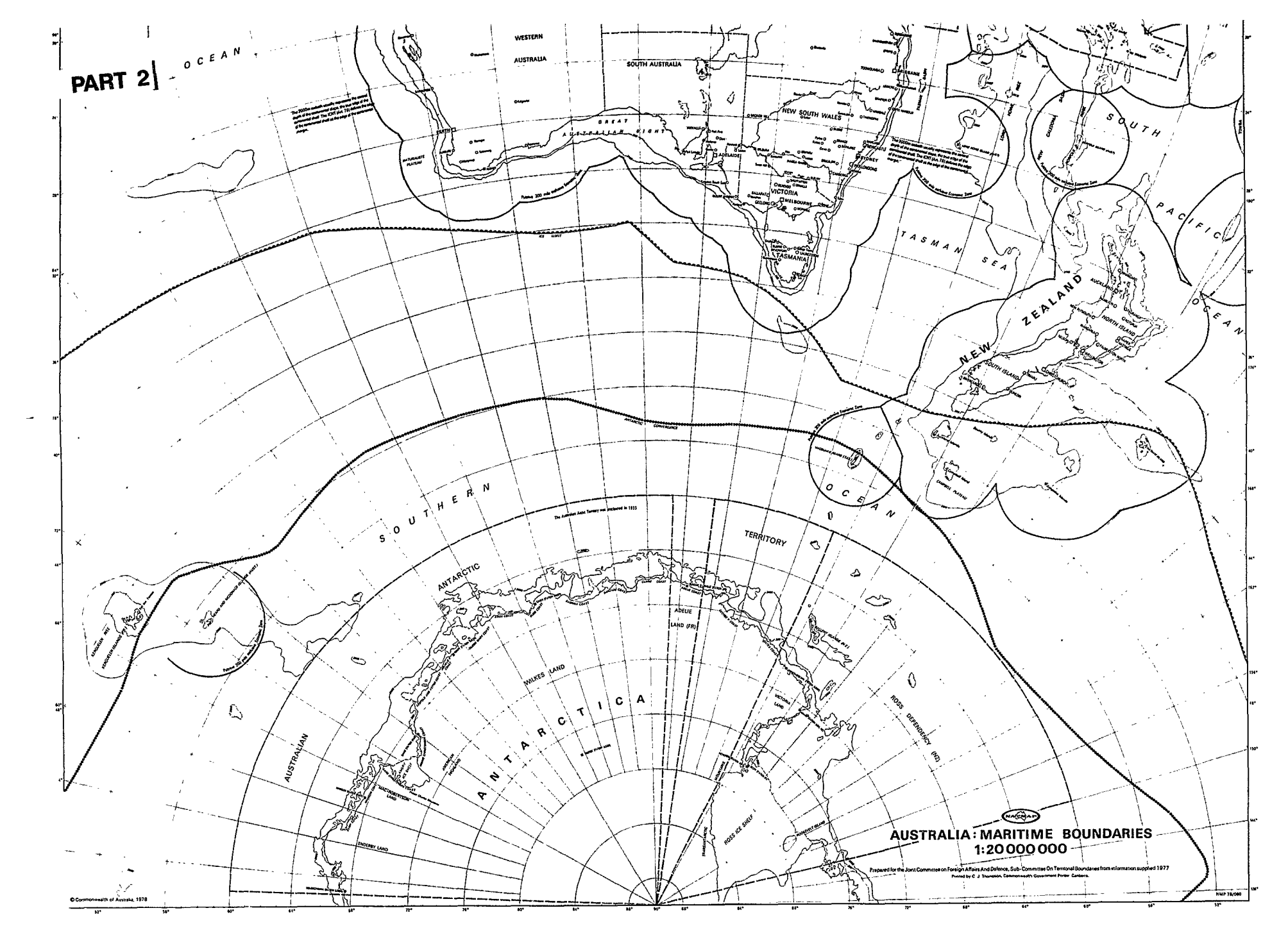
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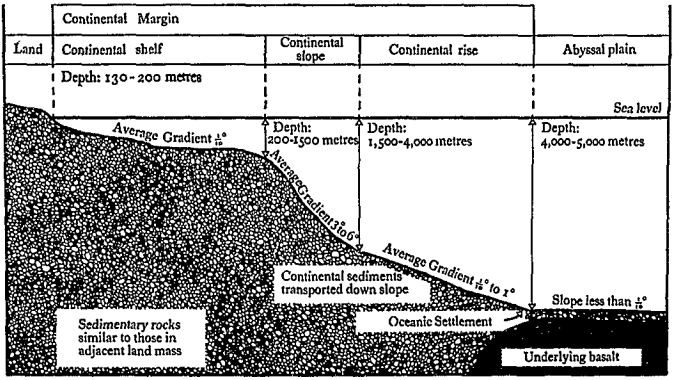
APPENDIX I

Diagrammatic profile of the Continental margin



APPENDIX II

APPENDIX II

DOCUMENT A/CONF.62/WP.10

Informal composite negotiating text

[*Original: English*]
[*15 July 1977*]

CONTENTS

CONTENTS *(continued)*

CONTENTS (*continued*)

CONTENTS (*continued*)

Preamble

The States Parties to the present Convention,

Considering that the General Assembly of the United Nations, by its resolution 2749 (XXV) of 17 December 1970, adopted the Declaration of Principles Governing *the Sea-Bed and the Ocean Floor, and the Subsoil Thereof,* beyond the Limits of National Jurisdiction,

Believing that the codification and progressive development of the law of the sea achieved in the present Convention will contribute to the maintenance of international peace and security, *in accordance with the purposes and* principles of the United Nations as set forth in the Charter,

Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. Use of terms

Article 1. Use of terms

1. For the purposes of the present Convention:

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

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

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

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

(5) (*a*) "Dumping" means:

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

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

(*b*) "Dumping" does not include:

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

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

(*c*) The disposal of wastes or other matter directly arising from or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources will not be covered by the provisions of the present Convention.

Part II. Territorial sea and contiguous zone

SECTION 1. GENERAL

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

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

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

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

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 3. Breadth of the territorial sea

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

Article 4. Outer limit of the territorial sea

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

Article 5. Normal baseline

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

Article 6. Reefs

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

Article 7. Straight baselines

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

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

3. 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.

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

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

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

Article 8. Internal waters

1. Except as provided in Part IV of the present Convention, 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 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in the present Convention shall exist in those waters.

Article 9. Mouths of rivers

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

Article 10. Bays

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

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

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

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

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

Article 11. Ports

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

Article 12. Roadsteads

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

Article 13. Low-tide elevations

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 14. Combination of methods for determining baselines

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

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

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

Article 16. Charts and lists of geographical co-ordinates

1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15, shall be shown on charts of a scale or scales adequate for determining them. Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

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

SECTION 3. INNOCENT PASSAGE IN THE TERRITORIAL SEA

SUBSECTION A. RULES APPLICABLE TO ALL SHIPS

Article 17. Right of innocent passage

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

Article 18. Meaning of passage

1. Passage means navigation through the territorial sea for the purpose of:

(*a*) Traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

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

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

Article 19. Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State Such passage shall take place in conformity with the present Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any of the following activities:

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

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

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

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

(*e*) The launching, landing or taking on board of any aircraft;

(*f*) The launching, landing or taking on board of any military device;

(*g*) The embarking or disembarking of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary regulations of the coastal State;

(*h*) Any act of wilful and serious pollution, contrary to the present Convention;

(*i*) Any fishing activities;

(*j*) The carrying out of research or survey activities;

(*k*) Any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

(*l*) Any other activity not having a direct bearing on passage.

Article 20. Submarines and other underwater vehicles

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

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

1. The coastal State may make laws and regulations, in conformity with the provisions of the present Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

(*a*) The safety of navigation and the regulation of marine traffic;

(*b*) The protection of navigational aids and facilities and other facilities or installations;

(*c*) The protection of cables and pipelines;

(*d*) The conservation of the living resources of the sea;

(*e*) The prevention of infringement of the fisheries regulations of the coastal State;

(*f*) The preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;

(*g*) Marine scientific research and hydrographic surveys;

(*h*) The prevention of infringement of the customs, fiscal, immigration or sanitary regulations of the coastal State.

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

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

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

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

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

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

3. In the designation of sea lanes and the prescription of traffic separation schemes under this article the coastal State shall take into account:

(*a*) The recommendations of competent international organizations;

(*b*) Any channels customarily used for international navigation;

(*c*) The special characteristics of particular ships and channels; and

(*d*) The density of traffic.

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

Article 23. Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances

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

shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

Article 24. Duties of the coastal State

1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with the present Convention. In particular, in the application of the present Convention or of any laws or regulations made under the present Convention, the coastal State shall not:

(a) Impose requirements on foreign ships which have the *practical effect of denying or impairing the right of* innocent passage; or

(b) Discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.

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

Article 25 Rights of protection of the coastal State

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

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

3. The coastal State may, without discrimination 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.

Article 26. Charges which may be levied upon foreign ships

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

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

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

Article 27. Criminal jurisdiction on board a foreign ship

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in 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;

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

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

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

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

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

4. In considering whether or in what manner an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. Except as provided in Part XII of the present Convention or with respect to violations of laws and regulations enacted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any *crime committeed before the ship entered the territorial* sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering *internal waters.*

Article 28. Civil jurisdiction in relation to foreign ships

1. *The coastal State should not stop or divert a foreign* ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on *board the ship.*

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. Paragraph 2 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution *against or to arrest, for the purpose of any civil* proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal *waters.*

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

Article 29. Definition of warships

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

Article 30. Non-observance by warships of the laws and regulations of the coastal State

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

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

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the

non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of the present Convention or other rules of international law.

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

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

SECTION 4. CONTIGUOUS ZONE

Article 33. Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(*a*) Prevent infringement of its customs, fiscal, immigration or sanitary 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 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Part III. Straits used for international navigation

SECTION 1. GENERAL

Article 34. Juridical status of waters forming straits used for international navigation

1. The régime of passage through straits used for international navigation established in this Part shall not in other respects affect the status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35. Scope of this Part

Nothing in this Part shall affect:

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

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

(*c*) The legal régime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article 36 High seas routes or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if a high seas route or a route through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics exists through the strait.

SECTION 2. TRANSIT PASSAGE

Article 37. Scope of this section

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

Article 38. Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded, except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if a high seas route or a route in an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics exists seaward of the island.

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

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

Article 39. Duties of ships and aircraft during their passage

1. Ships and aircraft, while exercising the right of transit passage, shall:

(*a*) Proceed without delay through or over the strait;

(*b*) Refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering straits, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(*c*) Refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress;

(*d*) Comply with other relevant provisions of this Part.

2. Ships in transit shall:

(*a*) Comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

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

3. Aircraft in transit shall:

(*a*) Observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; State aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

(*b*) At all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40. Research and survey activities

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

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

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

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

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

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

5. In respect of a strait where sea lanes or traffic separation schemes are proposed through the waters of two or more States bordering the strait, the States concerned shall co-operate in formulating proposals in consultation with the organization.

6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.

7. Ships in transit shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Article 42. Laws and regulations of States bordering straits relating to transit passage

1. Subject to the provisions of this section, States bordering straits may make laws and regulations relating to transit passage through straits, in respect of all or any of the following:

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

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

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

(*d*) The taking on board or putting overboard of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary regulations of States bordering straits.

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

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

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

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

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

User States and States bordering a strait should by agreement co-operate:

(*a*) In the establishment and maintenance in a strait of necessary navigation and safety aids or other improvements in aid of international navigation; and

(*b*) For the prevention, reduction and control of pollution from ships.

Article 44. Duties of States bordering straits

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

SECTION 3. INNOCENT PASSAGE

Article 45. Innocent passage

1. The régime of innocent passage, in accordance with section 3 of Part II of the present Convention, shall apply in straits used for international navigation:

(*a*) Excluded under paragraph 1 of article 38 from the application of the régime of transit passage; or

(*b*) Between one area of the high seas or an exclusive economic zone and the territorial sea of a foreign State.

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

Part IV. Archipelagic States

Article 46. Use of terms

For the purposes of the present Convention:

(*a*) "Archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;

(*b*) "Archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 47. Archipelagic baselines

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

2. The length of such baselines shall not exceed 100 nautical miles, except that up to three per cent of the

total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

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

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

6. The archipelagic State shall clearly indicate such baselines on charts of a scale or scales adequate for determining them. The archipelagic State shall give due publicity to such charts and shall deposit a copy of each such chart with the Secretary-General of the United Nations.

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

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

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

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

Article 49. Juridical status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil

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

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

3. This sovereignty is exercised subject to this Part.

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

Article 50. Delimitation of internal waters

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

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

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

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

Article 52. Right of innocent passage

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

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

Article 53. Right of archipelagic sea lanes passage

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the safe, continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.

2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

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

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

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

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

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

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

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

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

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

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

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

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

Part V. Exclusive economic zone

Article 55. Specific legal régime of the exclusive economic zone

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

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

1. In the exclusive economic zone, the coastal State has:

(*a*) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed 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;

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

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the preservation of the marine environment;

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

2. In exercising its rights and performing its duties under the present Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of the present Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI of the present Convention.

Article 57. Breadth of the exclusive economic zone

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

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

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of the present Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of the present Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under the present Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations established by the coastal State in accordance with the provisions of the present Convention and other rules of international law in so far as they are not incompatible with this Part.

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

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

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

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

(*a*) Artificial islands;

(*b*) Installations and structures for the purposes provided for in article 56 and other economic purposes;

(*c*) Installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and per-

manent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused must be entirely removed.

4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the appropriate international organizations.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones. Due notice shall be given of the extent of safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. Artificial islands, installations and structures have no territorial sea of their own and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 61. Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and relevant subregional, regional and global organizations shall co-operate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing countries, and taking into account fishing patterns, the interdependence of stocks and any generally recommended subregional, regional or global minimum standards.

4. In establishing such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through subregional, regional and global organizations where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62. Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing countries in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the regulations of the coastal State. These regulations shall be consistent with the present Convention and may relate, *inter alia*, to the following:

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

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

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

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

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

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

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

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

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

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

(*k*) Enforcement procedures.

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

Article 63. Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

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

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

Article 64. Highly migratory species

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

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part of the present Convention.

Article 65. Marine mammals

Nothing in the present Convention restricts the right of a coastal State or international organization, as appropriate, to prohibit, regulate and limit the exploitation of marine mammals. State shall co-operate either directly or through appropriate international organizations with a view to the protection and management of marine mammals.

Article 66. Anadromous stocks

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.

2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landwards of the outer limits of its exclusive economic zone and for fishing provided for in subparagraph (*b*) of paragraph 3. The State of origin may, after consultation with other States fishing these stocks, establish total allowable catches for stocks originating in its rivers.

3. (*a*) Fisheries for anadromous stocks shall be conducted only in the waters landwards of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin.

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

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

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

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

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

Article 67. Catadromous species

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

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

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

Article 68. Sedentary species

This Part does not apply to sedentary species as defined in paragraph 4 of article 77 of the present Convention.

Article 69. Right of land-locked States

1. Land-locked States shall have the right to participate in the exploitation of the living resources of the exclusive economic zones of adjoining coastal States on an equitable basis, taking into account the relevant economic and geographical circumstances of all the States concerned. The terms and conditions of such participation shall be determined by the States concerned through bilateral, subregional or regional agreements. Developed land-locked *States shall*, however, be entitled to exercise their rights only within the exclusive economic zones of adjoining developed coastal States.

2. This article is subject to the provisions of articles 61 and 62.

3. Paragraph 1 is without prejudice to arrangements agreed upon in regions where the coastal States may grant to land-locked States of the same region equal or prefer-

entitl rights for the exploitation of the living resources in the exclusive economic zones.

Article 70. Right of certain developing coastal States in a subregion or region

1. Developing coastal States which are situated in a subregion or region whose geographical peculiarities make such States particularly dependent for the satisfaction of the nutritional needs of their populations upon the exploitation of the living resources in the exclusive economic zones of their neighbouring States and developing coastal States which can claim no exclusive economic zones of their own shall have the right to participate, on an equitable basis, in the exploitation of living resources in the exclusive economic zones of other States in a subregion or region.

2. The terms and conditions of such participation shall be determined by the States concerned through bilateral, subregional or regional agreements, taking into account the relevant economic and geographical circumstances of all the States concerned, including the need to avoid effects detrimental to the fishing communities or to the fishing industries of the States in whose zones the right of participation is exercised.

3. This article is subject to the provisions of articles 61 and 62.

Article 71. Non-applicability of articles 69 and 70

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

Article 72. Restrictions on transfer of rights

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

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

Article 73. Enforcement of laws and regulations of the coastal State

1 The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations enacted by it in conformity with the present Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries regulations in the exclusive economic zone may not include imprisonment, in the absence of agreement to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify, through appropriate channels, the flag State of the action taken and of any penalties subsequently imposed.

Article 74. Delimitation of the exclusive economic zone between adjacent or opposite States

1. The delimitation of the exc'usive economic zone between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances.

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

3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.

4. For the purposes of the present Convention, "median or equidistance line" means the 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.

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

Article 75. Charts and lists of geographical co-ordinates

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

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

Part VI. Continental shelf

Article 76. Definition of the continental shelf

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.

Article 77. Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part of the present Convention consist of the mineral and other

r n-living resources of the sea-bed and subsoil together w th living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed o the subsoil.

Article 78. Superjacent waters and air space

The rights of the coastal State over the continental shelf d not affect the legal status of the superjacent waters or e the air space above those waters.

Article 79. Submarine cables and pipelines on the continental shelf

1. All States are entitled to lay submarine cables and p pelines on the continental shelf, in accordance with the p ovisions of this article.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation o its natural resources and the prevention, reduction and c ntrol of pollution from pipelines, the coastal State may n t impede the laying or maintenance of such cables or p pelines.

3. The delineation of the course for the laying of such p pelines on the continental shelf is subject to the consent o the coastal State.

4. Nothing in this Part of the present Convention affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connexion with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

5. When laying submarine cables or pipelines, States shall pay due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

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

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

Article 81. Drilling on the continental shelf

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

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

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

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

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

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

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

1. The delimitation of the continental shelf between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances.

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

3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.

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

Article 84. Charts and lists of geographical co-ordinates

1. Subject to this Part of the present Convention, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 82 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

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

Article 85. Tunnelling

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

Part VII. High seas

Section 1. General

Article 86. Application of the provisions of this Part

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

Article 87. Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by the present Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

(a) Freedom of navigation;

(*b*) Freedom of overflight;

(*c*) Freedom to lay submarine cables and pipelines, subject to Part VI of the present Convention;

(*d*) Freedom to construct artificial islands and other installations permitted under international law, subject to Part VI of the present Convention;

(*e*) Freedom of fishing, subject to the conditions laid down in section 2;

(*f*) Freedom of scientific research, subject to Parts VI and XIII of the present Convention.

2. These freedoms shall be exercised by all States, with due consideration for the interests of other States in their exercise of the freedom of the high seas, and also with due consideration for the rights under the present Convention with respect to activities in the Area.

Article 88. Reservation of the high seas for peaceful purposes

The high seas shall be reserved for peaceful purposes.

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

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

Article 90. Right of navigation

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

Article 91. Nationality of ships

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

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

Article 92. Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in the present Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

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

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

Article 94. Duties of the flag State

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

2. In particular every State shall:

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

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

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

(*a*) The construction, equipment and seaworthiness of ships;

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

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

4. Such measures shall include those necessary to ensure:

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

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

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

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

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to shipping or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 95. Immunity of warships on the high seas

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

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

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas,

have complete immunity from the jurisdiction of any State other than the flag State.

Article 97. Penal jurisdiction in matters of collision

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

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

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

Article 98. Duty to render assistance

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

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

Article 99. Prohibition of the transport of slaves

Every State shall 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 100. Duty to co-operate in the repression of piracy

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

Article 101. Definition of piracy

Piracy consists of any of the following acts:

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

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

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

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

(*c*) Any act of inciting or of intentionally facilitating an act described in subparagraphs (*a*) and (*b*).

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

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

Article 103. Definition of a pirate ship or aircraft

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

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

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

Article 105. Seizure of a pirate ship or aircraft

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

Article 106. Liability for seizure without adequate grounds

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

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

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

Article 108. Illicit traffic in narcotic drugs or psychotropic substances

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

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

Article 109. Unauthorized broadcasting from the high seas

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

2. Any person engaged in unauthorized broadcasting from the high seas may be prosecuted before the court of the flag State of the vessel, the place of registry of the installation, the State of which the person is a national, any place where the transmissions can be received or any State where authorized radio communications is suffering interference.

3. On the high seas, a State having jurisdiction in accordance with paragraph 2 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

4. For the purposes of the present Convention, "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

Article 110. Right of visit

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

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

(*b*) That the ship is engaged in the slave trade;

(*c*) That the ship is engaged in unauthorized broadcasting and the warship has jurisdiction under article 109;

(*d*) That the ship is without nationality; or

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

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

4 These provisions shall apply *mutatis mutandis* to military aircraft.

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

Article 111. Right of hot pursuit

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

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

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

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

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

6. Where hot pursuit is effected by an aircraft:

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

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

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

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

Article 112. Right to lay submarine cables and pipelines

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

2. Paragraph 5 of article 79 applies to such cables and pipelines.

Article 113. Breaking or injury of a submarine cable or pipeline

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 apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

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

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

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

Every State shall 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.

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

Article 116. Right to fish on the high seas

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

(*a*) Their treaty obligations;

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

(*c*) The provisions of this section.

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

All States have the duty to 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 118. Co-operation of States in the management and conservation of living resources

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

Article 119. Conservation of the living resources of the high seas

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

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

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

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

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

Article 120. Marine mammals

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

Part VIII. Régime of islands

Article 121. Régime of islands

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

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

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

Part IX. Enclosed or semi-enclosed seas

Article 122. Definition

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

Article 123. Co-operation of States bordering enclosed or semi-enclosed seas

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

(*a*) To co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(*b*) To co-ordinate the implementation of their rights and duties with respect to the preservation of the marine environment;

(*c*) To co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

(*d*) To invite, as appropriate, other interested States or international organizations to co-operate with them in furtherance of the provisions of this article.

Part X. Right of access of land-locked States to and from the sea and freedom of transit

Article 124. Use of terms

1. For the purposes of the present Convention:

(*a*) "Land-locked State" means a State which has no seacoast;

(*b*) "*Transit State*" *means a State, with or without* a sea-coast, situated between a land-locked State and the sea through whose territory "traffic in transit" passes;

(*c*) "Traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked State;

(*d*) "Means of transport" means

(i) Railway rolling stock, sea, lake and river craft and road vehicles;

(ii) Where local conditions so require, porters and pack animals.

2. Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1.

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

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in the present Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and the transit States concerned through bilateral, subregional or regional agreements.

3. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all necessary measures to ensure that the rights and facilities, provided for in this Part of the present Convention for land-locked States shall in no way infringe their legitimate interests.

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

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

Article 127. Customs duties, taxes and other charges

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connexion with such traffic.

2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

Article 128. Free zones and other customs facilities

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

Article 129. Co-operation in the construction and improvement of means of transport

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

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

1. Transit States shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit.

2. Should such delays or difficulties occur, the competent authorities of the transit States and of land-locked States shall co-operate towards their expeditious elimination.

Article 131. Equal treatment in maritime ports

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

Article 132. Grant of greater transit facilities

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

Part XI. The Area

SECTION 1. GENERAL

Article 133. Use of terms

For the purpose of this Part of the present Convention:

(*a*) "Activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area.

(*b*) "Resources" means mineral resources *in situ*. When recovered from the Area, such resources shall, for the purposes of this Part of the present Convention, be regarded as minerals.

(*c*) Minerals shall include the following categories:

(i) Liquid or gaseous substances such as petroleum, gas, condensate, helium, nitrogen, carbon dioxide, water, steam, hot water, and also sulphur and salts extracted in liquid form in solution;

(ii) Useful minerals occurring on the surface of the sea-bed or at depths of less than three metres beneath the surface and also concretions of phosphorites and other minerals;

(iii) Solid minerals in the ocean floor at depths of more than three metres from the surface;

(iv) Ore-bearing silt and brine.

Article 134. Scope of this Part

1. This Part of the present Convention shall apply to the "Area".

2. States Parties shall notify the Authority established pursuant to article 154, of the limits referred to in subparagraph (1) of paragraph 1 of article 1, determined by co-ordinates of latitude and longitude and shall indicate the same on appropriate large-scale charts officially recognized by that State.

3. The Authority shall register and publish such notification in accordance with rules adopted by it for the purpose.

4. Nothing in this article shall affect the validity of any agreement between States with respect to the establishment of limits between opposite or adjacent States.

5. Activities in the Area shall be governed by the provisions of this Part of the present Convention.

Article 135 Legal status of the superjacent waters and air space

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

SECTION 2. PRINCIPLES GOVERNING THE AREA

Article 136 Common heritage of mankind

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

Article 137. Legal status of the Area and its resources

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation shall be recognized.

2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals derived from the Area, however, may only be alienated in accordance with this Part of the present Convention and the rules and regulations adopted thereunder.

3. No State or person, natural or juridical, shall claim, acquire or exercise rights with respect to the minerals of the Area except in accordance with the provisions of this Part of the present Convention. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

Article 138. General conduct of States in relation to the Area

The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part of the present Convention, and other pertinent rules of international law, including the Charter of the United Nations, in the interests of maintaining peace and security and promoting international co-operation and mutual understanding.

Article 139. Responsibility to ensure compliance and liability for damage

1. States Parties shall have the responsibility to ensure that activities in the Area, whether undertaken by States Parties, or state enterprises, or persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with the provisions of this Part of the present Convention. The same responsibility applies to international organizations for activities in the Area undertaken by such organizations. Without prejudice to applicable principles of international law and paragraph 16 of annex II to this Convention, damage caused by the failure of a State Party to carry out its responsibilities under this Part of the present Convention shall entail liability. A State Party shall not however be liable for damage caused by any failure to comply by a person whom it has sponsored under subparagraph (ii) of paragraph 2 of article 151 if the State Party has taken all necessary and appropriate measures to secure effective compliance under paragraph 4 of article 151.

2. A group of States Parties or a group of international organizations, acting together, shall be jointly and severally responsible under these articles.

3. States Parties shall take appropriate measures to ensure that the responsibility provided for in paragraph 1 of this article shall apply *mutatis mutandis* to international organizations.

Article 140. Benefit of mankind

Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries as specifically provided for in this Part of the present Convention.

Article 141. Use of the Area exclusively for peaceful purposes

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

Article 142. Rights and legitimate interests of coastal States

1. Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such resources lie.

2. Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.

3. Neither the provisions of this Part of the present Convention nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of

Part XII of the present Convention as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastlines or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

SECTION 3. CONDUCT OF ACTIVITIES IN THE AREA

Article 143. Marine scientific research

1. Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, in accordance with Part XIII of the present Convention.

2. States Parties shall promote international co-operation in marine scientific research in the Area exclusively for peaceful purposes by:

(*a*) Participation in international programmes and encouraging co-operation in marine scientific research by personnel of different countries and of the Authority;

(*b*) Ensuring that programmes are developed through the Authority or other international bodies as appropriate for the benefit of developing countries and technologically less developed countries with a view to

(i) Strengthening their research capabilities;

(ii) Training their personnel and the personnel of the Authority in the techniques and applications of research;

(iii) Fostering the employment of their qualified personnel in activities of research in the Area;

(*c*) Effective dissemination of the results of research and analysis when available, through the Authority or other international channels when appropriate.

Article 144. Transfer of technology

The Authority and States Parties shall co-operate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States benefit therefrom. In particular they shall initiate and promote:

(*a*) Programmes for the transfer of technology to the Enterprise and to developing countries with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing countries to the relevant technology, under fair and reasonable terms and conditions;

(*b*) Measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing countries, particularly through the opening of opportunities to personnel from the Enterprise and from developing countries for training in marine science and technology and their full participation in activities in the Area.

Article 145. Protection of the marine environment

With respect to activities in the Area, necessary measures shall be taken in order to ensure effective protection for the marine environment from harmful effects which may arise from such activities in accordance with Part XII of the present Convention. To that end the Authority shall adopt appropriate rules, regulations 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, particular attention being paid to the need for protection from the consequences of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;

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

Article 146. Protection of human life

With respect to activities in the Area, necessary measures shall be taken in order to ensure effective protection of human life. To that end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as reflected in specific treaties which may be applicable.

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

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.

2. Stationary and mobile installations relating to the conduct of activities in the Area shall be subject to the following conditions:

(i) Such installations shall be erected, emplaced and removed solely in accordance with the provisions of this Part of the present Convention and subject to rules and regulations adopted by the Authority. The erection, emplacement and removal of such installations shall be the subject of timely notification through Notices to Mariners or other generally recognized means of notification;

(ii) Such installations shall not be located in the Area where they may obstruct passage through sea lanes of vital importance for international shipping or in areas of intense fishing activity;

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

(iv) Such installations shall be used exclusively for peaceful purposes;

(v) Such installations shall not possess the status of islands. They shall have no territorial sea, nor shall their presence affect the determination of territorial or jurisdictional limits of any kind.

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

Article 148. Participation of developing countries in activities in the Area

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

Article 149 Archaeological and historical objects

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

SECTION 4. DEVELOPMENT OF RESOURCES OF THE AREA

Article 150. Policies relating to activities in the Area

1 Activities in the Area shall be carried out in accordance with the provisions of this Part of the present Convention in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international co-operation for the over-all development of all countries, especially the developing countries and specifically so as to ensure:

(a) orderly and safe development and rational management of the resources of the Area, as well as the efficient conduct of activities in the Area in accordance with sound principles of conservation and the avoidance of waste;

(b) the expanding of opportunities for participation in such activities consistent with articles 144 and 148;

(c) transfer of revenues and technology to the Authority;

(d) just, stable and remunerative prices for raw materials originating in the Area which are also produced outside the Area, and increasing availability of those minerals so as to promote equilibrium between supply and demand;

(e) security of supplies to consumers of raw materials originating in the Area which are also produced outside the Area;

(f) the enhancing of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and preventing monopolization of the exploration and exploitation of the resources of the Area; and

(g) the protection of developing countries from any adverse effects on their economies or on their earnings resulting from a reduction in the price of an affected mineral, or in the volume of that mineral exported, to the extent that such reductions are caused by activities in the Area, through the following:

A. The Authority, acting through existing forums or such new arrangements or agreements as may be appropriate and in which all interested parties participate, shall take measures necessary to achieve the growth, efficiency and stability of markets for those classes of commodities produced from the Area, at prices remunerative to producers and fair to consumers. All parties shall co-operate to this end. The Authority shall have the right to participate in any commodity conference dealing with the categories of minerals produced in the Area. The Authority shall have the right to become a party to any such arrangement or agreement resulting from such conferences as are referred to above. The participation by the Authority in any organs established under the arrangements or agreements referred to above shall be in respect of the production in the Area and in accordance with the rules of procedure established for such organs.

B. (i) The Authority shall limit in an interim period specified below, total production of minerals from nodules in the Area so as not to exceed for the first seven years of that period the projected cumulative growth segment of the world nickel demand. After the first seven years of the interim period total production of minerals from nodules in the Area shall on a yearly basis not exceed 60 per cent of the cumulative growth segment of the world nickel demand, as projected from the beginning of the interim period, provided however that this shall not affect such production under contracts already awarded, as is permitted under the production limit referred to above for the first seven years of the interim period. The cumulative growth segment for the purpose of this Part of the present Convention shall be computed in accordance with subparagraph (iii) below. The interim period referred to above shall begin on 1 January 1980 and shall terminate on the day when such new arrangements or agreements as referred to in subparagraph (A) above, in which all affected parties participate, enter into force. The Authority shall resume the power to limit the production of minerals from nodules in the Area if the said arrangements or agreements should lapse or become ineffective for any reason whatsoever.

(ii) The Authority shall carry out the decisions taken by such organs as referred to in subparagraph (A) above and apply the interim production limit provided for in subparagraph (i) above, in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the Enterprise.

(iii) The rate of increase in world nickel demand projected for the interim period referred to in subparagraph (i) above shall, for the first five years of the interim period, be the annual constant percentage rate of increase in world demand during the 20-year period to 1 January 1980. The calculation of such rate of increase in world nickel demand shall be made by application of the least squares method using definitive data from the latest 20-year period prior to that date, and for which such data are available. Thereafter this rate of increase shall be adjusted every five years on the basis of a recalculation applying the aforesaid method and using definitive data from the latest 10-year period prior to the commencement of any such five-year period, and for which such data are available.

(iv) The cumulative growth segment of the world nickel demand referred to in subparagraph (i) above shall be computed by applying the rate of increase determined pursuant to subparagraph (iii) to a base amount calculated by projecting world nickel demand for the year immediately preceding 1 January 1980 by applying the aforesaid rate of increase to the

average of world nickel demand during the latest five-year period prior to the aforesaid date, and for which definitive data are available. Thereafter the base amount shall be adjusted every five years on the basis of the most recent definitive data available for the five-year period immediately preceding any such five-year period applying the method specified in this subparagraph.

C. The Authority may regulate production of minerals from the Area, other than minerals from nodules, under such conditions and applying such methods as may be appropriate.

D. Following recommendations from the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation for developing countries which suffer adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or the volume of that mineral exported, to the extent that such reduction is caused by activities in the Area.

2. (*a*) The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.

(*b*) Special consideration for developing countries, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this Part of the present Convention, shall not be deemed to be discrimination.

(*c*) All rights granted shall be fully safeguarded in accordance with the provisions of the present Convention.

Article 151. Functions of the Authority

1. Activities in the Area shall be carried out by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this Part of the present Convention and its annexes, and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of article 160.

2. Activities in the Area shall be carried out on the Authority's behalf as prescribed in subparagraph 3 below:

(i) by the Enterprise, and

(ii) in association with the Authority by States Parties or State Entities, or persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which, through contractual or other arrangements, undertake, in accordance with this Part of the present Convention, to contribute the technological capability, financial and other resources necessary to enable the Authority to fulfil its functions pursuant to paragraph 1 of this article.

3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with annex II to the present Convention and approved by the Council after review by the Technical Commission. In the case of activities in the Area carried out on behalf of the Authority by the entities specified in subparagraph (ii) of paragraph 2 of this article, such a plan of work shall in accordance with subparagraph (*b*) of paragraph 3 of annex II be in the form of a contract. Such contracts may provide for joint arrangements in accordance with annex II, subparagraphs (*i*) and (*j*) (iii) of paragraph 5.

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part of the present Convention, including its annexes, and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160 and the plans of work approved in accordance with paragraph 3 of this article. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance.

5. The Authority shall have the right to take at any time any measures provided for under this Part of the present Convention to ensure compliance with its terms, and the performance of the control and regulatory functions assigned to it thereunder or under any contract. The Authority shall have the right to inspect all facilities in the Area used in connexion with any activities in the Area.

6. A contract under paragraph 3 of this article shall provide for security of tenure. Accordingly, it shall not be cancelled, revised, suspended or terminated except in accordance with paragraphs 12 and 13 of annex II.

7. The Authority shall carry out marine scientific research concerning the Area and its resources, and may enter into contracts for that purpose. The Authority shall promote and encourage the conduct of marine scientific research in the Area, harmonize and co-ordinate such research, and arrange for the effective dissemination of the results thereof.

8. The Authority shall take measures in accordance with this Convention:

(*a*) to acquire technology and scientific knowledge relating to activities in the Area; and

(*b*) to promote and encourage the transfer of such technology and scientific knowledge so that all States benefit therefrom.

9. The Authority shall establish a system for the equitable sharing of benefits derived from the Area, taking into special consideration the interests and needs of the developing countries and peoples, particularly the land-locked and geographically disadvantaged among them, and countries which have not attained full independence or other self-governing status.

Article 152. Periodic review

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

Article 153. The Review Conference

1. Twenty years from the entry into force of the present Convention, the Assembly shall convene a Conference for the review of those provisions of this Part of the present Convention and the annexes thereto which governs

the system of exploration and exploitation of the resources of the Area. The Conference shall consider in detail, in the light of the experience acquired during that period, whether the provisions of this Part governing the system of exploration and exploitation of the resources of the Area have achieved their aims in all respects, in particular whether they have contributed to a just distribution of *the resources of the Area, whether they have not resulted* in an excessive concentration of these resources in the hands of a small number of States, whether the economic principles set forth in article 150 have been complied with and whether the régime has benefited the developing countries.

2. In particular, the Conference shall consider whether, *during the 20-year period, a balance has been maintained* between the areas reserved for the Authority and developing countries, and the contract areas exploited by States, State entities, natural or juridical persons in association with the Authority.

3. If the Conference decides to amend the provisions of this Part of the present Convention governing the *system of exploration and exploitation of the resources of* the Area, it shall in any event ensure that the principle of the common heritage of mankind, the international régime designed to ensure its equitable exploitation for the benefit of all countries, especially the developing countries, and an Authority to conduct, organize and control activities in the Area are maintained. It shall also ensure the maintenance of the principles laid down in this Part of the present Convention with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the general conduct of States in relation to the Area, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, economic aspects of activities in the Area, scientific research, transfer of technology, protection of the marine environment, and of human life, rights of coastal States, the legal status of the superjacent waters and air space and accommodation as between the various forms of activities in the Area and in the marine environment.

4. With respect to the amendment referred to in paragraph 3 above, the Conference shall determine the system of voting, and procedures for entry into force provided that *the majorities required under its voting system shall* be the same as the majorities required for decisions, by voting, of the Third United Nations Conference on the Law of the Sea under rule 39 of the rules of procedure for that Conference. The Conference shall make every effort to reach agreement on substantive matters by way of consensus and there shall be no voting on such matters until all efforts at consensus have been exhausted.

5. Amendments adopted by the Conference under the provisions of this article shall not affect rights acquired under existing contracts. In adopting rules, regulations and procedures on duration of activities under subparagraph (*b*) (2) of paragraph 11 of annex II to the present Convention, the Authority shall however take into account the possibility of the Convention being amended, provided that in all cases a reasonable time for return on capital shall be given.

6. If the Conference fails to amend or to reach agreement within five years on the provisions of this Part of the present Convention governing the system of exploration and exploitation of the resources of the Area, activities in the Area shall be carried out by the Authority through the Enterprise and through joint ventures negotiated with the State and entities referred to in subparagraph (ii) of paragraph 2 of article 151, on terms and conditions to be agreed upon between the parties thereto, provided however that the Authority shall exercise effective control over such activities.

SECTION 5. THE AUTHORITY

SUBSECTION 1. GENERAL

Article 154. Establishment of the Authority

1. There is hereby established the International Sea-Bed Authority which shall function in accordance with the provisions of this Part of the present Convention.

2. *All States Parties are ipso facto* members of the Authority.

3. The seat of the Authority shall be at Jamaica.*

4. The Authority may establish such regional centres or offices as it deems necessary for the performance of its functions.

Article 155. Nature and fundamental principles of the Authority

1. The Authority is the organization through which States Parties shall organize and control activities in the Area, particularly with a view to administering the resources of the Area, in accordance with this Part of the present Convention.

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

3. All members, in order to ensure to all of them the *rights and benefits resulting from membership, shall fulfil* in good faith the obligations assumed by them in accordance with this Part of the present Convention.

Article 156. Organs of the Authority

1. There are hereby established as the principal organs of the Authority, an Assembly, a Council and a Secretariat.

2. There is hereby established the Enterprise, the organ through which the Authority shall directly carry out activities in the Area.

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

4. *The principal organs shall each be responsible for* exercising those powers and functions which have been conferred on them. In exercising such powers and functions, each organ shall act in a manner compatible with the distribution of powers and functions among the various organs of the Authority, as provided for in this Part of the present Convention.

SUBSECTION 2. THE ASSEMBLY

Article 157. Composition, procedure and voting

1. The Assembly shall consist of all the members of the Authority.

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

* Malta and Fiji have also proposed that the seat of the Authority be located in their countries.

3. Sessions shall take place at the seat of the Authority unless otherwise determined by the Assembly. At such sessions, each member shall have one representative who may be accompanied by alternates and advisers.

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

5. Each member of the Assembly shall have one vote.

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

7. Decisions on questions of procedure, including the decision to convene a special session of the Assembly, shall be made by a majority of the representatives present and voting.

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

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

10. Upon a request in writing to the President sponsored by not less than one quarter of the members of the Authority for an advisory opinion on the conformity with the present Convention of a proposed action before the Assembly on any matter, a vote on that action shall be deferred pending reference to the Sea-Bed Disputes Chamber for such an opinion. Voting on that action shall be stayed pending delivery of an advisory opinion by the Chamber. If the advisory opinion is not received by the final week of the session in which it is requested, the Assembly shall decide when it will meet to vote upon the deferred matter.

Article 158. Powers and functions

1. The Assembly is the supreme organ of the Authority, and as such shall have the power to establish the general policies in conformity with the provisions of this Part of the present Convention, to be pursued by the Authority on any questions or matters within the competence of the Authority. The Assembly may discuss any such question or matter, and may decide which organ shall deal with any such question or matter not specifically entrusted by the provisions of the present Convention to a particular organ of the Authority.

2. In addition, the powers and functions of the Assembly shall be:

(i) Election of the members of the Council in accordance with article 159;

(ii) Election of the Secretary-General from among the candidates proposed by the Council;

(iii) Selection of the 11 members of the Sea-Bed Disputes Chamber from among the members of the Law of the Sea Tribunal;

(iv) Appointment, upon the recommendation of the Council, of the members of the Governing Board of the Enterprise as well as the Director-General of the Enterprise;

(v) Establishment, as appropriate, of such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Part of the Convention. In the composition of such subsidiary organs due account shall be taken of the principle of equitable geographical distribution and of special interests and the need for members qualified and competent in the relevant technical questions dealt with by such organs;

(vi) Assessment of the contributions of members to the administrative budget of the Authority in accordance with an agreed general assessment scale until the Authority shall have sufficient income for meeting its administrative expenses;

(vii) Adoption of the financial regulations of the Authority, including rules on borrowing, upon the recommendation of the Council;

(viii) Consideration and approval of the budget of the Authority on its submission by the Council;

(ix) Adoption of its rules of procedure;

(x) Examination of periodic reports from the Council and from the Enterprise and of special reports requested from the Council and from any other organs of the Authority;

(xi) Studies and recommendations for the purpose of promoting international co-operation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification;

(xii) Adoption of rules, regulations and procedures for the equitable sharing of financial and other economic benefits derived from activities in the Area, taking into particular consideration the interests and the needs of the developing countries;

(xiii) Consideration of problems of a general nature in connexion with activities in the Area in particular for developing countries, as well as of such problems for States in connexion with activities in the Area as are due to their geographical location, including land-locked and geographically disadvantaged countries;

(xiv) Establishment, upon the recommendation of the Council on the basis of advice from the Economic Planning Commission of a system of compensation as provided in subparagraph (c) (D) of paragraph 1 of article 150;

(xv) Suspension of members pursuant to Article 186;

(xvi) Final adoption of the rules, regulations and procedures, and amendments thereto, provisionally adopted by the Council in accordance with the provisions of paragraph 11 of annex II to the present Convention and pursuant to subparagraph (xiv) of paragraph 2 of article 160.

SUBSECTION 3. THE COUNCIL

Article 159. Composition, procedure and voting

1. The Council shall consist of 36 members of the Authority elected by the Assembly, the election to take place in the following order:

(*a*) four members from among countries which have made the greatest contributions to the exploration for, and the exploitation of, the resources of the Area, as demonstrated by substantial investments or advanced technology in relation to resources of the Area, including at least one State from the Eastern (Socialist) European region.

(*b*) four members from among countries which are major importers of the categories of minerals to be derived from the Area, including at least one State from the Eastern (Socialist) European region.

(*c*) four members from among countries which on the basis of production in areas under their jurisdiction are major exporters of the categories of minerals to be derived from the Area, including at least two developing countries.

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

(*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 (Socialist), Latin America and Western Europe and others.

2. In electing the members of the Council in accordance with paragraph 1 above, the Assembly shall ensure that land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly.

3. Elections shall take place at regular sessions of the Assembly, and each member of the Council shall be elected for a term of four years. In the first election of members of the Council, however, one half of the members of each category shall be chosen for a period of two years.

4. Members shall be eligible for re-election; but due regard should be paid to the desirability of rotating seats.

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

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

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

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

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

Article 160. Powers and functions

1. The Council is the executive organ of the Authority, having the power to establish in conformity with the provisions of this Part of the present Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority on any questions or matters within the competence of the Authority.

