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COMMITTEE ON THE PEACEFUL USES OF THE  
SEA-BED AND THE OCEAN FLOOR BEYOND  
THE LIMITS OF NATIONAL JURISDICTION

DRAFT OCEAN SPACE TREATY

Working paper submitted by Malta

Prefatory note

1. The following draft of an ocean space treaty was presented by Dr. Arvid Pardo and is submitted by the Government of Malta as a working paper for discussion purposes.
2. The draft ocean space treaty raises a number of questions with respect to which further study is necessary and does not necessarily represent the definitive views of the Government of Malta.
3. The title used is an abbreviated title of convenience. The full title of the draft treaty is as follows: "Draft Treaty concerning the establishment of an international régime, including international machinery, for the sea-bed and ocean floor and the subsoil thereof and for its resources beyond the limits of national jurisdiction, including a precise definition of the area and also concerning a broad range of related issues, including those of the régimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of the coastal State), the preservation of the marine environment (including inter alia the question of pollution) and scientific research."
4. The following abbreviated titles have been used:  
  
1958 Territorial Sea Convention: Convention on the Territorial Sea and the Contiguous Zone done at Geneva on 29 April 1958.  
  
1958 High Seas Convention: Convention on the High Seas done at Geneva on 29 April 1958.  
  
1958 Fishing Convention: Convention on Fishing and Conservation of the Living Resources of the High Seas done at Geneva on 29 April 1958.

1958 Continental Shelf Convention: Convention on the Continental Shelf done at Geneva on 29 April 1958.

USA draft convention: Draft United Nations Convention on the International Sea-bed Area - Working paper submitted by the United States of America (A/8021, Annex V).

Tanzania draft statute: Draft statute for an international sea-bed authority as submitted by the United Republic of Tanzania (A/AC.138/33).

5. In an effort to facilitate comparison with the provisions of the 1958 Geneva Conventions on the Law of the Sea, new words or sentences not found in those Conventions have been underlined in Parts I, II and III of the present preliminary draft.

6. It is regretted that it has been impossible to annex a draft statute for the proposed International Maritime Court.

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## Introduction

The present working paper is based on the postulate that the principle of laissez-faire freedom underlying the present régimes governing activities in ocean space beyond national jurisdiction is largely obsolescent and increasingly inadequate for reasons which were explained in the statement delivered by the delegation of Malta on 23 March 1971 in the main committee of the United Nations Committee on the Peaceful Uses of the Sea-bed.

At the same time the encroachment of coastal State jurisdiction over areas of ocean space previously open to the access of all and the growing multiplicity of complex national legislation governing activities in that part of ocean space subject to national jurisdiction, threaten seriously to hamper vital international interests in ocean space, such as international commerce and navigation, control of marine pollution and scientific research.

The increasingly serious problems and conflicts developing in ocean space cannot be solved satisfactorily in the framework of existing legal régimes of the seas, largely based on concepts that seldom correspond to contemporary reality, or by the sole elaboration of an international régime for the seabed beyond national jurisdiction, since all uses of ocean space are increasingly interlinked.

A new international order for ocean space must therefore be constructed that takes into account, and seeks equitably to regulate, the problems created by the advance of science and technology, by the increasing and more diversified use of ocean space and by the intensifying competition for its resources.

General Assembly resolution 2750 (XXV), in its paragraphs 2, 3 and 6, gives the international community the opportunity to create this new international order.

Since ocean space is a single ecological system and since its uses are increasingly interlinked, the new international order must reflect a total and comprehensive approach to the marine environment and to the international regulation of its problems, whether several international legal instruments are prepared or whether it is preferred, as in the present working paper, to attempt to incorporate the main features of the envisaged new order for ocean space in one instrument.

The working paper attempts to balance equitably the wide spectrum of national interests in ocean space: it also attempts to safeguard vital national interests considered as a whole while recognizing the growing interdependence of regions and of the world.

The working paper thus seeks to outline an equitable legal framework within which the vital interests of mankind are protected and within which all States can find expanding opportunities in the beneficial and peaceful use of the marine environment.

To this end two concepts have been rejected:

- (a) laissez-faire freedom beyond national jurisdiction;
- (b) the unfettered sovereignty of the State within national jurisdiction.

In contemporary conditions both must yield to the supreme interests of mankind if we are to survive and to expand our beneficial use of the oceans.

## Part I

In this part of the working paper it is attempted mainly to update existing law of the sea as incorporated in the 1958 Geneva Convention on the Territorial Sea and in that relating to the High Seas within the framework of a comprehensive approach to ocean space.

The main divergencies with existing law of the sea are the following:

- (1) The definitions of ocean space and of national and international ocean space and the replacement of the term ships, contained in the Geneva Convention, by the term vessels, which, comprehensively defined, takes into account the advance of technology in ocean space.
- (2) The first article of Chapter II is new. It is attempted here to formulate two principles which it is believed should be incorporated in international law:
  - firstly that no State can legitimately use its technological capability, whether within or outside national jurisdiction, in a manner that may cause extensive change in the natural state of the marine environment, without the consent of the international community;
  - secondly that the coastal State has a legal obligation to take and enforce within its jurisdiction reasonable measures to control pollution of the oceans which might