2. In addition the Council shall:

(i) Supervise and co-ordinate the implementation of the provisions of this Part of the present Convention and invite the attention of the Assembly to cases of non-compliance;

(ii) Propose to the Assembly a list of candidates for the election of the Secretary-General;

(iii) Recommend to the Assembly candidates for appointment as members of the Governing Board of the Enterprise as well as the Director-General of the Enterprise;

(iv) Establish, as appropriate, and with due regard to economy and efficiency, in addition to the Commissions provided for in article 161, paragraph 1, such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Part of the present Convention. In the composition of such subsidiary organs, emphasis shall be placed on the need for members qualified and competent in the relevant technical matters dealt with by such organs provided that due account shall be taken of the principle of equitable geographical distribution and of special interests;

(v) Adopt its rules of procedure;

(vi) Enter into agreements with the United Nations or other intergovernmental organizations on behalf of the Authority, subject to approval by the Assembly;

(vii) Examine the reports of the Enterprise and transmit them to the Assembly with its recommendations;

(viii) Present to the Assembly annual reports and such special reports as the Assembly may require;

(ix) Issue directives to the Enterprise and exercise control over its activities in accordance with paragraph 4 of article 151;

(x) Approve on behalf of the Authority, after review by the Technical Commission, formal written plans of work, for the conduct of activities in the Area, drawn up in accordance with paragraph 3 of article 151. In so doing the Council shall act expeditiously. The plan of work shall be deemed to have been approved, unless a decision to disapprove it is

taken within 60 days of its submission by the Technical Commission;

(xi) Exercise control over activities in the Area in accordance with paragraph 4 of article 151;

(xii) Adopt on the recommendation of the Economic Planning Commission necessary and appropriate measures in accordance with paragraph 1 (*g*) of article 150 to protect against adverse economic effects specified therein;

(xiii) Make recommendations to the Assembly on the basis of advice from the Economic Planning Commission for a system of compensation as provided in subparagraph (*g*) (D) of paragraph 1 of article 150;

(xiv) Adopt and apply provisionally, pending final adoption by the Assembly, rules, regulations and procedures, and any amendments thereto, in accordance with the provisions of paragraph 11 of annex II, taking into account the recommendations of the Rules and Regulations Commission. Such rules, regulations and procedures shall remain in effect on a provisional basis until final adoption by the Assembly or amendment by the Council in the light of any views expressed by the Assembly;

(xv) Review the collection of all payments to be made by or to the Authority in connexion with operations pursuant to this Part of the present Convention and recommend to the Assembly the financial regulations of the Authority, including rules on borrowing;

(xvi) Submit to the Assembly for its approval the budget of the Authority;

(xvii) Make recommendations concerning the policies and measures required to give effect to the principles of this Part of the present Convention;

(xviii) Make recommendations to the Assembly concerning suspension of the privileges and rights of membership for gross and persistent violations of the provisions of this Part of the present Convention upon a finding of the Sea-Bed Disputes Chamber.

Article 161. Organs of the Council

1 There are hereby established as organs of the Council:

(*a*) An Economic Planning Commission, constituted in accordance with article 162 of the present Convention;

(*b*) A Technical Commission and Rules and Regulations Commission, each of which shall be composed of 15 members appointed by the Council with due regard to the need for members qualified and competent in the relevant technical matters which may arise in such organs and to the principle of equitable geographical distribution and special interests.

2. The Council shall invite States Parties to submit nominations for appointment to each of the Commissions referred to in paragraph 1 above.

3. Appointment to each Commission shall take place not less than 60 days before the end of a calendar year and the members of a Commission shall hold office from the commencement of the next calendar year following their appointment until the end of the third calendar year thereafter. The first appointments to a Commission, however, shall take place not less than 30 days after the entry into force of the present Convention, and five of those so appointed shall hold office until the end of the calendar year next following the year of their appointment, while five other members shall hold office until the end of the second calendar year following their appointment.

4. In the event of the death, incapacity or resignation of a member of a Commission prior to the expiry of his term of office, the Council shall appoint a member from the same area of interest who shall hold office for the remainder of the term of the previous member.

5. Members of a Commission shall be eligible for reappointment for one further term of office.

6. Each Commission shall appoint its Chairman and two Vice-Chairmen, who shall hold office for one year.

7. The Council shall approve, on the recommendation of a Commission, such rules and regulations as may be necessary for the efficient conduct of the functions of the Commission.

8. Decisions of the Commissions shall be by a two-thirds majority of members present and voting.

9. Each Commission shall function at the seat of the Authority and shall meet as often as shall be required for the efficient performance of its functions.

Article 162. The Economic Planning Commission

1. The Economic Planning Commission shall be composed of 18 experts appointed by the Council, upon nomination by States Parties. Such experts shall have appropriate qualifications and experience relevant to mining and the management of mineral resource activities, and international trade and finance. In the composition of the Economic Planning Commission, the Council shall take into account the need for equitable geographical distribution. The Council shall also ensure at all times a fair and equitable balance within the Commission between those experts appointed from countries which export and countries which import minerals which are also derived from the Area.

2. The Economic Planning Commission shall submit its recommendations to the Council upon an affirmative vote of two thirds of members present and voting. In those cases where a recommendation is not adopted by consensus, any dissenting opinions and analyses shall be forwarded to the Council together with the recommendation.

3. The Economic Planning Commission, in consultation with the competent organs of the United Nations, its specialized agencies and any other intergovernmental organization with responsibilities relating to minerals which are also derived from the Area, shall review the trends of, and factors affecting, supply, demand and prices of raw materials which may be obtained from the Area, bearing in mind the interests of both importing and exporting countries, and in particular the developing countries among them.

4. The Commission shall make such special studies and reports as may be required by the Council from time to time.

5. Any situation likely to lead to such adverse effects as referred to in subparagraph (*g*) of paragraph 1 of article 150 may be brought to the attention of the Economic Planning Commission by the State Party or States

Parties concerned. The Commission shall forthwith investigate this situation and shall make recommendations, in consultations with affected States Parties and with the competent intergovernmental organizations, to the Council in accordance with paragraph 6 of this article.

6. On the basis of studies, reports and reviews referred to above, the Commission shall advise the Council as to the exercise of its powers and functions pursuant to subparagraph (xii) of paragraph 2 of article 160.

7. The Commission shall propose to the Council for submission to the Assembly a system of compensation for developing countries who suffer adverse effects caused by activities in the Area, as provided in subparagraph (g) (D) of paragraph 1 of article 150. After adoption by the Assembly of such system of compensation the Economic Planning Commission shall make such recommendations to the Council as are necessary for the application of the system in concrete cases.

Article 163. The Technical Commission

1. Members of the Technical Commission shall have appropriate qualifications and experience in economics, the management of mineral resources, ocean and marine engineering and mining and mineral processing technology and practices, operation of related marine installations, equipment and devices, ocean and environmental sciences and maritime safety, accounting and actuarial techniques.

2. Subject to such guidelines and directives as the Council may adopt, the Technical Commission shall:

(i) Make recommendations to the Council with regard to the carrying out of the Authority's functions with respect to scientific marine research and transfer of technology;

(ii) Prepare special studies and reports at the request of the Council;

(iii) Advise the Rules and Regulations Commission on all technical aspects of its work;

(iv) Prepare assessments of the environmental implications of activities in the Area;

(v) Supervise, on a regular basis all operations with respect to activities in the Area, where appropriate in consultation and collaboration with any entity carrying out such activities or State or States concerned;

(vi) Initiate on behalf of the Authority proceedings before the Sea-Bed Disputes Chamber in cases of non-compliance;

(vii) Upon a finding by the Sea-Bed Disputes Chamber in proceedings resulting from subparagraph (vi) above, notify the Council and make recommendations with respect to measures to be taken;

(viii) Inspect and audit all books, records and accounts related to financial obligations to the Authority concerning activities in the Area and collect all payments to the Authority prescribed in annex II to the present Convention;

(ix) Advise the Council, the Economic Planning Commission and the Rules and Regulations Commission on financial aspects of their work;

(x) Direct and supervise a staff of inspectors who shall inspect all activities in the Area to determine whether the provisions of this Part of the present Convention, the rules, regulations and procedures prescribed thereunder, and the terms and conditions of any contract with the Authority are being complied with;

(xi) Issue emergency orders, which may include orders for the suspension of operations, to prevent serious harm to the marine environment arising out of any activity in the Area;

(xii) Disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of irreparable harm to a unique environment;

(xiii) Take into account views on protection of the environment of recognized experts in the field before making recommendations to the Council on the above matters as they relate to the protection of the marine environment;

(xiv) Review formal written plans of work for activities in the Area in accordance with paragraph 3 of article 151.

3. States Parties and other parties concerend shall facilitate the exercise by the members of the Commission and its staff of their functions which shall not be delayed or otherwise impeded.

4. The Members of the Commission and its staff shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State Party or other party concerned when carrying out their functions of supervision and inspection.

Article 164. The Rules and Regulations Commission

1. Members of the Rules and Regulations Commission shall have appropriate qualifications in legal matters, including those relating to ocean mining and other marine matters.

2. The Rules and Regulations Commission shall:

(i) Formulate and submit to the Council the rules, regulations and procedures referred to in subparagraph (xiv) of paragraph 2 of article 160, taking into account all relevant factors, including assessments prepared by the Technical Commission of the environmental implications of activities in the Area;

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

(iii) Prepare special studies and reports at the request of the Council.

SUBSECTION 4. THE SECRETARIAT

Article 165. The Secretary-General

1. The secretariat shall comprise a Secretary-General and such staff as the Authority may require. The Secretary-General shall be appointed by the Assembly upon the recommendation of the Council. He shall be the chief administrative officer of the Authority.

2. The Secretary-General shall act in that capacity in all meetings of the Assembly and of the Council, and of any subsidiary organs established by them, and shall perform such other functions as are entrusted to him by any organ of the Authority.

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

Article 166. The staff of the Authority

1. The staff of the Authority shall consist of such qualified scientific and technical and other personnel as may

be required to fulfil the administrative functions of the Authority. The Authority shall be guided by the principle that its staff shall be kept to a minimum.

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

3. The staff shall be appointed by the Secretary-General. The terms and conditions on which the staff shall be appointed, remunerated and dismissed shall be in accordance with regulations made by the Council, and to general rules approved by the Assembly on the recommendation of the Council.

Article 167. International character of the secretariat

1. In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials of the Authority responsible only to the Authority. They shall have no financial interest whatsoever in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose any industrial secret or data which is proprietary in accordance with paragraph 8 of annex II to the present Convention or other confidential information coming to their knowledge by reason of their official duties for the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

2. Any violation of the responsibilities set forth in paragraph 1 of this article shall be considered a grave disciplinary offence and shall, in addition, entail personal liability for damages. Any State Party or natural or juridical person sponsored by a State Party may bring an alleged violation of this article before the Sea-Bed Disputes Chamber which may order monetary penalties or the assessment of damages. Upon such order, the Secretary-General shall dismiss the staff member concerned. The elaboration of the provisions of this paragraph shall be included in the staff regulations of the Authority.

Article 168. Consultation and co-operation with non-governmental organizations

1. The Secretary-General shall, on matters within the competence of the Authority, make suitable arrangements, with the approval of the Council, for consultation and co-operation with non-governmental organizations recognized by the Economic and Social Council of the United Nations.

2. Any organization with which the Secretary-General has entered into an arrangement under paragraph 1 may designate representatives to attend as observers meetings of the organs of the Authority in accordance with the rules of procedure of any such organ. Procedures shall be established for obtaining the views of such organizations in appropriate cases.

3. Written reports submitted by these non-governmental organizations on subjects in which they have special competence and which are related to the work of the Authority may be distributed by the Secretary-General to States Parties.

SUBSECTION 5. THE ENTERPRISE

Article 169. The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to subparagraph (i) of paragraph 2 of article 15 and in accordance with the general policies laid down by the Assembly. Activities conducted by the Enterprise shall be subject to the directives and control of the Council.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity and functions as provided for in the Statute set forth in annex III to the present Convention, and shall in all respects be governed by the provisions of this Part of the present Convention. Appointment of the members of the Governing Board shall be made in accordance with the provisions of the Statute set forth in annex III.

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

4. The Enterprise shall in accordance with paragraph 3 of article 173 and paragraph 10 of annex III, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144, and other relevant provisions of the present Convention.

SUBSECTION 6. FINANCE

Article 170. General Fund

1. The Assembly shall establish the General Fund of the Authority.

2. All receipts of the Authority arising from activities in the Area, including any excess of revenues of the Enterprise over its expenses and costs shall be paid into the General Fund in such proportion as the Council shall determine.

Article 171. Annual budget of the Authority

The Council shall submit for the approval of the Assembly annual budget estimates for the expenses of the Authority. To facilitate the work of the Council in this regard, the Secretary-General shall initially prepare the budget estimates.

Article 172. Expenses of the Authority

1. Expenses of the Authority comprise:

(*a*) Administrative expenses, which shall include costs of the staff of the Authority, costs of meetings, and expenditure on account of the functioning of the organs of the Authority;

(*b*) Expenses not included in the foregoing, incurred by the Authority in carrying out the functions entrusted to it under this Part of the present Convention.

2. The expenses referred to in paragraph 1 of this article shall be met to an extent to be determined by the Assembly on the recommendation of the Council, out of the General Fund, the balance of such expenses to be met out of contributions by members of the Authority in accordance with a scale of assessment adopted by the Assembly pursuant to the subparagraph (vi) of paragraph 2 of article 158.

Article 173. Special Fund

1. Any excess of revenues of the Authority over its expenses and costs to an extent determined by the Council, all payments received pursuant to article 170 and any voluntary contributions made by members of the Authority shall be credited to a Special Fund.

2. Amounts in the Special Fund shall be apportioned and made available equitably in such manner and in such currencies, and otherwise in accordance with criteria, rules, regulations and procedures adopted by the Assembly pursuant to subparagraph (xii) of paragraph 2 of article 158.

3. In establishing the criteria, rules, regulations and procedures referred to in paragraph 2 of this article the Assembly shall take into account the need to earmark for the Enterprise a part of the funds received by the Authority from contractors in accordance with paragraph 7, of annex II to the present Convention, in order to enable the Enterprise to explore and exploit directly the resources of areas reserved for it in accordance with subparagraph (*f*) (ii) of paragraph 5 of annex II, as well as other parts of the Area.

Article 174. Borrowing powers of the Authority

Subject to such limitations as may be approved by the Assembly in the financial regulations adopted by it pursuant to subparagraph (vii) of paragraph 2 of article 158, the Council may exercise borrowing powers on behalf of the Authority without, however, imposing on members of the Authority any liability in respect of loans entered into pursuant to this paragraph, and accept voluntary contributions made to the Authority.

Article 175. Annual audit

The records, books and accounts of the Authority, including its annual financial statements, shall be subject to an annual audit by a recognized independent auditor.

SUBSECTION 7. LEGAL STATUS, PRIVILEGES AND IMMUNITIES

Article 176. Legal status

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

Article 177. Privileges and immunities

To enable the Authority to fulfil its functions it shall enjoy in the territory of each State Party, the immunities and privileges set forth herein except as provided in annex III to the present Convention with respect to operations of the Enterprise.

Article 178. Immunity from legal process

The Authority, its property and assets, shall enjoy, in the territory of each State Party, immunity from legal process, except when the Authority waives its immunity.

Article 179. Immunity from search and any form of seizure

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

Article 180. Property and assets free from restrictions, regulations control and moratoria

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

Article 181. Immunities of certain persons connected with the Authority

The President and members of the Assembly, the Chairman and members of the Council, members of any organ of the Assembly, or the Council, and members of the Sea-Bed Disputes Chamber and the Secretary-General and staff of the Authority, shall enjoy in the territory of each member State:

(*a*) Immunity from legal process with respect to acts performed by them in the exercise of their functions, except when this immunity is waived;

(*b*) Not being local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by States Parties to the representatives, officials and employees of comparable rank of other States Parties.

Article 182. Immunities of persons appearing in proceedings before the Sea-Bed Disputes Chamber

The provisions of the preceding article shall apply to persons appearing in proceedings before the Sea-Bed Disputes Chamber as parties, agents, counsel, advocates, witnesses or experts; provided, however, that subparagraph (*b*) thereof shall apply only in connexion with their travel to and from, and their stay at, the place where the proceedings are held.

Article 183. Inviolability of archives

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

2. All proprietary data, industrial secrets or similar information and all personnel records shall not be placed in archives open to public inspection.

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

Article 184. Exemption from taxation and customs duties

1. The Authority, its assets, property and income, and its operations and transactions authorized by the present Convention, shall be exempt from all taxation and customs duties. The Authority shall also be exempt from liability for the collection or payment of any taxes or customs duties.

2. Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Authority to the President or members of the Assembly, or in respect of salaries, expense allowances or other emoluments paid by the Authority to the Chairman and members of the Council, members of the Sea-Bed Disputes Chamber, members of any organ of the Assembly or of the Council and the Secretary-General and staff of the Authority.

SUBSECTION 8. SUSPENSION OF RIGHTS OF MEMBERS

Article 185. Suspension of voting rights

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

Article 186. Suspension of privileges and the rights of membership

1. A State Party which has grossly and persistently violated the provisions of this Part of the present Convention or of any agreement or contractual arrangement entered into by it pursuant to this Part of the present Convention, may be suspended from the exercise of the

privileges and the rights of membership by the Assembly upon recommendation by the Council.

2. No action may be taken under this article until the Sea-Bed Disputes Chamber has found that a State Party has grossly and persistently violated the provisions of this Part of the present Convention.

SECTION 6. SETTLEMENT OF DISPUTES

Article 187. Jurisdiction of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal

1. The Sea-Bed Disputes Chamber of the Law of the Sea Tribunal shall have jurisdiction pursuant to articles 187 to 192. The establishment of the Chamber, and the manner in which it shall exercise its jurisdiction shall be governed by the provisions of Part XV of the present Convention.

2. The Chamber shall have jurisdiction with respect to:

(*a*) Disputes between a State Party and the Authority concerning an allegation that a decision or measure taken by the Assembly, the Council or any of its organs is in violation of this Part of the present Convention, rules, regulations or procedures promulgated in accordance therewith, or that the Assembly, the Council or such organ lacks jurisdiction in respect of such decision or measure, or has misused its power.

(*b*) Disputes arising out of any of the grounds stated in subparagraph (*a*) above between a national of a State Party and the Authority relating to a decision or measure directed specifically to that person, or, in the case of a person referred to in subparagraph (ii) of paragraph 2 of article 151 conducting activities in the Area or seeking a contract to do so, a decision or measure which is of direct concern to him though in form not directed to him.

(*c*) Disputes, other than those referred to in subparagraphs (*a*) and (*b*) above, between the Authority and a State Party or between the Authority and a national of a State Party relating to the interpretation or application of any contract concerning activities in the Area.

(*d*) Disputes between the Authority and a State Party concerning alleged violations by the State Party of the provisions of this Part of the present Convention relating to activities in the Area.

(*e*) Disputes arising out of matters referred to in articles 167 and 186.

Article 188. Submission of disputes to arbitration

Where the parties to any dispute referred to in article 187 so agree for any specific dispute, or have so agreed under a contract or a general arbitration clause, such dispute shall be submitted to arbitration in accordance with the provisions of annex VI to the present Convention, or to any other arbitration procedure agreed upon.

Article 189. Disputes involving States Parties or their nationals

1. The Sea-Bed Disputes Chamber of the Law of the Sea Tribunal shall also have jurisdiction with regard to:

(i) Disputes between States Parties concerning the interpretation or application of this Part of the present Convention in respect of activities in the Area;

(ii) Disputes brought by a State Party against a national of another State Party, or between nationals of different States Parties, regarding the interpretation or application of any contract between them, or in respect of their activities in the Area.

2. Where a respondent party so elects within one month of receiving notice of the referral of a dispute to the Chamber under paragraph 1 above, the dispute shall instead be submitted to arbitration in accordance with the provisions of annex VI to the present Convention.

Article 190. Advisory opinions

The Sea-Bed Disputes Chamber of the Law of the Sea Tribunal shall give advisory opinions when requested to do so by the Assembly, the Council or any of its organs, on any legal question arising within the scope of their activities. Such advisory opinions shall be rendered as a matter of urgency.

Article 191. Scope of jurisdiction with regard to decisions adopted by the Assembly or Council

In exercising its jurisdiction pursuant to articles 187 and 189 the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal shall not pronounce itself on the question whether any rules, regulations or procedures adopted by the Assembly or by the Council are in conformity with the provisions of the present Convention. Its jurisdiction with regard to such rules, regulations and procedures shall be confined to their application to individual cases. The Sea-Bed Disputes Chamber shall have no jurisdiction with regard to the exercise by the Assembly or by the Council or any of its organs of their discretionary powers under this Part of the present Convention; in no case shall it substitute its discretion for that of the Authority.

Article 192. Rights of States Parties when their nationals are parties to a dispute

When in a dispute referred to in articles 187 and 189, a national of a State Party is a party, the sponsoring State shall be given notice thereof, and shall have a right to intervene in the proceedings.

Part XII. Protection and preservation of the marine environment

SECTION 1. GENERAL PROVISIONS

Article 193. General obligation

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

Article 194. Sovereign right of States to exploit their natural resources

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

Article 195. Measures to prevent, reduce and control pollution of the marine environment

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

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

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

(*a*) Release of toxic, harmful and noxious substances, especially those which are persistent:

(i) from land-based sources;

(ii) from or through the atmosphere;

(iii) by dumping.

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

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

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

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities in pursuance of the rights and duties of other States exercised in conformity with the present Convention.

Article 196. Duty not to transfer damage or hazards or transform one type of pollution into another

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

Article 197. Use of technologies or introduction of alien or new species

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

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

SECTION 2. GLOBAL AND REGIONAL CO-OPERATION

Article 198. Co-operation on a global or regional basis

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

Article 199. Notification of imminent or actual damage

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

Article 200. Contingency plans against pollution

In the case referred to in article 199, States in the area affected, in accordance with their capabilities, and the competent international organizations, global or regional, shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. Towards that end, States shall jointly promote and develop contingency plans for responding to pollution incidents in the marine environment.

Article 201. Promotion of studies, research programmes and exchange of information and data

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

Article 202. Scientific criteria and regulations

In the light of the information and data acquired pursuant to article 201, States shall co-operate directly or through competent international organizations, global or regional, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention of pollution of the marine environment.

SECTION 3. TECHNICAL ASSISTANCE

Article 203. Scientific and technical assistance to developing States

States shall directly or through competent international or regional organizations, global or regional:

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

(i) Training of their scientific and technical personnel;

(ii) Facilitating their participation in relevant international programmes;

(iii) Supplying necessary equipment and facilities;

(iv) Enhancing the capacity of developing States to manufacture such equipment;

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

(*b*) Provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution in the marine environment;

(*c*) Provide appropriate assistance, in particular to developing States, concerning the preparation of environmental assessments.

Article 204. Preferential treatment for developing States

Developing States shall, for purposes of the prevention of pollution of the marine environment or the minimization of its effects, be granted preference in:

(*a*) The allocation of appropriate funds and technical assistance facilities of international organizations, and

(*b*) The utilization of their specialized services.

SECTION 4. MONITORING AND ENVIRONMENTAL ASSESSMENT

Article 205. Monitoring of the risks or effects of pollution

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, individually or collectively through the competent international organizations, global or regional, to observe, measure, evaluate and analyse, by recognized methods, the risks or effects of pollution of the marine environment.

2. In particular, States shall keep under surveillance the effect of any activities which they permit or in which they engage to determine whether these activities are likely to pollute the marine environment.

Article 206. Publication of reports

States shall publish reports of the results obtained relating to risks or effects of pollution of the marine environment, or provide at appropriate intervals such reports to the competent international or regional organizations, which should make them available to all States.

Article 207. Assessment of potential effects of activities

When States have reasonable grounds for expecting 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 206.

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

Article 208. Pollution from land-based sources

1. States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.

2. States shall also take other measures as may be necessary to prevent, reduce and control pollution of the marine environment from land-based sources.

3. States shall endeavour to harmonize their national policies at the appropriate regional level.

4. States, acting in particular through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 respectively shall include those designed to minimize, to the fullest possible extent, the release of toxic, harmful and noxious substances, especially persistent substances, into the marine environment.

Article 209. Pollution from sea-bed activities

1. Coastal States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connexion with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

2. States shall also take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

4. States shall endeavour to harmonize their national policies at the appropriate regional level.

5. States, acting in particular through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment arising from or in connexion with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

Article 210. Pollution from activities in the Area

1. International rules, standards and recommended practices and procedures shall be established in accordance with the provisions of Part XI of the present Convention to prevent, reduce and control pollution of the marine environment from activities relating to the exploration and exploitation of the Area. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

2. Subject to other relevant provisions of this section, States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment from activities relating to the exploration and exploitation of the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry. The requirements of such laws and regulations shall be no less effective than the international rules, standards and procedures referred to in paragraph 1 of this article.

Article 211. Dumping

1. States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment from dumping.

2. States shall also take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.

4. States, acting in particular through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment by dumping. Such rules, standards and recommended prac-

tices and procedures shall be re-examined from time to time as necessary.

5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consultation with other States which by reason of their geographical situation may be adversely affected thereby.

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

Article 212. Pollution from vessels

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards for the prevention, reduction and control of pollution of the marine environment from vessels. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

2. States shall establish laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or vessels of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

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

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

5. Where international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and where coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where, for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources, and the particular character of its traffic, the adoption of special mandatory methods for the prevention of pollution from vessels is required, coastal States, after appropriate consultations through the competent international organization with any other countries concerned, may for that area, direct a communication to the competent international organization, submitting scientific and technical evidence in support, and information on necessary reception facilities. The organization shall, within twelve months after receiving such a communication, determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal State may, for that area, establish laws and regulations for the prevention, reduction and control of pollution from vessels, implementing such international rules and standards or navigational practices as are made applicable through the competent international organization for special areas. Coastal States shall publish the limits of any such particular, clearly defined area, and laws and regulations applicable therein shall not become applicable in relation to foreign vessels until fifteen months after the submission of the communication to the competent international organization. Coastal States, when submitting the communication for the establishment of a special area within their respective exclusive economic zones, shall at the same time, notify the competent international organization if it is their intention to establish additional laws and regulations for that special area for the prevention, reduction and control of pollution from vessels. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards and shall become applicable in relation to foreign vessels 15 months after the submission of the communication to the competent international organization, and provided the organization agrees within twelve months after submission of the communication.

Article 213. Pollution from or through the atmosphere

1. States shall, within air space under their sovereignty or with regard to vessels or aircraft flying their flag or of their registry, establish national laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, taking into account internationally agreed rules, standards and recommended practices and procedures.

2. States shall also take other measures as may be necessary to prevent, reduce and control such pollution.

3. States, acting in particular through competent international organizations or diplomatic conference shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from or through the atmosphere.

SECTION 6. ENFORCEMENT

Article 214. Enforcement with respect to land-based sources of pollution

States shall enforce their laws and regulations established in accordance with article 208 of the present Convention and shall adopt the necessary legislative, administrative and other measures to implement applicable international rules and standards established through competent international organizations or diplomatic conference for the protection and preservation of the marine environment from land-based sources of marine pollution.

Article 215. Enforcement with respect to pollution from sea-bed activities

States shall enforce their laws and regulations established in accordance with article 209 and shall adopt the necessary legislative, administrative and other measures to implement applicable international rules and standards established through competent international organizations or diplomatic conference for the protection and preservation of the marine environment from pollution arising from sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

Article 216. Enforcement with respect to pollution from activities in the Area

Enforcement of international rules, standards and recommended practices and procedures established to prevent,

reduce and control pollution of the marine environment from activities concerning exploration and exploitation of the Area pursuant to Part XI of the present Convention shall be governed by the provisions of that Part.

Article 217. Enforcement with respect to dumping

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

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

(*b*) by the flag State with regard to vessels and aircraft registered in its territory or flying its flag;

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

2. This article shall not impose on any State an obligation to institute proceedings when such proceedings have already been commenced by another State in accordance with this article.

Article 218. Enforcement by flag States

1 States shall ensure compliance with applicable international rules and standards established through the competent international organization or general diplomatic conference and with their laws and regulations established in accordance with the present Convention for the prevention, reduction and control of pollution of the marine environment, by vessels flying their flag or vessels of their registry and shall adopt the necessary legislative, administrative and other measures for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where the violation occurred.

2. Flag States shall, in particular, establish appropriate measures in order to ensure that vessels flying their flags or vessels of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of international rules and standards referred to in paragraph 1 for the prevention, reduction and control of pollution from vessels, including the requirements in respect of design, construction, equipment and manning of vessels.

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

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 219, 221 and 229 shall provide for immediate investigation and where appropriate cause proceedings to be taken in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

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

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

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

8. Penalties specified under the legislation of flag States for their own vessels shall be adequate in severity to discourage violations wherever the violations occur.

Article 219. Enforcement by port States

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

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

3. A State, whenever a vessel is voluntarily within one of its ports, or off-shore terminals, shall, as far as practicable, comply with requests from any State for investigation of discharge violations of international rules and standards referred to in paragraph 1, believed to have occurred in, caused, or threaten damage to the internal waters, territorial sea or exclusive economic zone of the State making such a request, and likewise, shall, as far as practicable, comply with requests from the flag State for investigation of such violations, irrespective of where the violations occurred.

4. The records of the investigation carried out by a port State pursuant to the provisions of this article shall be transferred to the flag State or to the coastal State at their request. Any proceedings initiated by the port State on the basis of such an investigation, subject to the provisions of section 7 of this Part of the present Convention, may be suspended at the request of a coastal State, when the violation has occurred within the internal waters, territorial sea or exclusive economic zone of that State and the evidence and records of the case and any bond posted with the authorities of the port State shall be transferred to the coastal State. Such transfer shall preclude the continuation of proceedings in the port State.

Article 220. Measures relating to seaworthiness of vessels to avoid pollution

Subject to the provisions of section 7 of this Part of the present Convention, States which have ascertained,

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

Article 221. Enforcement by coastal States

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

2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated national laws and regulations established in accordance with the present Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of section 3 of Part II of the present Convention, may undertake physical inspection of the vessel relating to the violation and may, when warranted by the evidence of the case, cause proceedings, including arrest of the vessel, to be taken in accordance with its laws, subject to the provisions of section 7 of this Part of the present Convention.

3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, violated applicable international rules and standards or national laws and regulations conforming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels, that State may require the vessel to give information regarding the identification of the vessel and its port of registry, its last and next port of call and other relevant information required to establish whether a violation has occurred.

4. Flag States shall take legislative, administrative and other measures so that their vessels comply with requests for information as set forth in paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, violated applicable international rules and standards or national laws and regulations conforming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels and the violation has resulted in a substantial discharge into and, in significant pollution of, the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a flagrant or gross violation of applicable international rules and standards or national laws and regulations conforming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels, resulting in discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to the provisions of Section 7 of this Part of the present Convention provided that the evidence so warrants, cause proceedings to be taken in accordance with its laws.

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

8. The provisions of paragraphs 3, 4, 5, 6 and 7 shall apply correspondingly in respect of national laws and regulations established pursuant to paragraph 5 of article 212.

Article 222. Measures relating to maritime casualties to avoid pollution

1. Nothing in this Part of the present Convention shall affect the right of States to take measures, in accordance with international law, beyond the limits of the territorial sea for the protection of coastlines or related interests, including fishing, from grave and imminent danger from pollution or threat of pollution following upon a maritime casualty or acts related to such a casualty.

2. Measures taken in accordance with this article shall be proportionate to the actual or threatened damage.

Article 223. Enforcement with respect to pollution from or through the atmosphere

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

SECTION 7. SAFEGUARDS

Article 224. Measures to facilitate proceedings

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

Article 225. Exercise of powers of enforcement

The powers of enforcement against foreign vessels under this Part of the present Convention may only be exercised

by officials or by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 226. Duty to avoid adverse consequences in the exercise of the powers of enforcement

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

Article 227. Investigation of foreign vessels

1. States shall not delay a foreign vessel longer than is essential for purposes of investigation provided for in articles 217, 219 and 221. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment release shall be made subject to reasonable procedures such as bonding or other appropriate financial security Without prejudice to applicable international rules and standards relating to the seaworthiness of ships, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard.

2. States shall co-operate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

Article 228. Non-discrimination of foreign vessels

In exercising their right and carrying out their duties under this Part of the present Convention, States shall not discriminate in form or in fact against vessels of any other State.

Article 229. Suspension and restrictions on institution of proceedings

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

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

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

Article 230. Institution of civil proceedings

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

Article 231. Monetary penalties and the observance of recognized rights of the accused

1. Only monetary penalties may be imposed with respect to violations of national laws and regulations, or applicable international rules and standards, for the prevention, reduction and control of pollution from vessels committed by foreign vessels beyond the internal waters.

2. In the conduct of proceedings to impose penalties in respect of such violations committed by a foreign vessel, recognized rights of the accused shall be observed.

Article 232. Notification to flag States and other States concerned

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

Article 233. Liability of States arising from enforcement measures

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

Article 234. Safeguards with respect to straits used for international navigation

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

SECTION 8. ICE-COVERED AREAS

Article 235. Ice-covered areas

Coastal States have the right to establish and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of

the year or to obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection of the marine environment based on the best available scientific evidence.

SECTION 9. RESPONSIBILITY AND LIABILITY

Article 236. Responsibility and liability

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law for damage attributable to them resulting from violations of these obligations.

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

3. States shall co-operate in the development of international law relating to criteria and procedures for the determination of liability, the assessment of damage, the payment of compensation and the settlement of related disputes.

SECTION 10. SOVEREIGN IMMUNITY

Article 237. Sovereign immunity

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

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

Article 238 Obligations under other conventions on the protection and preservation of the marine environment

1. The provisions of this Part of the present Convention shall be without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in the present Convention.

2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be applied in a manner consistent with the general principles and objectives of the present Convention.

Part XIII. Marine scientific research

SECTION 1. GENERAL PROVISIONS

Article 239 Right to conduct marine scientific research

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

Article 240. Promotion of marine scientific research

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

Article 241. General principles for the conduct of marine scientific research

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

(a) Marine scientific research activities shall be conducted exclusively for peaceful purposes;

(b) Such activities shall be conducted with appropriate scientific methods and means compatible with the present Convention;

(c) Such activities shall not unjustifiably interfere with other legitimate uses of the sea compatible with the present Convention and shall be duly respected in the course of such uses;

(d) Such activities shall comply with all relevant regulations established in conformity with the present Convention including those for the protection and preservation of the marine environment.

Article 242. Marine scientific research activities not constituting the legal basis for any claim

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

SECTION 2. GLOBAL AND REGIONAL CO-OPERATION

Article 243. Promotion of international co-operation

States and competent international organizations shall, in accordance with the principle of respect for sovereignty and on the basis of mutual benefit, promote international co-operation in marine scientific research for peaceful purposes.

Article 244. Creation of favourable conditions

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

Article 245. Publication and dissemination of information and knowledge

1. States and competent international organizations shall, in accordance with the present Convention, make available information on proposed major programmes and *their objectives as well as knowledge resulting from marine* scientific research by publication and dissemination through appropriate channels.

2. For this purpose, States shall, both individually and in co-operation with other States and with competent international organizations, actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research in particular to developing states, as well as the strengthening of the autonomous marine research capabilities of developing states through, *inter alia*, programmes to provide adequate education and training of their technical and scientific personnel.

SECTION 3. CONDUCT AND PROMOTION OF MARINE SCIENTIFIC RESEARCH

Article 246. Marine scientific research in the territorial sea

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

Article 247. Marine scientific research in the exclusive economic zone and on the continental shelf

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

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

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

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

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

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

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

(*d*) contains information communicated pursuant to article 249 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project.

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

Article 248. Research project under the auspices of, or undertaken by, international organizations

A coastal State which is a member of a regional or global organization or has a bilateral agreement with such an organization, and in whose exclusive economic zone or on whose continental shelf the organization wants to carry out a marine scientific research project, shall be deemed to have authorized the project to be carried out, upon notification to the duly authorized officials of the coastal State by the organization, if that State approved the project when the decision was made by the organization for the undertaking of the project or is willing to participate in it.

Article 249. Duty to provide information to the coastal State

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

(*a*) the nature and objectives of the research project;

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

(*c*) the precise geographical areas in which the activities are to be conducted;

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

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

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

Article 250. Duty to comply with certain conditions

1. States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:

(*a*) Ensure the rights of the coastal State, if it so desires, to participate or be represented in the research project, especially on board research vessels and other craft or installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the research project;

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

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

(*d*) If requested, assist the coastal State in assessing such data and samples and the results thereof;

(*e*) Ensure, subject to paragraph 2 of this article, that the research results are made internationally available through appropriate national or international channels, as soon as feasible;

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

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

2. This article is without prejudice to the conditions established by the laws and regulations of the coastal

State for the granting of consent where the coastal State, notwithstanding the provisions of article 247, nevertheless grants its consent to the project in question.

Article 251. Communications concerning research project

Communications concerning the research project shall be made through appropriate official channels unless otherwise agreed.

Article 252. General criteria and guidelines

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

Article 253. Implied consent

States or competent international organizations may proceed with a research project upon the expiry of six months from the date upon which the information required pursuant to article 249 was provided to the coastal State unless within four months of the receipt of the communication containing such information the coastal State has informed the State or organization conducting the research that:

(*a*) it has withheld its consent under the provisions of article 247; or

(*b*) the information given by the State or competent international organization in question regarding the nature or objectives of the research project does not conform to the manifestly evident facts; or

(*c*) it requires supplementary information relevant to the conditions and the information provided for under articles 249 and 250; or

(*d*) outstanding obligations exist with respect to a previous research project carried out by that State or organization, with regard to conditions established in article 250.

Article 254. Cessation of research activities

1. The coastal State shall have the right to require the cessation of any research activities in progress within its exclusive economic zone or on its continental shelf if:

(*a*) the research project is not being conducted in accordance with the information initially communicated to the coastal State as provided under article 249 regarding the nature, objectives, method, means or geographical areas of the project; or

(*b*) the State or competent international organization conducting the research project fails to comply with the provisions of article 250 concerning the rights of the coastal State with respect to the project and compliance is not secured within a reasonable period of time.

Article 255. Rights of neighbouring land-locked and geographically disadvantaged States

1 States and competent international organizations conducting marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall take into account the interests and rights of neighbouring land-locked and other geographically disadvantaged States, as provided for in the present Convention and shall notify these States of the proposed research project as well as provide, at their request, relevant information and assistance as specified in article 249 and subparagraphs (*d*) and (*f*) of article 250.

2 Such neighbouring land-locked and other geographically disadvantaged States shall, at their request, be given the opportunity to participate, whenever feasible, in the proposed research project through qualified experts appointed by them.

Article 256. Measures to facilitate marine scientific research and assist research vessels

For the purpose of giving effect to bilateral or regional and other multilateral agreements and in a spirit of international co-operation to promote and facilitate marine scientific research activities conducted in accordance with the present Convention, coastal States shall adopt reasonable and uniformly applied rules, regulations and administrative procedures applicable to States and competent international organizations desiring to carry out research activities in the exclusive economic zone or on the continental shelf and shall, for the same purpose, adopt measures to facilitate access to their harbours and to promote assistance for marine scientific research vessels carrying out such activities, in accordance with the present Convention.

Article 257. Marine scientific research in the Area

States, irrespective of their geographical location, as well as competent international organizations, shall have the right, in conformity with the provisions of Part XI of the present Convention, to conduct marine scientific research in the Area.

Article 258. Marine scientific research in the water column beyond the exclusive economic zone

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

SECTION 4. LEGAL STATUS OF SCIENTIFIC RESEARCH INSTALLATIONS AND EQUIPMENT IN THE MARINE ENVIRONMENT

Article 259. Deployment and use

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

Article 260. Legal status

The installations or equipment referred to in this section shall not have the status of islands or possess their own territorial sea, and their presence shall not affect the delimitation of the territorial sea, exclusive economic zone and continental shelf of the coastal State.

Article 261. Safety zones

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

Article 262. Non-interference with shipping routes

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

Article 263. Identification markings and warning signals

Installations or equipment referred to in this section shall bear identification markings indicating the State of registry or the international organization to which they

belong and shall have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account the principles established by competent international organizations.

SECTION 5. RESPONSIBILITY AND LIABILITY

Article 264. Responsibility and liability

1. States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with the present Convention.

2. States and competent international organizations shall be responsible and liable for the measures they undertake in contravention of the present Convention in respect of marine scientific research activities conducted by other States, their natural or juridical persons or by competent international organizations, and shall provide compensation for damage resulting from such measures.

3. States and competent international organizations shall be responsible and liable pursuant to the principles set forth in article 236 for damage arising out of marine scientific research undertaken by them or on their behalf.

SECTION 6. SETTLEMENT OF DISPUTES

Article 265. Settlement of disputes

Unless otherwise agreed or settled by the parties concerned, disputes relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be settled in accordance with section 2 of Part XV of the present Convention, except that the coastal State shall not be obliged to submit to such settlement any dispute arising out of:

(*a*) the exercise by the coastal State of a right or discretion in accordance with article 247; or

(*b*) a decision by the coastal State to terminate a research project in accordance with article 254.

Article 266. Interim measures

Pending settlement of a dispute in accordance with article 265, the State or competent international organization authorized to conduct a research project shall not allow research activities to commence or continue without the express approval of the coastal State concerned.

Part XIV. Development and transfer of marine technology

SECTION 1. GENERAL PROVISIONS

Article 267. Promotion of development and transfer of marine technology

1. States, directly or through appropriate international organizations, shall co-operate within their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.

2. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the preservation of the marine environment, marine scientific research and other uses of the marine environment compatible with the present Convention, with a view to accelerating the social and economic development of the developing States.

3. States shall endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis.

Article 268. Protection of legitimate interests

States in promoting such co-operation, shall have proper regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology.

Article 269. Basic objectives

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

(*a*) the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data;

(*b*) the development of appropriate marine technology;

(*c*) the development of the necessary technological infrastructure to facilitate the transfer of marine technology;

(*d*) the development of human resources through training and education of nationals of developing States and countries and especially of the least developed among them; and

(*e*) international co-operation at all levels, particularly at the regional, subregional and bilateral levels.

Article 270. Measures to achieve the basic objectives

In order to achieve the above-mentioned objectives, States, directly or through competent international organizations, shall, *inter alia*, endeavour to:

(*a*) establish programmes of technical co-operation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, particularly the developing land-locked and other geographically disadvantaged States, as well as other developing States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of the marine resources, and to develop the infrastructure of such technology;

(*b*) promote favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions;

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

(*d*) promote the exchange of scientists, technologists and other experts;

(*e*) undertake projects, promote joint ventures and other forms of bilateral and multilateral co-operation.

SECTION 2. INTERNATIONAL CO-OPERATION

Article 271. Ways and means of international co-operation

International co-operation for the development and transfer of marines technology shall, where feasible and appropriate, be carried out through existing bilateral, regional or multilateral programmes, and also through expanded and new programmes in order to facilitate marine scientific research and the transfer of marine technology,

particularly in new fields and appropriate international funding for ocean research and development.

Article 272. Guidelines, criteria and standards

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

Article 273. Co-ordination of international programmes

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

Article 274. Co-operation with international organizations and the Authority in the transfer of technology to developing States

States shall co-operate actively with competent international organizations and the Authority, to encourage and facilitate the transfer to developing States, their nationals and the Enterprise of skills and technology with regard to the exploration of the Area, the exploitation of its resources and other related activities.

Article 275. Objectives of the Authority with respect to the transfer of technology

Subject to all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of technology, the Authority shall, with regard to the exploration of the Area and the exploitation of its resources, ensure:

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

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

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

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

SECTION 3. REGIONAL MARINE SCIENTIFIC AND TECHNOLOGICAL CENTRES

Article 276. Establishment of regional centres

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

2. All States of the region shall duly co-operate with the regional centres in order to ensure the more effective achievement of their objectives.

Article 277. Functions of regional centres

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

(*a*) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the sea-bed, mining and desalination technologies;

(*b*) management studies;

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

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

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

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

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

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

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

SECTION 4. CO-OPERATION AMONG INTERNATIONAL ORGANIZATIONS

Article 278. Co-operation among international organizations

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

Part XV. Settlement of disputes

SECTION 1

Article 279. Obligation to settle disputes by peaceful means

The States Parties shall settle any dispute between them relating to the interpretation or application of the present Convention in accordance with paragraph 3 of article 2, and shall seek a solution through the peaceful means indicated in paragraph 1 of article 33, of the Charter of the United Nations.

Article 280. Settlement of disputes by means chosen by the parties

Nothing in this Part shall impair the right of any States Parties to agree at any time to settle a dispute between

them relating to the interpretation or application of the present Convention by any peaceful means of their own choice.

Article 281. Obligation to exchange views

1. If a dispute arises between States Parties relating to the interpretation or application of the present Convention, the parties to the dispute shall proceed expeditiously to exchange views regarding settlement of the dispute through negotiations in good faith or other peaceful means.

2. Similarly, the parties shall proceed to an exchange of views whenever a procedure for the settlement of a dispute has been terminated without a settlement of the dispute, or where a settlement has been reached and the circumstances require further consultation regarding the manner of its implementation.

Article 282. Obligations under general, regional or special agreements

If States Parties which are parties to a dispute relating to the interpretation or application of the present Convention have accepted, through a general, regional or special agreement or some other instrument or instruments, an obligation to settle such dispute by resort to a final and binding procedure, such dispute shall, at the request of any party to the dispute, be referred to such procedure. In this case any other procedure provided in this Part shall not apply, unless the parties to the dispute otherwise agree.

Article 283. Procedure when dispute is not settled by means chosen by the parties

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

2. If the parties have also agreed on a time-limit for such a procedure, the provisions of paragraph 1 shall apply only upon the expiration of that time-limit.

Article 284. Conciliation

1. Any State Party which is a party to a dispute relating to the interpretation or application of the present Convention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with the procedure in annex IV to the present Convention, or with some other procedure.

2. If the other party accepts this invitation and the parties agree upon the procedure, any party to the dispute may submit it to the agreed procedure.

3. If the other party does not accept the invitation or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.

4. When a dispute has been submitted to conciliation, such conciliation proceedings may only be terminated in accordance with the provisions of annex IV or other agreed conciliation procedure, as the case may be.

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

The provisions of this section shall apply to any dispute which pursuant to section 6 of Part XI of the present Convention is to be settled in accordance with procedures provided for in this Part. If an entity other than a State Party is a party to such a dispute, this section shall apply *mutatis mutandis*.

SECTION 2

Article 286. Application of section 1 and proceedings under this section

Subject to the provisions of articles 296 and 297, any dispute relating to the interpretation or application of the present Convention shall, where no settlement has been reached by recourse to the provisions of section 1, be submitted, at the request of any party to the dispute, to the court or tribunal having jurisdiction under the provisions of this section.

Article 287. Choice of procedure

1. A State Party, when signing, ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes relating to the interpretation or application of the present Convention:

(*a*) The Law of the Sea Tribunal constituted in accordance with annex V to the present Convention;

(*b*) The International Court of Justice;

(*c*) An arbitral tribunal constituted in accordance with annex VI to the present Convention;

(*d*) A special arbitral tribunal constituted in accordance with annex VII to the present Convention for one or more of the categories of disputes specified therein.

2. Any declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal to the extent and in the manner provided for in section 6 of Part XI of the present Convention.

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with annex VI to the present Convention.

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

5. If the parties to the dispute have not accepted the same procedure for the settlement of such dispute, it may be submitted only to arbitration in accordance with annex VI to the present Convention, unless the parties otherwise agree.

6. Any declaration made under this article shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

7. When a dispute has been submitted to a court or tribunal having jurisdiction under this article, a new declaration or notice of revocation of a declaration or expiration of a declaration, shall no affect in any way the proceedings so pending, unless the parties otherwise agree.

8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

Article 288. Competence

1. Any court or tribunal provided for in article 287 shall have jurisdiction in any dispute relating to the interpretation or application of the present Convention which is submitted to it in accordance with the provisions of this Part.

2. Any court or tribunal provided for in article 287 shall have jurisdiction in any dispute relating to the interpretation or application of an international agreement related to the purposes of the present Convention, which is submitted to it in accordance with the provisions of such agreement.

3. The Sea-Bed Disputes Chamber of the Law of the Sea Tribunal constituted in accordance with annex V to the present Convention, or an arbitral tribunal constituted in accordance with annex VI shall have jurisdiction in any matter provided for in section 6 of Part XI of the present Convention which is submitted to it in accordance with that Part.

4. Any disagreement as to whether a court or tribunal has jurisdiction, shall be settled by the decision of that court or tribunal.

Article 289. Expert advice and assistance

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party to the dispute or on its own initiative, and in consultation with the parties, select not less than two scientific or technical experts from the appropriate list prepared in accordance with article 2 of annex VII to the present Convention, to sit with such court or tribunal but without the right to vote.

Article 290. Provisional measures

1. If a dispute has been duly submitted to any court or tribunal which considers *prima facie* that it has jurisdiction under this Part, or section 6 of Part XI of the present Convention, such court or tribunal shall have the power to prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending final adjudication.

2. Any provisional measures under this article may only be prescribed, modified or revoked upon the request of a party to the dispute and after giving the parties an opportunity to be heard. Notice of any provisional measures, or of their modification or revocation, shall be given forthwith by the court or tribunal to the parties to the dispute and to such other States Parties as it considers appropriate.

3. Pending the constitution of an arbitral or special arbitral tribunal to which a dispute has been submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the Law of the Sea Tribunal or, when appropriate, its Sea-Bed Disputes Chamber, shall have the power to prescribe provisional measures in conformity with paragraphs 1 and 2, if it considers *prima facie* that the tribunal to which the dispute has been submitted would have jurisdiction and that the urgency of the situation so requires. As soon as it has been constituted, the tribunal to which the dispute has been submitted may affirm, modify or revoke such provisional measures, acting in conformity with paragraphs 1 and 2.

4. As soon as the circumstances justifying the provisional measure have changed or ceased to exist, such provisional measures may be modified or revoked.

5. Any provisional measures prescribed or modified under this article shall be promptly complied with by the parties to the dispute.

Article 291. Access

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

2. The dispute settlement procedures specified in this Part shall be open to entities other than States Parties as provided for in section 6 of Part XI of the present Convention.

Article 292. Prompt release of vessels

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the coastal State has failed, neglected or refused to comply with the relevant provisions of the present Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be brought before any court or tribunal agreed upon by the parties. Failing such agreement within 10 days from the time of detention, the question of release may be brought before any court or tribunal accepted by the detaining State under article 287 or before the Law of the Sea Tribunal, unless the parties otherwise agree.

2. An application for such release may only be brought by or on behalf of the flag State of the vessel.

3. The question of release shall be dealt with promptly by such court or tribunal which shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State shall remain competent to release the vessel or its crew at any time.

4. The decision of such court or tribunal as to the release of the vessel or its crew shall be promptly complied with by the authorities of the detaining State upon the posting of the bond or other financial security determined by the court or tribunal.

Article 293. Applicable law

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

2. If the parties to a dispute so agree, the court or tribunal having jurisdiction under this section shall make its decision *ex aequo et bono*.

Article 294. Exhaustion of local remedies

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

Article 295. Finality and binding force of decisions

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

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

Article 296. Limitations on applicability of this section

1. Without prejudice to the obligations arising under section 1, disputes relating to the exercise by a coastal State of sovereign rights or jurisdiction provided for in the present Convention shall only be subject to the procedures specified in the present Convention when the following conditions have been complied with:

(*a*) that in any dispute to which the provisions of this article apply, the court or tribunal shall not call upon the other party or parties to respond until the party which has submitted the dispute has established *prima facie* that the claim is well founded;

(*b*) that such court or tribunal shall not entertain any application which in its opinion constitutes an abuse of legal process or is frivolous or vexatious; and

(*c*) that such court or tribunal shall immediately notify the other party to the dispute that the dispute has been submitted and such party shall be entitled, if it so desires, to present objections to the entertainment of the application.

2. Subject to the fulfilment of the conditions specified in paragraph 1, such court or tribunal shall have jurisdiction to deal with the following cases:

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

(*b*) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of the present Convention or of laws or regulations established by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

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

3. No dispute relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be brought before such court or tribunal unless the conditions specified in paragraph 1 have been fulfilled; provided that:

(*a*) when it is alleged that there has been a failure to comply with the provision of articles 247 and 254, in no case shall the exercise of a right or discretion in accordance with article 247, or a decision taken in accordance with article 254, be called in question; and

(*b*) the court or tribunal shall not substitute its discretion for that of the coastal State.

4. No dispute relating to the interpretation or application of the provisions of the present Convention with regard to the living resources of the sea shall be brought before such court or tribunal unless the conditions specified in paragraph 1 have been fulfilled; provided that:

(*a*) when it is alleged that there has been a failure to discharge obligations arising under articles 61, 62, 69 and 70, in no case shall the exercise of a discretion in accordance with articles 61 and 62 be called in question; and

(*b*) the court or tribunal shall not substitute its discretion for that of the coastal State; and

(*c*) in no case shall the sovereign rights of a coastal State be called in question.

5. Any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute.

Article 297. Optional exceptions

1. Without prejudice to the obligations arising under section 1 of this Part of the present Convention, a State Party when signing, ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, may declare that it does not accept any one or more of the procedures for the settlement of disputes specified in the present Convention with respect to one or more of the following categories of disputes:

(*a*) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall, when such dispute arises, indicate, and shall for the settlement of such disputes accept a regional or other third party procedure entailing a binding decision, to which all parties to the dispute have access; and provided further that such procedure or decision shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory;

(*b*) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service and, subject to the exceptions referred to in Article 296, law enforcement activities in the exercise of sovereign rights or jurisdiction provided for in the present Convention;

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

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

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

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

5. When a dispute has been submitted to any procedure in accordance with this article, a new declaration, or the withdrawal of a declaration, shall not affect in any way the proceedings so pending, unless the parties otherwise agree.

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

Part XVI. Final clauses

Article 298. Ratification

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

Article 299. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 300. Entry into force

1. The present Convention shall enter into force on the ... day following the date of deposit of the ... instrument of ratification or accession.

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

Article 301. Status of annexes

The annexes form an integral part of the present Convention, and unless expressly provided otherwise, a reference to the present Convention constitutes a reference to its annexes.

Article 302. Authentic texts

The original of the present Convention, 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, who shall send copies thereof to all States.

Article 303. Testimonium clause, place and date

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

DONE AT CARACAS, this ... day of ..., one thousand nine hundred and seventy ...

Transitional provision

1. The rights recognized or established by the present Convention to the resources of a territory whose people have not attained either full independence or some other self-governing status recognized by the United Nations, or a territory under foreign occupation or colonial domination, or a United Nations Trust Territory, or a territory administered by the United Nations, shall be vested in the inhabitants of that territory, to be exercised by them for their own benefit and in accordance with their own needs and requirements.

2. Where a dispute over the sovereignty of a territory under foreign occupation or colonial domination exists, in respect of which the United Nations has recommended specific means of solution, rights referred to in paragraph 1 shall not be exercised except with the prior consent of the parties to the dispute until such dispute is settled in accordance with the purposes and principles of the Charter of the United Nations.

3. A metropolitan or foreign power administering, occupying or purporting to administer or occupy a territory may not in any case exercise, profit, or benefit from or in any way infringe the rights referred to in paragraph 1.

4. Reference in this article to a territory include continental territories and islands.

ANNEXES

ANNEX I

Highly migratory species

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

ANNEX II

Basic conditions of exploration and exploitation

Title to minerals and processed substances

1. Title to the minerals shall normally be passed upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to subparagraph (*b*) of paragraph 3 of this annex for stages of operations, title to the minerals or processed substances shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 7 of this annex.

Prospecting

2. (*a*) The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the transfer of data to the Authority, the training of personnel designated by the Authority and accepts verification of compliance by the Authority with all of its rules and regulations in so far as they relate to prospecting. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place. Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may close a particular area for prospecting when the available data indicates the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

(*b*) Prospecting shall not confer any preferential, proprietary or exclusive rights on the prospector with respect to the resources or minerals.

Exploration and exploitation

3. (*a*) Exploration and exploitation shall only be carried out in areas specified in plans of work referred to in paragraph 3 of article 151 and approved by the Authority in

accordance with the provisions of this annex and the relevant rules, regulations and procedures adopted pursuant to paragraph 11 of this annex.

(*b*) Contracts shall normally cover all stages of operations. If the applicant for a contract applies for a specific stage or stages, the contract may only comprise such stage or stages. Nothing in this paragraph shall in any way limit the discretion of the Enterprise.

(*c*) Every contract entered into by the Authority shall:

(i) Be in strict conformity with the present Convention and the rules and regulations prescribed by the Authority;

(ii) Ensure control by the Authority at all stages of operations in accordance with paragraph 4 of article 151;

(iii) Confer exclusive rights on the Contractor in the contract area in accordance with the rules and regulations of the Authority.

Qualifications of applicants

4. (*a*) The Authority shall adopt appropriate administrative procedures and rules and regulations for making an application and for the qualifications of an applicant. Such qualifications shall include financial standing, technological capability and satisfactory performance under any previous contracts with the Authority.

(*b*) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(*c*) Every applicant without exception shall:

(i) Undertake to comply with and to accept as enforceable the obligations created by the provisions of Part XI of the present Convention, the rules and regulations adopted by the Authority, and the decisions of its organs and the terms of contracts, and to accept control by the Authority in accordance therewith;

(ii) Undertake to negotiate upon the conclusion of the contract, if the Authority shall so request, an agreement making available to the Enterprise under licence, the technology used or to be used by the applicant, in carrying out activities in the Area on fair and reasonable terms in accordance with subparagraph (*j*) (iv) of paragraph 5 of this annex;

(iii) Accept control by the Authority in accordance with subparagraph (*c*) (ii) of paragraph 3;

(iv) Provide the Authority with satisfactory assurances that its obligations covered by the contract entered into by it will be fulfilled in good faith.

Selection of applicants

5. (*a*) On the first day of the sixth month after the entry into force of this Part of the present Convention, and thereafter each fourth month on the first day of that month, the Authority shall take up for consideration applications received for contracts with respect to activities of exploration and exploitation.

(*b*) When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether

(i) the applicant has complied with the procedures established for applications in accordance with paragraph 4 of this annex and has given the Authority the commitments and assurances required by that paragraph. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 20 days to remedy such defects;

(ii) the applicant possesses the requisite qualifications pursuant to paragraph 4.

(*c*) Once it is established that the conditions referred to in subparagraph (*b*) above are met, the Authority shall determine whether more than one application has been received within the preceding time period as provided in subparagraph (*a*) above in respect of substantially the same area and category of minerals and whether the granting of a contract would be in conformity with the provisions of subparagraph (*g*) of paragraph 1 of article 150 and the relevant decisions of the Authority in implementation thereof. If no competing application has been received, and if the granting of a contract would be in conformity with subparagraph (*g*) of paragraph 1 of article 150, the Authority shall without delay enter into negotiations with the applicant with a view to concluding a contract.

(*d*) The negotiations referred to in subparagraph (*c*) above shall, within the framework of the provisions of Part XI of the present Convention and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160, deal with:

(i) operational requirements under regulations adopted pursuant to paragraph 11 of this annex such as duration of activities, size of area, performance requirements and protection of the marine environment;

(ii) the financial contribution to be made by the applicant under the financial arrangements established in paragraph 7 of this annex, and participation in the project by developing countries, on the basis of the incentives for such participation established in paragraph 7;

(iii) transfer of technology under programmes and measures pursuant to article 144, and subparagraph (*c*) (ii) of paragraph 4 of this annex.

(*e*) In the course of the negotiations referred to in subparagraph (*d*) above, and prior to the conclusion of a contract, the Authority shall ensure that such contract would be in full conformity with the provisions of Part XI of the present Convention and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160, in particular the provisions, rules, regulations and procedures on the issues enumerated in subparagraph (*d*) above, and the provisions of subparagraph (*g*) of paragraph 1 of article 150, and the relevant decisions of the Authority in implementation thereof.

(*f*) The negotiations referred to in subparagraph (*d*) above shall be conducted as expeditiously as possible. As soon as the issues under negotiation in accordance with subparagraph (*d*) above have been settled, the Authority shall conclude the corresponding contract with the applicant. In cases of a refusal of contract the Authority shall state the reasons for such refusal.

(*g*) If the Authority receives within the applicable time period as provided in subparagraph (*a*) above more than one application in respect of substantially the same part of the Area and category of minerals, or if the applications received within that time period cannot all be accommodated within the production limits established in subparagraph (*g*) of paragraph 1 of article 150, selection from among the applicants shall be made on a comparative basis. In accordance with subparagraphs (*c*) and (*d*), the Authority shall enter into negotiations with the applicants in order to make its selection on the basis of a comparative evaluation of their applications and qualifications. In so doing the Authority shall also take into account the need to give reasonable priority to applicants who are ready to enter into such joint arrangements with the Enterprise as referred to in subparagraphs (*i*) and (*j*) (iii) below. Once the selection is made, the Authority shall enter into negotiations with the selected applicant or applicants on the terms of a contract in accordance with subparagraphs (*c*) and (*d*) above.

(*h*) If the Contractor in accordance with subparagraph (*b*) of paragraph 3 of this annex has entered into a contract with the Authority for separate stages of operations, he shall have a preference and a priority among applicants for a contract for subsequent stages of operations with regard to the same areas and resources; provided, however, that where the Con-

tractor's performance has not been satisfactory such preference or priority may be withdrawn.

(*f*) Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration and exploitation of the resources of the Area.

(i) The proposed contract area shall be sufficiently large and of sufficient value to allow the Authority to determine that one half of it shall be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. Upon such determination by the Authority the Contractor shall indicate the co-ordinates dividing the area into two halves of equal estimated commercial value and the Authority shall designate the *half which is to be reserved. The Contractor* may, alternatively, submit two non-contiguous areas of equal estimated commercial value, of which the Authority shall designate one as the reserved area. The designation by the Authority of one half of the area, or of one of two non-contiguous areas, as the case may be, in accordance with the provisions of this subparagraph, shall be made as soon as the Authority has been able to examine the relevant data as may be necessary to decide that both parts are equal in estimated commercial value.

(ii) Areas designated by the Authority as reserved areas in accordance with this subparagraph, may be exploited only through the Enterprise or in association with developing countries. The Enterprise shall be given an opportunity to decide whether it wishes itself to conduct the activities in the designated area. When considering applications *from developing countries, or from* a group of applicants which include developing countries, for areas designated under this subparagraph, and not selected by the Enterprise, the Authority shall, before entering into a contract, ensure that the developing countries will obtain substantial benefit therefrom.

(iii) In conducting activities in areas reserved in accordance with this subparagraph, the Enterprise may enter into joint arrangements of the kind referred to in subparagraph (i) above with other entities referred to in subparagraph (ii) of paragraph 2 of article 151. In such joint arrangements appropriate provision shall be made for participation by developing countries. The nature and extent of such participation shall be determined by the Authority.

(iv) The Authority may require that the Contractor make available to the Enterprise the same technology to be used in the Contractor's operations on fair and reasonable terms and conditions in accordance with subparagraph (*c*) (ii) of paragraph 4 of this annex. If the Authority requests an agreement pursuant to this subparagraph and the negotiations do not lead to an agreement within a reasonable time, the matter shall be referred to binding arbitration in accordance with the provisions of annex VI to the present Convention. In the event that the Contractor does not accept, or fails to implement the arbitral decision, the Contractor shall be liable in accordance with the provisions of paragraph 12 *of this annex.*

(v) Nothing in this subparagraph shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this annex in any part of the Area not subject to contract or joint arrangement.

(*k*) *Contractors entering into such joint arrangements* with the Enterprise as referred to in subparagraphs (*i*) and (*j*) (iii) above shall receive financial incentives as provided for in the financial arrangements established in paragraph 7 of this annex.

(*l*) While the inclusion of a quota or anti-monopoly *provision appears to be acceptable in principle, its detailed* formulation has yet to be fully negotiated.

Activities conducted by the Enterprise

6. Activities in the Area conducted under subparagraph (i) of paragraph 2 of article 151 through the Enterprise shall be governed by the provisions of Part XI of the present Convention including the resource policy set forth in article 150 and the relevant decisions of the Authority in implementation thereof, as well as the statutes of the Enterprise and by the rules, regulations and procedures adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160.

*Financial terms of contracts**

7. (*a*) In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in subparagraph (ii) of paragraph 2 of article 151 and in negotiating those terms within the framework of the provisions of Part XI of the present Convention, and of those rules, regulations and procedures, the Authority shall be guided by the following objectives:

(i) to ensure optimum revenues for the Authority;

(ii) to attract investments and technology into the exploration and exploitation of the Area;

(iii) *to ensure equality of financial treatment and com*parable financial obligations on the part of all States and other entities which obtain contracts;

(iv) to provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing countries *or their nationals, and to stimulate the transfer* of technology thereto;

(v) to enable the Enterprise to engage in sea-bed mining effectively from the time of entry into force of this Convention;

(*b*) A fee shall be levied in respect of the administrative cost of processing an application for a contract and shall be fixed by the Authority at an amount not exceeding ... per contract application.

(*c*) (i) The financial contribution of a Contractor shall be made up of an annual fixed charge to mine, a production charge and a share of net proceeds.

(ii) The Authority shall not establish any fees or charges to be applied to the Contractor other than those determined under (i) above, the fee referred in subparagraph (*b*) above and the guarantee referred to in subparagraph (*a*) (2) (iii) of paragraph 11 of this annex.

(*d*) (i) An annual fixed charge to mine in respect of each year that the Contractor holds rights under the contract to commercial production from the contract area. The charge shall be based on the rate of ... per annum per contract area. No charge shall be payable for the first three years following the date of the entry into force of the contract and thereafter the charge may be deducted from any production charge under (ii) below paid in the same year.

(ii) A production charge of ... per cent of the market value or ... per cent of the amount of the processed metals extracted from the contract area. For this purpose, the market value shall be the product of the quantity of the recoverable

* The text of paragraph 7 is a preliminary draft submitted after consultations with experts and further work needs to be done on this subject.

metals produced and the average price for that amount of metal during the relevant account period. Where the Authority determines that an international commodity exchange provides a representative pricing mechanism, the average price on such exchange shall be used in the calculation of the price of each unit of production. In all other cases, the Authority, after consultation with the Contractor, shall determine the average price.

(iii) A share of net proceeds to be determined by deducting from the proceeds of operations in the Area the costs incurred by the Contractor in respect of those operations and applying a percentage to the balance according to the rate of return on investment to the Contractor as set out in subparagraph D below.

A. Proceeds of operations shall be assessed in terms of the value of production in the following manner ... and shall include any proceeds from the disposal of capital assets not deducted from costs under B (1) below or, the market value of those capital assets at the relevant time which are no longer required for operations under the contract and which are not sold.

B. The costs incurred by the Contractor in respect of those operations shall comprise:

1. Development costs: that is all expenditures incurred prior to the commencement of commercial production from the contract area which are directly related to the development of the productive capacity of the contract area, including, *inter alia*, costs of machinery, equipment, ships, buildings, land, roads, exploration and feasibility studies and other research and development construction, interest, required leases, licences, and, subsequent to the commencement of commercial production, similar costs required for the replacement of equipment and machinery, maintenance and improvement of productive capacity and improvement of performance; less proceeds from the disposal of capital assets;

2. Operating costs: that is all expenditures incurred in the operation of the productive capacity of the contract area, including, *inter alia*, expenditures for wages, salaries, employee benefits, supplies, materials, services, transportation, sale of products, interest, charges to mine and production charges paid under subparagraph (*d*) (i) and (ii) above, utilities, purchases, and overhead and administrative costs specifically related to the operations of the contract area and any net operating losses carried forward from prior accounting periods;

Provided that:

(*a*) Payments in respect of acquisition of assets referred to in 1 and 2 above shall not be allowed as costs to the extent that the acquisition was not the result of an arm's length transaction between the parties concerned;

(*b*) The costs referred to in 1 and 2 above in respect of interest paid by the Contractor may only be allowed if the debt-equity ratio of the project is reasonable in all the circumstances, and the rates of interest may be no greater than those approved by the Authority as reasonable having regard to existing commercial rates;

(*c*) The costs referred to in 1 and 2 above shall not be interpreted as including payments in respect of taxes or similar charges levied by States in respect of the operations of the contractor.

C. The net proceeds for a given accounting period shall be determined for each contract area by deducting from the proceeds of operations in that area the development costs and operating costs for that contract area, in accordance with the rules and regulations and in accordance with the following:

1. Operating costs for a given accounting period shall include any loss from the previous accounting period and shall be deductible in the accounting period in which they occur.

2. Development costs shall be deductible in the given accounting period as a depreciation charge on such percentage basis per annum as is agreed in the contract, provided that any such agreement must provide an opportunity for the Contractor to recover initial development costs i.e. development costs as at the commencement of commercial production within ... years from the start of commercial production.

D. 1. In each year, the share of net proceeds to be received by the Authority shall be determined according to the rate of return on the Contractor's investment hereinafter referred to as the rate of return. The rate of return shall be calculated by dividing the sum of the Contractor's portions of net proceeds in all preceding years by the total number of completed years from the date of commencement of commercial production, and expressing this average as a percentage of adjusted development costs. Adjusted development costs shall be equal to actual development costs less the sum of all amounts deducted by the Contractor as development costs up to the end of the year in question;

2. If for any year, the rate of return thus determined is zero or negative, the Contractor's rate of return shall be "minimal". If the rate of return is greater than zero but less than 10 per cent, the Contractor's rate of return status shall be "low". If the rate of return is 10 per cent or more, but less than 20 per cent, the status shall be "medium". If the rate of return is 20 per cent or more, the status shall be "high".

3. (*a*) Where the status is "minimal", the Authority shall not be entitled to any payment under this paragraph;

(*b*) Where the status is "low", the Authority shall be entitled to...;

(*c*) Where the status is "medium", the Authority shall be entitled to...;

(*d*) Where the status is "high", the Authority shall be entitled to...;

(iv) A. Where both parties agree, the Authority may elect to receive as its share of the net proceeds, a share of the deemed profits of the Contractor instead of a share of the net proceeds calculated under the method set out in subparagraph (*d*) (iii) above

B. For the purpose of A above, the deemed profits of the Contractor in any one year

shall be ... per cent of the imputed value of assessed metal content of nodules mined from the contract area in that year.

C. For the purpose of B above, the imputed value of the metal content shall be ... per cent of the market value of the processed metal, such market value being calculated in accordance with subparagraph (*d*) (*ii*) above, and the assessed metal content shall be *determined in a manner* to be agreed between the parties.

D The share of the deemed profits of the Contractor in any one year to be paid to the Authority shall be ... per cent of those deemed profits.

(*e*) The Authority may, taking into account any recommendations of the Economic Planning Commission and the Technical Commission, adopt rules and regulations that provide for incentives to Contractors that may be applied on a uniform and non-discriminatory basis in cases where such incentives would further the objectives set out in subparagraph (*a*) above. Such incentives may include reducing or eliminating the fixed charge or the production charge, or both of them, or reducing *its percentage of net proceeds*, or consenting to accelerated depreciation of development costs.

(*f*) (i) The amounts referred to in subparagraph (*b*) and subparagraph (*d*) (i) above shall be in constant 1st-January 1980 U.S. dollars.

(ii) The payments to the Authority under (ii) (iii) and (iv) of subparagraph (*d*) above may be made either in a currency agreed upon between the Authority and the Contractor, or in the equivalents of processed metals at current market value. The market value shall be ascertained in accordance with (ii) of subparagraph (*d*) above.

(*g*) The Authority shall adopt rules and regulations regarding the method of selection of auditors responsible for attesting to the conformity of the Contractor with these related financial terms and the related rules and procedures of the Authority.

Transfer of Data

8. *The Contractor shall transfer in accordance with the* rules and regulations and the terms and conditions of the *contract to the Authority at time intervals determined by the* Authority all data which are both necessary and relevant to *the effective implementation of the powers and functions of* the organs of the Authority in respect of the contract area. Transferred data in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

Training Programmes

9. The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract.

Exclusive Right to Explore and Exploit in the Contract Area

10. The Authority shall, pursuant to Part XI of the present Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area with the Authority in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor. The Authority shall not, during the continuance of a contract, permit any other entity to carry out activities in the same area for the same category of minerals. The Contractor shall have security of tenure in accordance with paragraph 6 of article 151.

Rules, Regulations and Procedures

11. (*a*) The Authority shall adopt and uniformly apply rules, regulations and procedures for the implementation of Part XI of the present Convention, including these basic conditions, on the following matters:

(1) *Administrative procedures relating to prospecting*, exploration and exploitation in the Area

(2) Operations

(i) Size of area;

(ii) Duration of activities;

(iii) Performance requirements and guarantees;

(iv) Categories of minerals;

(v) Renunciation of areas;

(vi) Progress reports;

(vii) Submission of data;

(viii) Inspection and supervision of operations;

(ix) Passing of title pursuant to paragraph 1;

(x) Prevention of *interference with other uses of the* sea and of the marine environment;

(xi) *Transfer of rights* by a Contractor;

(xii) Procedures for transfer of technology to developing countries and for their direct participation;

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

(xiv) *Continuity of operations in the event of disputes;*

(xv) Definition of commercial production.

(3) Financial matters

(i) *Establishment of uniform and non-discriminatory* costing and accounting rules;

(ii) Apportionment of proceeds of operations;

(iii) The incentives referred to in paragraph 7.

(4) Rules, regulations and procedures to implement decisions *of the Council taken in pursuance of Articles 150* and 162.

(*b*) Regulations on the following items shall fully reflect the objective criteria set out below:

(1) Size of area

The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation *in order to permit intensive exploration operations*. Areas for exploitation shall be calculated to satisfy stated production requirements over the term of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the area. Areas shall neither be smaller nor larger than are necessary to satisfy this objective. In cases where the Contractor has obtained a contract for exploitation, the area not covered by such contract shall be relinquished to the Authority.

(2) Duration of activities

(i) *Prospecting shall be without time-limit;*

(ii) Exploration should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;

(iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the

ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration as to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial scale mining and processing systems, during which period commercial production should not be required. *The total duration of exploitation, however,* should also be short enough to give the Authority an opportunity to amend the terms and conditions of the contract at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the contract."

(3) *Performance requirements*

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

Once commercial production is achieved in the exploitation stage, the Authority shall within reasonable limits and taking into consideration all relevant factors require the Contractor to maintain commercial production throughout the period of the contract.

(4) Categories of minerals

In determining the category of mineral in respect of which a contract may be entered into, the Authority shall give emphasis *inter alia* to the following characteristics:

(i) Resources which require the use of similar mining methods; and

(ii) Resources which can be developed simultaneously without undue interference between Contractors in the same area developing different resources.

Nothing in this paragraph shall deter the Authority from granting a contract for more than one category of mineral in the same contract area to the same applicant.

(5) Renunciation of areas

The Contractor shall have the right at any time to renounce without penalty the whole or part of his rights in the contract area.

(6) Protection of the marine environment

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

(7) Commercial production

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

Penalties

12. (*a*) A Contractor's rights under the contract concerned may be suspended or terminated only in the following cases:

(i) If the Contractor has conducted his activities in such a way as to result in gross and persistent or serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the present Convention and rules and regulations, which were not caused by circumstances beyond his control; or

(ii) If a Contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.

(*b*) The Authority may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation in lieu of suspension or termination or in any case not covered under subparagraph (*a*) above.

(*c*) Except in cases of emergency orders as provided for in subparagraph (*xi*) of paragraph 2 of Article 163, the Authority may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust his judicial remedies in the Sea-Bed Dispute Chamber. The Sea-Bed Dispute Chamber may, however, order execution of a decision regarding monetary penalties or suspension pending final adjudication of the matter.

Revision of Contract

13. (*a*) When circumstances have arisen, or are likely to arise, which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI of the present Convention, the parties shall enter into negotiations to adjust it to new circumstances in the manner prescribed in the contract.

(*b*) Any contract entered into in accordance with paragraph 3 of Article 151, may only be revised if the parties involved have given their consent.

Transfer of Rights

14. The rights and obligations arising out of a contrac shall be transferred only with the consent of the Authority and in accordance with the rules and regulations adopted by it The Authority shall not withhold consent to the transfer i the proposed transferee is in all respects a qualified applicant and assumes all of the obligations of the transferor.

Applicable law

15. The law applicable to the contract shall be the provisions of Part XI of the present Convention, the rules and regulations prescribed by the Authority and the terms and conditions of the contract. The rights and obligations of the Authority and of the Contractor shall be valid and enforceable in the territory of each State Party. No State Party may impose conditions on a Contractor that are inconsistent with Part XI of the present Convention. However, the application by a State Party of environmental regulations to sea-bed miners it sponsors or to ships flying its flag, more stringent than those imposed by the Authority puruuant to subparagraph (*b*) (6) of paragraph 11 of this annex, shall not be deemed inconsistent with Part XI of the present Convention.

Liability

16. Any responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor. It shall be a defence in any proceeding against a Contractor that the damage was the result of an act or omission of the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority shall lie with the Authority. It shall be a defence in any proceeding against the Authority that the damage was a result of an act or omission of the Contractor Liability in every case shall be for the actual amount of damage.

ANNEX III

Statute of the Enterprise

Purpose

1 (*a*) The Enterprise shall carry out activities of the Authority in the Area in the performance of its functions in implementation of article 169.

(*b*) In the performance of its functions and in carrying out its purposes, the Enterprise shall act in accordance with the provisions of Part XI of the present Convention and its annexes, including article 151 and the resource policy set forth in article 150 and the relevant decisions of the Authority in implementation thereof.

Relationship to the Authority

2. (*a*) Pursuant to article 169 the Enterprise shall be subject to the general policies laid down by the Assembly and the directives and control of the Council.

(*b*) Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

Limitation of liability

3. No member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Structure of the Enterprise

4. The Enterprise shall have a Governing Board, a Director-General and such staff as may be necessary for the performance of its duties.

Governing Board

5. (*a*) The Governing Board shall be responsible for the conduct of operations of the Enterprise, and for this purpose shall exercise all the powers given to it by this annex.

(*b*) The Governing Board shall be composed of 15 qualified, competent and experienced members elected by the Assembly. Election of these members shall be based on the principe of equitable geographical representation, taking special interests into account.

(*c*) Members of the Board shall be elected for a period of four years and shall be eligible for re-election. Rue regard should be paid to the desirability of rotating seats.

(*d*) Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the votes cast.

(*e*) Each member of the Board shall appoint an alternate with full powers to act for him when he is not present.

(*f*) Members of the Board shall continue in office until their successors are appointed or elected. If the office of a member of the Board becomes vacant more than 90 days before the end of his term, the Board may appoint another member for the remainder of the term. While the office remains vacant, the alternate of the former member of the Board shall exercise his powers, except that of appointing an alternate.

(*g*) The Governing Board shall function in continuous session at the principal office of the Enterprise, and shall meet as often as the business of the Enterprise may require.

(*h*) A quorum for any meeting of the Governing Board shall be two thirds of the members of the Board.

(*i*) Any member of the Authority may send a representative to attend any meeting of the Board when a request made by, or a matter particularly affecting, that member is under consideration.

(*j*) Subject to directives from the Council on the matter, the Governing Board may appoint such committees as they deem advisable.

Director-General and Staff

6. (*a*) The Assembly shall, upon the recommendation of the Council, elect a Director-General who shall not be a member of the Board or an alternate. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly, and the Council, when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be reappointed for one further term.

(*b*) The Director-General shall be chief of the operating staff of the Enterprise and shall conduct, under the direction of the Governing Board, the ordinary business of the Enterprise. Subject to the general control of the Governing Board, he shall be responsible for the organization, appointment and dismissal of the staff.

(*c*) The Director-General and the staff of the Enterprise, in the discharge of their offices, owe their duty entirely to the Enterprise and to no other authority. Each member of the Enterprise shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(*d*) In appointing the staff the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible, and shall be guided by the principle that the staff should be kept to a minimum.

Location of offices

7. The principal office of the Enterprise shall be at the seat of the Authority. The Enterprise may establish other offices in the territories of any member, with the consent of that member.

Publication of reports and provison of information

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

(*b*) The Enterprise shall publish its annual report and such other reports as it deems desirable to carry out its purposes.

(*c*) Copies of all reports, statements and publications made under this article shall be distributed to members.

Allocation of net income

9. (*a*) Subject to (*b*) below, all net disposable income generated by the Enterprise, shall be transferred quarterly to the Authority which shall determine the apportionment and distribution of such proceeds to the Enterprise and to States Parties in accordance with subparagraphs (viii), (xii) and (xiv) of paragraph 2 of article 158 and subparagraphs (xiii), (xv) and (xvi) of paragraph 2 of article 160.

(*b*) During an initial period, determined by the Council, required for the Enterprise to become self-supporting the Council, on the recommendation of the Governing Board, shall determine annually what part of the net income of the Enterprise, should be transferred to the Authority.

(*c*) In determining the amount of net disposable income generated by the Enterprise at any material time, the Council, on the recommendation of the Governing Board, shall make due provision for the reserves and surplus of the Enterprise.

Finance

10. (*a*) The funds and assets of the Enterprise shall comprise:

(i) Amounts determined from time to time by the Assembly out of the Special Fund referred to in article 173, including funds to cover its administrative expenses in accordance with subparagraph (vi) of paragraph 2 of article 158 and paragraph 2 of article 172 and including funds earmarked for the Enterprise in accordance with paragraph 3 of article 173.

(ii) Voluntary contributions made by States Parties to the present Convention specifically for the purpose of financing activities of the Enterprise.

(iii) Amounts borrowed by the Enterprise in accordance with subparagraph (c) below.

(iv) Amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements in accordance with paragraph 3 of article 151.

(v) Net income of the Enterprise after transfer of revenues to the Authority in accordance with paragraph 9.

(vi) Other funds made available to the Enterprise including charges to enable it to carry out its functions and to commence operations as soon as possible.

(b) The Governing Board of the Enterprise shall determine when the Enterprise may commence operation.

(c) (i) The Enterprise shall have the power to borrow funds, and in that connexion to furnish such collateral or other security therefor as it shall determine; provided, however, that before making a public sale of its obligations in the markets of a member, the Enterprise shall have obtained the approval of that member and of the member in whose currency the obligations are to be denominated. The total amount and sources of borrowings shall be approved by the Council on the recommendation of the Governing Board.

(ii) States Parties shall make every effort to support applications by the Enterprise for loans in capital markets, including loans from international financial institutions, and to cause appropriate changes where necessary in the constitutive instruments of such institutions.

(iii) To the extent that the costs of exploration, development and exploitation of the Enterprise's first site cannot be covered by the funds referred to in subparagraph (a) above, States Parties shall guarantee debts incurred by the Enterprise for the financing of such costs. Under such guarantees States Parties shall be liable on a basis adopted by the Assembly which is proportionate to the United Nations scale of assessments. To the extent necessary for the securing of such loans as referred to above, States Parties undertake to advance as refundable paid-in capital up to ... per cent of the liability which they have incurred in accordance with this subparagraph.

(d) The funds and assets of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel, and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

Operations

11. (a) The Enterprise shall propose to the Council projects for carrying out activities in the Area in accordance with article 151, paragraph 2 (i). Such proposals shall include a detailed description of the project, an analysis of the estimated costs and benefits, a draft formal written plan of work, and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

(b) Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in subparagraph (a) of this paragraph.

(c) Procurement of goods and services:

(i) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them under its direction and management. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response to invitations in member countries to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

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

A. Non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

B. Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing countries, including the land-locked or otherwise geographically disadvantaged among them.

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

(d) The Enterprise shall have title to all minerals and processed substances produced by it. They shall be marketed in accordance with rules, regulations and procedures adopted by the Council in accordance with the following criteria:

(i) The products of the Enterprise shall be made available on a non-discriminatory basis to States Parties;

(ii) The Enterprise shall sell its products at not less than international market prices.

(e) Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise all such powers incidental to its business as shall be necessary or desirable in the furtherance of its purposes.

(f) The Enterprise and its staff shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in paragraph 1 of this annex.

Legal status, immunities and privileges

12. (a) To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of each member. To give effect to this principle the Enterprise may, where necessary, enter into special agreements for this purpose.

(b) The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(i) To enter into contracts, forms of association, or other arrangements, including agreements with States and international organizations;

(ii) To acquire, lease, hold and dispose of immovable and movable property;

(iii) To be a party to legal proceedings in its own name.

(c) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities, or is otherwise engaged in commercial activity. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment of execution before the delivery of final judgement against the Enterprise.

(d) (i) The property and assets of the Enterprise, wheresoever located and by whomsoever held,

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

(ii) All property and assets of the Enterprise shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

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

(iv) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing countries or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

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

(e) The Enterprise, its assets, property, and revenues derived from its operations and transactions authorized by this annex, shall be immune from taxation.

(f) Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this annex and shall inform the Enterprise of the detailed action which it has taken.

(g) The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in subparagraph (e) above to such extent and upon such conditions as it may determine.

ANNEX IV

Conciliation

Article 1. Institution of proceedings

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

Article 2. List of conciliators

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

Article 3. Constitution of Conciliation Commission

The Conciliation Commission shall, unless the parties otherwise agree, be constituted as follows:

1. Subject to the provisions of paragraph 7, the Conciliation Commission shall consist of five members.

2. The party submitting the dispute to conciliation shall appoint two conciliators to be chosen preferably from the list and who may be its nationals. Such appointments shall be included in the notification under article 1.

3. The other party to the dispute shall appoint two conciliators in the same manner within 21 days of receipt of notification under article 1. If the appointments are not made within the prescribed period, the party which submitted the dispute to conciliation may, within one week of the expiration of the prescribed period, either terminate the proceedings by notification addressed to the other party or request the Secretary-General to make the appointments in accordance with paragraph 5.

4. Within 30 days following the date of the last of their own appointment, the four conciliators shall appoint a fifth conciliator chosen from the list, who shall be chairman. If the appointment is not made within the prescribed period, either party may, within one week of the expiration of the prescribed period, terminate the proceedings by notification addressed to the other party or, where the proceedings are not so terminated, request the Secretary-General to make the appointment in accordance with paragraph 5.

5. Upon the request of a party to the dispute in accordance with paragraphs 3 or 4, the Secretary-General of the United Nations shall make the necessary appointments within 30 days of the receipt of such request. The Secretary-General shall make such appointments from the list referred to in article 2 of this annex and in consultation with the parties to the dispute.

6. Any vacancy shall be filled in the manner prescribed for the initial appointment.

7. Parties in the same interest shall appoint two conciliators jointly by agreement. Where there are several parties having separate interests, or where there is disagreement as to whether they are of the same interest, each of them shall appoint one conciliator.

8. In disputes involving more than two parties, the provisions of paragraphs 1 to 6 shall apply to the maximum extent possible.

Article 4. Procedure to be adopted

The Conciliation Commission shall, unless the parties otherwise agree, decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any State Party to submit to it its views orally or in writing. Recommendations of the Commission and procedural decisions shall be made by a majority vote of its members.

Article 5. Amicable settlement

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

Article 6. Functions of the Commission

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

Article 7. Report

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

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

Article 8. Termination

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

Article 9. Facilities, fees and expenses

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

Article 10. Right of parties to vary procedure

The parties to the dispute may by agreement vary any provision of this annex.

ANNEX V

Statute of the Law of the Sea Tribunal

Article 1. General provisions

1. The Law of the Sea Tribunal shall be constituted and shall function in accordance with the provisions of the present Convention and this Statute.

2. Any reference of a dispute to the Tribunal shall be subject to the provisions of Parts XI and XV of the present Convention.

SECTION 1. ORGANIZATION OF THE TRIBUNAL

Article 2. Composition of Tribunal

1. The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in matters relating to the law of the sea.

2. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

Article 3. Election of members

1. No two members of the Tribunal may be nationals of the same State, and a person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

2. There shall be not less than three members from each geographical group as established by the General Assembly of the United Nations.

Article 4. Procedure for nomination and election

1 Each State Party may nominate not more than two persons having the qualifications prescribed in article 2 of this statute The members of the Tribunal shall be elected from a list of persons thus nominated.

2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.

3. The first election shall be held within six months of the date of entry into force of the present Convention.

4. Elections of the members of the Tribunal shall be by secret ballot. They shall be held at a meeting of the States Parties convened by the Secretary-General in the case of the first election and by procedure agreed to by the States Parties in the case of subsequent elections. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of votes of the States Parties present and voting, provided that such majority shall include at least a majority of the States Parties.

Article 5. Term of office

1. The members of the Tribunal shall be elected for nine years and may be re-elected; provided, however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years.

2. The members of the Tribunal whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lots to be drawn by the Secretary-General of the United Nations immediately after the first elections has been completed.

3. The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any proceedings which they may have begun at the time of their replacement.

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

Article 6. Vacancies

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

2. A member of the Tribunal elected to replace a member whose term of office has not expired shall hold office for the remainder of the term of his predecessor.

Article 7. Conditions relating to interests of members

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

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

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

Article 8. Conditions relating to participation of members

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

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

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

4. Any doubt on this point shall be decided by a majority of the other members of the Tribunal present.

Article 9. Consequences of ceasing to fulfil conditions

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

Article 10. Diplomatic privileges and immunities

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

Article 11. Declaration by members

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

Article 12. President, Vice-President and Registrar

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

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

Article 13. Seat of Tribunal

1. The seat of the Tribunal shall be determined by the States Parties, provided that the Tribunal shall have the right

to sit and exercise its functions elsewhere whenever the Tribunal considers it desirable.

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

Article 14. Quorum

1. All available members shall sit, but a quorum of eleven members shall be required to constitute the Tribunal.

2. Subject to the provisions of article 18 of this Statute, the Tribunal shall determine which members are available to constitute the Tribunal for the consideration of a particular dispute, having regard to the effective functioning of the Sea-Bed Disputes Chamber and the special chambers as provided in articles 15 and 16 of this Statute.

3. All disputes and applications submitted to the Tribunal shall be heard and determined by the Tribunal, unless article 15 applies, or the parties request that it shall be dealt with in accordance with article 16.

Article 15 Establishment of a Sea-Bed Disputes Chamber

A Sea-Bed Disputes Chamber shall be established in accordance with the provisions of section 4 of this annex. Its jurisdiction, powers and functions shall be as provided for in section 6 of Part XI of the present Convention.

Article 16. Special chambers

1 The Tribunal may form such chambers, composed of three or more members, as the Tribunal may deem necessary for dealing with particular categories of disputes.

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

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

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

5. A judgement given by any of the chambers provided for in this article and in article 15 of this Statute shall be considered as rendered by the Tribunal.

Article 17. Rules of Tribunal

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

Article 18. Nationality of members

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

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

3. If the Tribunal hearing does not include a member of the nationality of the parties, each of these parties may proceed to choose a member as provided in paragraph 2.

4 The provisions of this article shall apply to articles 15 and 16 of this Statute. In such cases, the President, in consultation with the parties, shall request specified members of the Tribunal forming the chamber, as many as necessary, to give place to the members of the Tribunal of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the members specially chosen by the parties.

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

6 Members chosen as laid down in paragraphs 2, 3 and 4 shall fulfil the conditions required by article 2, paragraph 2 of article 8 and article 11 of this Statute. They shall participate in the decision on terms of complete equality with their colleagues.

Article 19. Remuneration of members

1. Each member of the Tribunal shall receive an annual allowance and, for each day on which he exercises his functions, a special allowance, provided that in any year the total sum payable to any member as special allowance shall not exceed the amount of the annual allowance.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for each day on which he acts as President.

4. The members chosen under article 18 of this Statute, other than members of the Tribunal, shall receive compensation for each day on which they exercise their functions.

5. These allowances and compensation shall be fixed from time to time at a meeting of the States Parties, taking into account the workload of the Tribunal. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed at a meeting of the States Parties on the proposal of the Tribunal.

7. Regulations made at the meeting of the States Parties shall fix the conditions under which retirement pensions may be given to members of the Tribunal and to the Registrar, and the conditions under which members of the Tribunal and Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 20. Expenses of the Tribunal

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

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

SECTION 2. COMPETENCE OF THE TRIBUNAL

Article 21. Parties before the Tribunal

1. States Parties may be parties before the Tribunal.

2. Entities other than States Parties may be parties before the Tribunal in any case expressly provided for in Part XI of the present Convention, or in accordance with any other agreement conferring jurisdiction on the Tribunal and accepted by all the parties to the dispute.

Article 22. Access to the Tribunal

The Tribunal shall be open to the States Parties. It shall be open to entities other than States Parties in any case provided for in Part XI of the present Convention or in accordance with any other agreement conferring jurisdiction on the Tribunal and accepted by all the parties to any dispute submitted to the Tribunal.

Article 23. Jurisdiction

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

Article 24. Reference of disputes subject to other agreements

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

Article 25. Applicable law

The Tribunal shall decide all disputes and applications in accordance with article 293 of the present Convention.

SECTION 3. PROCEDURE

Article 26. Institution of proceedings

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

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify all States Parties.

Article 27. Provisional measures

1. In accordance with article 290 of the present Convention, the Tribunal and its Sea-Bed Disputes Chamber shall have the power to prescribe provisional measures.

2. If the Tribunal is not in session, or a sufficient number of members are not available to constitute a quorum, the provisional measures shall be prescribed by the chamber of summary procedure to be established under paragraph 3 of article 16 of this Statute. Notwithstanding paragraph 4 of that article, such provisional measures may be adopted at the request of any party to the dispute. They shall be subject to review and revision by the Tribunal.

Article 28. Hearing

1. The hearing shall be under the control of the President or, if he is not able to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

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

Article 29. Conduct of case

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

Article 30. Default of appearance

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

Article 31. Majority for decision

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

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

Article 32. Judgement

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

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

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

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

Article 33. Request to intervene

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

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

3. If an application to intervene is granted, the decision of the Tribunal in respect of that dispute will be binding upon the applicant in so far as it relates to matters in respect of which that party intervened.

Article 34 Cases of interpretation or application

1. Whenever the interpretation or application of the present Convention is in question, the Registrar shall notify all States Parties forthwith.

2. Whenever, pursuant to article 23 or 21 of this Statute, the interpretation or application of an international agreement is in question, the Registrar shall notify all parties to the agreement.

3. Every party so notified has the right to intervene in the proceedings, but if it uses this right, the construction given by the judgement will be equally binding upon it.

Article 35. Finality and binding force of decisions

1. The decision of the Tribunal is final and shall be complied with by all the parties to the dispute.

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

3. In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party.

Article 36. Costs

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

SECTION 4. SEA-BED DISPUTES CHAMBER

Article 37. Composition of the Chamber

1. The Sea-Bed Disputes Chamber shall be established in accordance with article 15 of this Statute and shall be composed of eleven members, selected from among the members of the Tribunal by the Assembly of the Authority, by a majority specified in accordance with paragraph 6 of article 157 of the present Convention, for matters of substance.

2. The Assembly shall assure the representation of the principal legal systems of the world and equitable geographical distribution in the Chamber.

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

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

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

6. Upon the occurrence of a vacancy in the Chamber, the Tribunal shall select a successor from among its members who shall hold office for the remainder of the term of his predecessor, subject to the approval by the Assembly at its next regular session.

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

Article 38. Access

The Chamber shall be open to the States Parties, to the Authority and to nationals of States Parties in accordance with the provisions of section 6 of Part XI of the present Convention.

Article 39. Applicable law

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

(*a*) The rules, regulations and procedures adopted by the Assembly or the Council of the Authority in accordance with the present Convention; and

(*b*) The terms of any contracts concerning activities in the Area in any matter relating to such contract.

Article 40. Enforcement of decisions of the Chamber

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

Article 41. Applicability of the procedure of the Tribunal to the Chamber

1. The provisions of this annex which are not incompatible with this section shall apply to the Chamber.

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

SECTION 5. AMENDMENTS

Article 42. Amendments

1. Amendments to the present Statute shall be effected by the same procedure as provided for amendments to the present Convention.

2. The Tribunal shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the States Parties, for consideration in conformity with the provisions of paragraph 1.

ANNEX VI

Arbitration

Article 1. Institution of proceedings

Subject to the provisions of Part XV of the present Convention, any party to a dispute may submit the dispute to the arbitration procedure provided for in this annex by notification addressed to the other party or parties to the dispute.

Article 2. List of arbitrators

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

Article 3. Constitution of arbitral tribunal

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

1. Subject to the provisions of paragraph 7, the arbitral tribunal shall consist of five members. Each party to the dispute shall appoint one member, who shall be chosen preferably from the list and may be its national. In the case of the party requesting arbitration, such appointment shall be made at the time of the request. The other three members shall be appointed by agreement of the parties and shall be chosen preferably from the list and shall be nationals of third States, unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among these three members.

2. The party requesting arbitration shall, at the time of making the request, submit a statement of its claim and the grounds on which such claim is based.

3. Should the other party to the dispute fail to appoint a member within a period of 30 days from the date of receipt of the request for arbitration, the appointment shall be made in accordance with paragraph 5, at the request of the party which submitted the dispute to arbitration. Such request shall be made within two weeks of the expiry of the aforementioned period of 30 days.

4. If, within a period of 60 days from the date of receipt of the request for arbitration, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be so appointed jointly, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with paragraph 5, at the request of a party to the dispute. Such request shall be made within two weeks of the expiry of the aforementioned period of 60 days.

5. Unless the parties agree that any appointment under paragraphs 3 and 4 be made by some person or a third State chosen by the parties, the President of the Law of the Sea Tribunal shall make such appointment. If the President is unable to act under this paragraph, or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the Law of the Sea Tribunal who is available and is not a national of one of the parties. The appointments referred to in this paragraph shall be made from the list of arbitrators within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed must be of different nationalities and must not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

6. Vacancies which may occur as a result of death, resignation or any other cause shall be filled in such manner as provided for original appointments.

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

8. In disputes involving more than two parties, the provisions of paragraphs 1 to 6 shall apply to the maximum extent possible.

Article 4. Functions of arbitral tribunal

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

Article 5. Procedure to be adopted

In the absence of an agreement to the contrary between the parties to the dispute, the arbitral tribunal shall lay down its own procedure assuring to each party a full opportunity to be heard and to present its case.

Article 6. Duties of parties to a dispute

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

(*a*) Provide the tribunal with all relevant documents, facilities and information; and

(*b*) Enable the tribunal when necessary to summon and receive the evidence of witnesses or experts and to visit the localities in question.

Article 7. Expenses

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.

Article 8. Required majority for decisions

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

Article 9. Default of appearance

When one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceed-

ings and to make its award. Absence or default of a party shall not constitute an impediment to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not *only that it has jurisdiction over the dispute but also that the* award is well founded in fact and law.

Article 10. Award

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

Article 11. Finality of award

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

Article 12. Interpretation or implementation of award

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

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

Article 13. Application to entities other than States Parties

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

ANNEX VII

Special arbitration procedure

Article 1. Institution of proceedings

*Subject to the provisions of Part XV of the present Con*vention, any party to a dispute concerning the interpretation or application of the articles of the present Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, *including vessel source pollution, may submit the dispute* to the special arbitration procedure provided for in this annex by notification addressed to the other party or parties to the dispute.

Article 2. Lists of experts

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

Article 3. Constitution of special arbitral tribunal

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

1. Subject to the provisions of paragraph 7 below, the special arbitral tribunal shall consist of five members. Each party to the dispute shall appoint two members, one of whom may be its national, to be chosen preferably from the appropriate list or lists relating to the matters in dispute. The parties to the dispute shall by agreement appoint the President of the special arbitral tribunal who shall be chosen preferably from the appropriate list and shall be a national of a third State, unless the parties otherwise agree.

2. The party requesting special arbitration shall, at the time of making the request, appoint its members and submit a statement of its claim and the grounds on which such claim is based.

3. Should the other party to the dispute fail to appoint its members within a period of 30 days from the date of receipt of the request for special arbitration, the appointments shall be made in accordance with paragraph 5, at the request of the party which submitted the dispute to arbitration. Such request shall be made within two weeks of the expiry of the aforementioned period of 30 days.

4. *If, within a period of 30 days from the date of receipt* of the request for special arbitration, the parties are unable to reach agreement on the appointment of the President, such appointment shall be made in accordance with paragraph 5, at the request of a party to the dispute. Such request shall be made within two weeks of the expiry of the afore*mentioned* period of 30 days.

5. Unless the parties agree that any appointment under paragraphs 3 and 4 be made by some person of a third State chosen by the parties, the Secretary-General of the United Nations shall make such appointment, in consultation with the parties to the dispute and the appropriate international intergovernmental organization. The appointments referred to in this paragraph shall be made from the appropriate list or lists of experts within a period of 30 days of the receipt of the request. The members so appointed must be of different nationalities and must not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

6. Vacancies which may occur as a result of death, resignation or any other cause shall be filled in such manner as provided for original appointments.

7. Parties in the same interest shall appoint two members of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal.

8. In disputes involving more than two parties, the provisions of paragraphs 1 to 6 shall apply to the maximum extent *possible.*

Article 4. General provisions

The provisions of articles 4 to 12 of annex VI to the present Convention shall apply *mutatis mutandis* to the special arbitration procedure *under this annex.*

Article 5. Fact finding

1. The parties to a dispute may at any time agree to request a special arbitral tribunal constituted in accordance with article 3 of this annex, to carry out an inquiry and establish the facts giving rise to any dispute concerning the interpretation or the application of the provisions of the present Convention relating to fisheries, protection and preservation of the marine environment, marine scientific research or navigation.

2. Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with paragraph 1, shall be considered as conclusive as between the parties. If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review, by the parties concerned, of the questions giving rise to the dispute.

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

APPENDIX III

8TH SOUTH PACIFIC FORUM

Port Moresby, Papua New Guinea
29-31 August 1977

DECLARATION ON LAW OF THE SEA AND A REGIONAL FISHERIES AGENCY

The members of the South Pacific Forum meeting at Port Moresby

1. Recall their decisions to co-ordinate and harmonise their policies on the law of the sea so as to ensure the maximum benefits for their peoples and for the region as a whole and, specifically, to harmonise fisheries policies in the region and to adopt a co-ordinated approach in their negotiations with distant water fishing countries;

2. Note with appreciation the report on the establishment of a South Pacific Regional Fisheries Agency prepared by the Director of SPEC at their request;

3. Recognise that in the continued absence of a comprehensive international convention on the law of the sea and in view of the action taken by a large number of countries including distant water fishing countries exploiting the valuable highly migratory species in the region, the countries in the region should move quickly to establish fishing or exclusive economic zones and should take steps to co-ordinate their policies and activities if they are to secure more than a very small part of the benefits from their resources for their peoples;

4. Undertake to complete as early as practicable and, if possible, by 31 March 1978, the legislative and administrative actions necessary to establish extended fisheries jurisdiction to the fullest extent permissible under international law and to apply within their zones principles and measures for the exploration, exploitation, management and conservation of the living resources.

5. Decide to enter immediately into consultations at the official level with a view to:

(a) agreeing on principles and measures to be applied in the establishment of their extended fisheries jurisdictions,

(b) agreeing at least provisionally, on a common basis for negotiations with distant water fishing interests in relation to highly migratory species common to the region, and

(c) ensuring that agreements concluded in the near future with distant water fishing interests are compatible with these principles and measures and are so framed as to take account of principles and measures that the coastal state might agree to in future regional arrangments.

6. Recognise that the coastal countries of the South Pacific have an immediate and continuing need for information and advice concerning the living resources in the region and the ways and means of securing maximum benefits from them as well as for an effective instrument to co-ordinate policies in this field, and that management of resources moving over vast areas, control of their exploitation, surveillance and policing and collection of adequate statistical and other information require co-ordination by a regional agency.

7. Decide to establish a South Pacific Regional Fisheries Agency open to all Forum countries and all countries in the South Pacific with coastal state interests in the region who support the sovereign rights of the coastal state to conserve and manage living resources, including highly migratory species, in its 200 mile zone.

8. Request the Director of SPEC to convene and service not later than the end of November 1977 a meeting of officials of all interested coastal states in the region-

(a) to prepare a draft convention establishing a South Pacific regional fisheries agency;

(b) to make arrangements for the setting up of an interim agency office and for the appointment of a core staff for a period of one year;

(c) to discuss and prepare guidelines for the activities of the Agency which should include:

(i) collection, analysis and evaluation of statistical and other biological and economic information relating to the conservation and utilisation of living resources to assist member governments in the development of policies aimed at securing maximum benefits for their peoples;

(ii) assistance, if requested, in negotiations with distant water fishing nations and other extra-regional interests;

(iii) facilitation, without detriment to the sovereign rights of coastal countries, of a regional approach to management and to licensing including agreement on generally applicable policies and measures, pooling of information and standardisation of procedures and forms;

(iv) facilitation of collaboration among coastal countries and of co-operation by others in surveillance and enforcement;

(v) provision of advice on necessary conservation measures including the need for a widely based organisation envisaged in the Informal Composite Negotiating Text;

(vi) technical advice;

(vii) execution of agreed administrative activities.

In preparing these guidelines the officials should take into consideration the suggestions contained in the annex to the Director's Report to the Forum.

9. Welcome the offer of the Government of the Solomon Islands that the permanent headquarters of the Agency be located in Honiara, Solomon Islands.

10. Invite the Government of Australia to agree to the Agency office being located on an interim basis in Cronulla, New South Wales, pending its establishment on a permanent basis in Honiara, Solomon Islands.

11. Request the Director of SPEC to seek funds from governments and international agencies for the operation of the Agency until such time as it is self-supporting and to recommend an equitable formula for the costs to be levided on participating governments.

12. Draw the attention of the South Pacific Conference to this Declaration and invite the members of the Conference to consider arrangements whereby governments and territories in the region with a common interest as coastal states can participate with members of the Forum in the conservation and management of the living resources of the region.

SPF(77)13

8TH SOUTH PACIFIC FORUM

Port Moresby, Papua New Guinea
29-31 August, 1977

PROVISIONAL AGENDA ITEM 6

ESTABLISHMENT OF A SOUTH PACIFIC FISHERIES AGENCY

REPORT BY THE DIRECTOR OF SPEC

1. At their meeting in Suva (13-14 October 1976) members of the South Pacific Forum:

- Decided

  (a) to harmonise fisheries policies in the region; and

  (b) to adopt a co-ordinated approach in their negotiations with distant water fishing countries.

- Decided in principle to establish a South Pacific fisheries agency to promote the conservation and rational utilisation of the fish stocks of the region.

- Requested me

  (a) in consultation with the Secretary-General of the South Pacific Commission, to prepare proposals for consideration at the next session of the Forum for the establishment and operation of this agency;

  (b) to examine ways of co-operating in the surveillance and policing of the activities of foreign fishing vessels in the region.

2. This report is submitted in response to that request. In preparing it SPEC had valuable assistance from experts made available by the South Pacific Commission, the Government of Australia and the CFTC, and from a working group of representatives of Forum countries which met in Suva on 27 and 28 July 1977 as well as the benefit of consultations with the Secretary-General of the South Pacific Commission. As a result of this work the following proposals are now submitted for consideration and approval by the members of the Forum. A more detailed justification for them will be found in the Annex to this report.

NEED FOR EARLY ACTION

3. The recently concluded 6th Session of the Third U.N. Law of the Sea Conference has not reached agreement on an international convention and it is now clear that such a convention cannot come into force before 1980, if at all. However, a consensus has already emerged on the right of coastal states to establish exclusive economic zones in which they exercise sovereign rights regarding the exploration, exploitation, conservation and management of the living resources. As a result a large number of countries including the distant water fishing countries of concern to the South Pacific region have already passed 200 mile legislation.

4. The countries of the region should therefore move quickly and in concert to establish their economic zones which together would cover the bulk of the exploitable fishery resources of the region including the valuable highly migratory species, the harvest of which is worth at least 350 million dollars a year. Unless and until they do so and take steps to coordinate their policies and activities they will not be able to secure more than a very small part of the benefits from these resources for their peoples and the major benefits will continue to accrue almost entirely to countries outside the region. The total harvest in the region will very likely decline even further.

ESTABLISHMENT OF EXCLUSIVE ECONOMIC ZONES

5. It is recommended that members of the Forum should as quickly as possible complete the legislative and administrative actions necessary to establish exclusive economic zones to the full extent permissible under international law and should undertake to apply within these zones agreed principles and measures for the management and control of the exploration and exploitation and the conservation of the living resources.

6. To this end it is recommended that they should immediately enter into consultations at the official level with a view to agreeing on such principles as should be applied in the establishment of their exclusive economic zones.

NEGOTIATIONS WITH DISTANT WATER FISHING COUNTRIES

7. Recognising the weak bargaining position of individual coastal countries in view of the regional, migratory and vaiable nature of the most important living resources, the members of the Form have already decided to adopt a coordinated approach in negotiations with distant water fishing countries. It remains however to define the unified negotiating position that would maximise benefits for the peoples of the coastal countries and the region as a whole. It will also be necessary to ensure that agreements with outside countries and fishing enterprises are compatible with the principles to be agreed by the coastal countries in regard to management, control and conservation mentioned above.

8. Since the establishnent of exclusive economic zones should take place in the very near future and approaches by distant water fishing countries are already being made, it is recommended that the members of the Forum should without delay arrange consultations to agree at least a provisional unified basis for the negotiations and, in order to allow time

for more definitive arrangements, members of the Forum should undertake to limit any agreements they might make with distant water fishers in the near future to a term of not more than 12 months, to be renegotiated thereafter in accordance with the unified position reached then by the coastal countries.

SOUTH PACIFIC REGIONAL FISHERIES AGENCY

9. In considering the need for and the functions, constitution and membership of, a possible South Pacific Regional Fisheries Agency, two different types of organisation have been broadly distinguished. One would aim primarily at ensuring conservation and promoting optimum utilisation of the living resources throughout the sea area in which they occur, as envisaged in the revised Single Negotiating Text* under consideration by the U.N. Conference on the Law of the Sea. The other would aim primarily at ensuring maximum benefits for the peoples of the coastal countries in the region and for the region as a whole.

10. To be fully effective, the first type of organisation would need participation by all countries in whose waters the resources occur at various stages of their life cycle as well as by all the countries that exploit them. The second type of organisation, on the contrary, would comprise only those countries in the South Pacific with a common interest as coastal states. Arguments had been put forward for and against moves towards the early establishment of both types of organisation. However, there now apprears to be fairly general agreement that establishment of the wider-type organisation should await clarification of what its functions and powers might be under international law as it emerges from the U.N. Conference on the Law of the Sea, whereas an organisation confined to coastal countries could and should be set up forthwith based on already established legal principles, governing rights and duties of coastal states in waters under their jurisdiction, including exclusive economic zones.

11. The present proposals therefore relate to the second type of organisation - that of countries in the South Pacific having a common interest as coastal states. The proposals envisage an interim arrangement which may be modified or changed altogether if and when a wider organisation is set up. The Agency here proposed would indeed be required to work towards the establishment of a wider-type organisation at the appropriate time.

12. It is apparent from preceding sections of this report that the coastal countries of the South Pacific have an immediate and continuing need for obtaining information and advice concerning the living resources in the region and ways and means of securing maximum benefits from them. They also need simple and effective ways of continually coordinating policies and their application in this field. For this purpose alone the establishment of an Agency is essential or at least highly desirable. It appears however from the discussions that have taken place that management of the resources moving over the vast area covered by the economic zones of the coastal countries, control of exploitation and collection of statistical and other information would not be practicable to any significant extent without being coordinated through such an Agency.

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* Part II, Article 53.

13. Accordingly it is recommended that the members of the Forum should proceed with implementation of their earlier decision and decide to establish the Agency as soon as possible and to take steps toward this immediately.

14. To this end it is recommended that they should request SPEC in co-operation with SPC to convene and service, not later than the end of October 1977, a meeting of officials of countries in the region with common interest as coastal countries to:

(a) prepare a draft convention establishing the Agency which would have links with both the Forum and the SPC;

(b) to make arrangements for the setting up of a provisional Agency office and for the appointment of a core staff for a period of one year;

(c) to discuss and prepare guidelines for the activities of the Agency which should include:

(i) the collection, analysis and evaluation of statistical and other biological and economic information relating to the conservation and utilisation of living resources to assist member governments in the development of policies aimed at securing maximum benefits for their peoples;

(ii) assistance in negotiations with distant water fishing nations and other extra-regional interests;

(iii) the facilitation - without detriment to the sovereign rights of coastal countries - of a regional approach to licensing including agreement on generally applicable policies and measures, pooling of information, standardisation of procedures and forms;

(iv) the facilitation of collaboration among coastal countries and of co-operation by others in surveillance and enforcement; and

(v) provision of advice on necessary conservation measures including the need for a widely based organisation envisaged in the revised Single Negotiating Text;

(vi) technical advice;

(vii) execution of agreed administrative activities.

In preparing these guidelines the officials should take into consideration the suggestions contained in the Annex to this Report.

15. Since the setting up of the interim office of the Agency is urgent in view of the services expected of it in advising on negotiations with distant water fishers and in devising licensing systems, it is generally felt that the office should temporarily be located at a place where all necessary facilities, especially computer facilities, are already available and where it would have the benefit of being able to consult experienced fishery staff.

16. It is therefore recommended that the Forum should invite the Government of Australia to consider extending an invitation for the interim office of the Agency to be temporarily located at the headquarters of the Division of Oceanography and Fisheries of CSIRO in Cronulla, New South Wales.

17. It is recommended further that the Forum should request the Director of SPEC to seek funds for the operation of the Agency until such time as it is self-supporting from licencing revenue, from governments and international organisations. He should also recommend an equitable formula for any balance to be levied on participating governments.

INVOLVEMENT OF THE SOUTH PACIFIC COMMISSION

18. In view of the interest of the South Pacific Commission in some areas of fisheries research, it would be desirable to draw the attention of the South Pacific Conference to the decisions on these matters taken by the Forum and to invite the Conference to consider a suitable mechanism whereby those territories in the South Pacific with a common interest as coastal states can participate in the meeting referred to in Recommendation Five.

SUVA

4 August 1977

ANNEX TO REPORT BY
THE DIRECTOR OF SPEC
ON THE ESTABLISHMENT OF A
SOUTH PACIFIC FISHERIES AGENCY

C O N T E N T S

A. MAGNITUDE OF THE RESOURCE AND ITS POTENTIAL VALUE

1. Available statistics are not sufficient for an accurate assessment of the total fisheries production from the South Pacific region to be made. It is apparent nevertheless, that the fish taken from the area are extremely valuable. It has been estimated that the catches of highly migratory species alone in 1974 realized more than 250 million dollars (US) as fresh fish and prehaps three times this amount in the processed form. World market prices of tuna and other highly migratory species have since risen at an unprecedented rate (skipjack prices have doubled in the last 12 months) and even though total tuna catches from the region may have declined a little it is likely that the 1977 catch will realize more than 350 million dollars (US) to the fishing sector of the industry and perhaps as much as 1,000 million dollars (US) at the retail level. Only a very small part (less than 15%) of the total highly migratory species catch is caught, processed or marketed by member countries of the Forum.

2. Consequently no benefit is derived at present by these countries from the bulk of the resource. What is known about the distribution of catches and landings of fish from the area suggests that at least 75% of the tuna is caught, processed and marketed for the benefit of countries entirely outside the area.

3. The degree of taxation which tuna catching can support is an indication of the transferable benefits that accrue in this activity. This, conservatively estimated, may range between 5 and 10% of fresh fish value. The total transfereable benefit could therefore be taken as being at least between 17 and 35 million dollars (US) per year from the catching section alone.

4. Substantial benefits from fisheries for these highly migratory species for the countries of the region will depend upon -

(a) at least maintaining and hopefully increasing, production from the region and ensuring access to world markets and

(b) initiating a licensing or taxing system whereby revenue or other forms of remuneration accrue to coastal countries. Because of the highly migratory and seasonally variable nature of the resources in question close regional co-operation will be required to maintain production and it is difficult to envisage that any licensing or taxing system could be effective without the closest co-ordination between coastal countries. Surveillance and enforcement of fishing activities, and therefore revenue collection, are also dependent upon regional effort.

B. DATA COLLECTION AND ANALYSIS FOR MAXIMIZATION OF BENEFITS TO COASTAL COUNTRIES

5. The data on the highly migratory species of the South Pacific region at present available are quite inadequate for determination of levels of fishing activity, distribution of fishing effort and catches, resource evaluation, economic appraisal of the industries (and hence possible catch

taxes which could be carried), resource and fisheries management, or conservation purposes. There is general agreement that obtaining data for all of these purposes is of paramount importance to all coastal countries of the region and should be a basic function of a Regional Fisheries Agency or Commission.

6. Data necessary for these purposes would include catch and effort statistics, for domestic and foreign fishing vessels exploiting regional migratory species within the region and outside as well as similar statistics on bait fish or other essential support fisheries within the region.

7. In addition, the agency will need to collect and analyse relevant economic data such as:

(a) Level of, and fluctuation in, costs incurred in different types of fishing and processing the migratory species occurring in the region, including costs of vessels, gear, fuel, stores, labour etc. and

(b) Costs of marketing, including freight, insurance, taxes and duties, commissions etc. and prices obtained in various markets.

This basic information will be essential if the Agency is to assist its member countries in their determination of licence fees, particularly for foreign vessels, and generally in the development of policies for the maximisation of benefits from the fisheries within the exclusive economic zones. With good information and regional co-operation their economic and social benefits obtainable from taxation and regulation of foreign and regional vessels should include in addition to increased employment opportunities and earning power for local people, utilisation of local materials, export earnings and import replacement. The Agency would also be in a position to advise its members on specific fishery and fish processing projects including their marketing aspects. It would also be in a position to offer important assistance in negotiations with distant water fishing nations and other extra-regional interests.

C. REGIONAL CO-OPERATION IN RESPECT OF LICENSING

8. The highly migratory nature of the major resources of the region and the inability to predict the time and place of the occurrence of fishable concentrations require that vessels exploiting these resources are themselves extremely mobile and wide ranging. In order to maintain economical operations the long-range fleets of any country operating in the region must traverse the boundaries of the proposed extended economic zones of many coastal countries.

9. Most long-range vessels currently fish in the proposed potential zones of many countries in any one year and frequently shift from the zone of one country to that of another almost daily. In almost all cases the vessels have no predetermined cruise plan but adapt their course to the movements of good concentrations of fish. It therefore is impossible for each vessel to determine in advance in which economic zones it will fish or look for fish on a particular voyage and hence from which individual coastal countries it might require a licence.

10. On the other hand, it would be well-nigh impracticable for each coastal country to initiate and administer a complex licensing system to permit the necessary freedom of vessel movement while maintaining licence control over all vessels particularly since different types of licences for different types of vessels or the exploitation of different species would be required. In these circumstances, the need for a regional approach to licensing is apparent, but this must be achieved without curtailing or prejudicing the sovereign rights of the coastal countries within their exclusive economic zones since recognition of these rights represents one of the most significant gains obtained by them in the negotiations at the Third UN Conference on the Law of the Sea in recent years.

11. The role of the Regional Fishery Agency in licensing should accordingly be to enable coastal countries with common interest to exercise their licensing powers without curtailment and subject only to such co-ordination as they will mutually agree on in order to maximize benefits for themselves from the regional resource.

12. Specifically the agency would have the following functions in the field of licensing:

(a) to be the organisation in which coastal countries can agree upon policies and measures applicable generally to licensing in the region. e.g. requirements for reporting on fishing activities and catches; clearances upon entering and leaving the region; minimum fees; conservation measures to promote fuller participation of nationals of the region in the catching, processing and marketing of the regional resources (such as special concessions throughout the region for vessels of participating countries), incentives for processing of catches within the region, etc.

(b) to obtain, maintain and disseminate current information about licences issued and valid and about the activities of licensed vessels so as to facilitate effective surveillance and, if necessary, enforcement by coastal countries and also to serve as a basis for assessing and re-distributing licence fees.

(c) to standardize and organize licensing procedures and forms and to facilitate or carry out the issuance of licences; the reception and checking of reports; the clearance of vessels, the collection and re-distribution of fees and such other administrative activities in connection with licensing as the participating countries might entrust to it in order to make licensing more effective and less costly.

(d) to ensure that every licence issued for fishing activities in the region not only includes all regionall agreed requirements (see point a) above, but also conforms with any special requirements or restrictions imposed in the exercise of its sovereign rights by an individual participating country with regard to waters under its own jurisdiction so as to safeguard both regional and individual coastal country interests.

D. REGIONAL CO-OPERATION IN RESPECT OF SURVEILLANCE AND ENFORCEMENT

13. If it is assumed that the value of the total harvest of highly migratory species from the South Pacific region is of the order of 350 million dollars (U.S.) as fresh fish annually and that the catch could support taxation at a level of at least 17 and possibly 35 million dollars (U.S.), it is self evident that some form of policing will be required.

14. The compilation of statistics and economic data, the generation of revenue from catch taxes or other sources and the implementation of fishing policies in the region are all inseparably associated with the necessary regional approach to surveillance and enforcement. Good catch statistics and economic data will only be obtained and benefits to coastal countries maximised if licence conditions are observed and substantial illegal fishing is prevented. The multiplicity of boundaries of proposed zones of extended jurisdiction in the region and the complex mosaic patterns of such boundaries together with the extremely limited surveillance or enforcement capabilities of the individual coastal countries leaves no viable alternative to a regional approach to these problems.

15. It appears that eventually a combination of satellite and computer technology may represent the most efficient method of surveillance but until such technology is available for use in this region, existing traditional means will have to be used to the best advantage so as to discourage as far as possible violations of management regulations and licence conditions. Because of the paucity of means of surveillance and the vast area over which it has to be exercised it is necessary to simplify this task as much as possible. Because the movements of vessels over the complex network of zones of jurisdiction cannot be predicted or effectively controlled, countries must work together closely if surveillance is to be at all effective.

16. The Agency should therefore become the focal point for members to pool all information about the movements and activities of vessels and to make the conditions under which foreign vessels are admitted to zones of jurisdiction as uniform as possible, for requiring foreign vessels to report at frequent intervals to one of a few common check-points and for assisting members in physical surveillance by means of ships, aircraft and observations from shore. The Agency could greatly facilitate such co-operation. The task of surveillance would also be simplified if in negotiations with distant water fishing countries an agreement were obtained that vessels of those countries would be presumed to be exploring or exploiting the living resources of the zone in which they were navigating unless their gear was so stowed as not to make it quickly accessible.

17. It is generally felt that enforcement as distinct from surveillance must essentially be handled by individual countries i.e. if transgressors are to be apprehended and punished, this must be done by the forces and the courts of the country under whose jurisdiction the offence falls. However, countries could assist each other by furnishing and admitting evidence and could make evasion of any one jurisdiction less attractive by agreeing on uniform penalties and uniform policies in their application. The necessary agreements and arrangement could be facilitated by the Agency.

E. REGIONAL CO-OPERATION IN RESPECT OF CONSERVATION OF THE RESOURCES

18. The potential benefits from the exploitation of the living resources in the area could be significantly decreased if the resources were allowed to be depleted or if excessive fishing efforts were to increase costs substantially. Because of the highly migratory nature of the important resources, any conservation measures taken individually by coastal countries would be totally ineffective. Even measures taken collectively by the coastal countries of the region may still be inadequate and may have to be supplemented by action over the entire area of distribution of the resources. If the coastal countries manage their jurisdictional zones jointly and present a united policy on resource conservation and limitation of fishing effort they will be in a good position to obtain in negotiations the necessary collaboration of other countries fishing the same fish populations.

19. At present, the information necessary for an effective conservation programme is largely lacking, though agencies in the region, particularly the SPC and the University of the South Pacific are in the process of organising research activities which, hopefully, would provide important data. However, the Agency will provide an unique medium for the collation of all relevant research data from the whole of the region and combine these with relevant catch and effort data in order to achieve a comprehensive appraisal of the state of the fish stocks, to advise members on the conservation measures required and to reach agreement on their application. These responsibilities could be transferred to an organisation for the conservation of the resources over a wider area, as envisaged in the Law of the Sea negotiations, if and when it is established.

F. STRUCTURE OF A REGIONAL FISHERIES AGENCY

20. In order to carry out the functions outlined above, the Agency would need to have the necessary legal international status and legal status within the member countries. It should therefore be established as a regional inter-governmental organisaion by international convention defining, among other things, its legal status, its relations with the member countries, with other states and with other organisations. Such a convention should be drafted in consultation with prospective member countries, adopted at a plenipotentiary conference and subsequently signed and ratified or accepted or approved by the participating countries. The plenipotentiary conference could be convened either by one of the countries concerned or by an international organisation. The convenor would normally also become the depository of the convention.

21. Under the convention, participating countries would undertake to give effect within their jurisdiction to any duly made decision of the governing body of the organisation unless they had lodged a formal objection to it as prescribed in the convention.

22. The organisation should be open to membership by or on behalf of all coastal countries in the region having common interests in the migratory species occurring there. Accession should be subject to approval by the governing body of the organisation. If necessary, two grades of membership could be envisaged with participating countries passing from one to the other as constitutional developments occur.

23. The governing organ, which might be called ommission, would be composed of commissioners appointed by the member countries. Additional commissioners without voting rights might be appointed by specified international organisations. Each member country would have one vote. Substantive decisions of the Commission affecting the rights, duties and interests of their member countries should be taken by a qualified majority (two-thirds or three-quarters).

24. The Commission should have power to set up subsidiary organs e.g. a conservation committee which would review the status of the resources in the light of statistical and scientific information available and would recommend conservation measures to the Commission. The Commission might also establish an Administrative and Finance Committee which would keep the Agency's administrative and financial activities under review and could make recommendations to the Commission regarding management and utilisation of its financial resources. It might also be advisable to have a Legal Committee to advise the Commission on the drafting of regulations, agreements etc. The Commission should hold sessions at least biennially and the subsidiary organs as directed by the Commission.

25. The Chief Officer of the Agency, appointed by the Commission for a renewable four or five-year term might be called the Executive Director. He would appoint and direct the Agency staff, administer, receive and disburse the Agency's funds, plan and execute the Agency's activities, communicate with member governments and as required with other governments, organisations, institutions and individuals, enter into agreements on behalf of the Agency, prepare and issue the Agency's reports and publications, service the Agency's organs and carry out any other necessary tasks all as directed by the Commission and subject to such approvals as the Commission may determine.

G. STAFFING, EXPENSES AND FINANCING OF A REGIONAL FISHERIES AGENCY

26. In order to carry out the tasks and functions envisaged in the preceding sections of this Annex, a Regional Fisheries Agency will require a staff with competence in statistics, economics (fishery development, economic effects of fishing regulations etc.), law, public administration, stock assessment and management. The minimum needed might be two senior and two junior professional officers working under an Executive Director (and a Deputy Executive Director) and supported by necessary clerical and secretarial staff. The Agency will also have to employ consultants or short-term staff for specialised tasks from time to time.

27. The total personnel costs of such a staff might be between $230,000 and $275,000 for a full year. Other costs associated with the functioning of the Agency e.g. meetings, communications, transport, travel, computer services, printing and office supplies etc. are very difficult to estimate without knowing how much of these will have to be borne by the Agency itself and how much by the Agency's host government, participating governments and collaborating organisations. They may vary between $100,000 and $200,000 for a full year. The total of between $330,000 and $475,000 could, once the Agency is fully operative, be met easily from a small portion of the licence revenue earned by the participating countries. In the initial period

however, the cost, which in the first year would probably not exceed two-thirds of the estimates above, would have to be borne by the participating countries on some equitable basis.

8TH SOUTH PACIFIC FORUM

Port Moresby, Papua New Guinea
29-31 August 1977

FINAL COMMUNIQUE

The Eight South Pacific Forum was convened on 29 August 1977 at the Administrative College Conference Centre, Port Moresby, and was attended by His Excellency the President of the Republic of Nauru; the Prime Ministers of Australia, New Zealand, Papua New Guinea, Tonga and Western Samoa; the Premiers of the Cook Islands and of Niue; the Chief Minister of the Gilbert Islands; the Deputy Prime Minister of Fiji representing his Prime Minister and the Deputy Chief Minister of the Solomon Islands representing his Chief Minister. An official from Tuvalu was also present at the meeting as the Chief Minister was unable to attend because of Tuvalu's General Elections.

2. In his opening address, His Excellency the Governor-General of Papua New Guinea, Sir Tore Lokoloko, G.C.M.G., O.B.E. welcomed, on behalf of the Government and people of Papua New Guinea, all the delgates present.

3. The Governor-General recalled that Island Governments had come together because of their recognition of common problems which they faced in the region. Much ground work had already been done in previous Forums and in the discussions following towards solving these problems. He saw the Port Moresby Forum as providing the basis of concrete proposals in areas of mutual concern. He was certain that the Forum would adopt a wider perspective in finding regional solutions to regional problems. He reminded delegates of the need for vigilance, so that they could be worthy of the trust of future generations, while satisfying the needs of their present day peoples.

4. In reply, the Premier of Niue, Hon. Robert Rex, C.M.G., O.B.E. congratulated His Excellency the Governor-General, the Prime Minister, Rt Hon. Michael Somare and the people of Papua New Guinea for hosting the Eighth South Pacific Forum in Papua New Guinea. Delegates were appreciative of the hospitality with which they had been welcomed. He saw value in the informal gathering which they held during the weekend in Madang, which had paved the way to solutions for some of the difficult decisions. The Premier also congratulated the Prime Minister of Papua New Guinea in his success in retaining the leadership of the country in the recent elections. The Premier stressed that regional links had been developed since the Forum started, and should continue to be strengthened.

5. The Prime Minister and Deputy Prime Minister of Papua New Guinea were unanimously elected Chairman and Deputy Chairman respectively. The Premier of Niue was appointed as Press Spokesman for the Forum.

Admission of New Member

6. The Gilbert Islands was admitted as a full member to the forum having achieved full self-government.

Annual Report of the Director and Report of the SPEC Committee

7. In approving the Annual Report of the Director on the operations of the Secretariat since the last meeting of the Forum, the Forum agreed with the Director's statement that it was now time to take stock and to examine critically the past achievements of SPEC. The Forum also approved the Agreed Report of the pre-Forum SPEC Committee Meeting which had met on 24-26 August 1977 to consider the detailed operations of SPEC.

Telecommunications

8. The Forum noted the Government of Fini's undertaking to make sufficient places available to trainees from other participating countries in the Telecommunications Training Centre in Fiji to meet the needs of the countries of the region. Fiji would operate the Centre as a national institution to meet the regional need.

Law of the Sea

9. Forum members agreed to establish 200 mile fishing or economic zones as quickly as possible.

10. The Forum considered a paper prepared by the Director of SPEC on the establishment of a South Pacific Regional Fisheries Agency and adopted a Declaration which is attached to this Communique, on the Law of the Sea and the Regional Fisheries Agency.

11. The Forum expressed its support for Fiji's offer made at the 6th Session of the United Nations Law of the Sea Conference for Fiji to be the location of the proposed International Sea-bed Authority.

Relationships with Other Regional Organisations

12. In noting the growing importance of ASEAN as an influential organisation in a neighbouring region, the Forum agreed that informal contact on matters of common interest between the Forum and ASEAN should be initiated.

13. The Forum expressed its desire to see the role of ESCAP in the Pacific strengthened.

14. The Forum received the Report of the Vice-Chancellor of the University of the South Pacific on the operations of the University over the past year.

Membership of SPEC and the Forum

15. The Forum discussed the related questions of which countries could qualify to be members of SPEC and of the Forum. It was agreed that an officials group would meet during the forthcoming year with a view to reporting on the matter to the next Forum.

Third South Pacific Festival of Arts

16. The Forum welcomed Papua New Guinea's offer to host the Third South Pacific Festival of Arts in Late June/early July 1980. The importance of the Arts Festival to the South Pacific region was reaffirmed by the Forum.

Environment

17. The Forum endorsed the establishment of a comprehensive environmental management programme and adopted a resolution which is attached.

Date and Venue of Next Meeting

18. The Forum accepted the offer of the Government of Niue to host the 9th South Pacific Forum in Niue at a date to be confirmed later.

PORT MORESBY
31 AUGUST 1977

8TH SOUTH PACIFIC FORUM

Port Moresby, Papua New Guinea
29-31 August 1977

ENVIRONMENTAL MANAGEMENT

Members of the South Pacific Forum meeting at Port Moresby

1. Recognise that

(a) South Pacific countries are custodians of a significant proportion of the earth's surface which is richly endowed and so far largely unspoiled by unwise development.

(b) These countries have limited financial and human resources to ensure that the South Pacific region is wisely managed in the interest of future generations of Pacific peoples.

(c) South Pacific countries will more effectively manage this unique South Pacific environment by the adoption of common approaches and standards to development planning and environment conservation and by strong regional co-operation.

(d) South Pacific countries have the opportunity to explore and adopt new approaches to development planning and environment conservation which are most compatible with the national, social and cultural resources of the region.

2. Recall their decision made at the Seventh South Pacific Forum that SPEC should consult with the South Pacific Commission with the view to preparing proposals for a co-ordinated regional approach to the problem of environmental management for consideration at the Eighth South Pacific Forum.

3. Note a resolution of the Sixteenth South Pacific Conference directing that a proposal for a comprehensive environmental management programme be formulated reflecting the environmental interest of all countries and territories in the region by SPEC and the SPC as joint executing agencies.

4. Having considered the paper prepared by the South Pacific Commission in consultation with SPEC on a proposed comprehensive environmental management programme notes that:

(a) the paper lacks sufficient detail, particularly with respect to costs and institutional and administrative arrangements; and

(b) the establishment of a separate agency to administer the programme is undesirable.

5. Reaffirm however, its commitment to optimum and co-ordinated management of the total Pacific environment.

6. Resolve accordingly that SPEC should consult with the South Pacific Commission prior to the Seventeenth South Pacific Conference with a view towards convening a meeting of officials from members of the South Pacific Commission at the earliest possible date, to consider the paper in detail and to make recommendations to SPEC and the SPC on how the programme can be financed and modified to meet the needs of the countries of the region.

7. Support the further development of a programme by SPEC in consultation with the South Pacific Commission.

8. Invite UNEP, the UNDP and other multilateral organisations and interested donor governments and agencies to provide financial and other assistance for a comprehensive environmental management programme.

9. Agree that the Seventeenth South Pacific Conference be advised accordingly of the Forum's decision.

Proclamation

In the name of His Majesty George the Fifth King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India.

By Sir Douglas Mawson

Whereas I have it in command from His Majesty King George the Fifth to assert the sovereign rights of His Majesty over British land discoveries met with in Antarctica. Now, therefore, I, Sir Douglas Mawson, do hereby proclaim and declare to all men that, from and after the date of these presents, the full sovereignty of the Territory of King George V Land and its extension under the names of Oates Land situated between Longitudes 142 and 160 degrees east of Greenwich and between Latitude 66 degrees south and the South Pole Included herein are the following Islands. Curzon Archipelago: Way Archipelago: Drysdale Island: Mackellar Islets: Hodgeman Islets, vests in His Majesty King George the Fifth his heirs and successors for ever.

Given under my hand at Cape Denison on the Fifth day of January 1931.

Douglas Mawson
5.1.31

God Save the King.

APPENDIX V

THE ANTARCTIC TREATY

Australian Instrument of Ratification deposited: 23rd June, 1961.

Entry into force: 23rd June, 1961.

AUSTRALIA.

TREATY SERIES, 1961,

No. 12.

THE ANTARCTIC TREATY

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 forever 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 measures of a military nature, such as the establishment of military bases and forifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

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 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.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialised Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.

ARTICLE IV

1. 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 activites 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 right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. 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° 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 time 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 1 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 subparagraph 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 repsect 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 time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific 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 as 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, judical 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

1. (a) The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to particpate 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 provisions 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.

2. (a) 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 the 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 instrument 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 Reaty, 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.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized, have signed the present Treaty.

DONE at Washington this first day of December one thousand nine hundred and fifty-nine.

(Here follow the signatures of the Plenipotentiaries.)

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* Australian Instrument of Ratification was deposited on 23rd June, 1961.

* The Treaty entered into force on 23rd June, 1961.

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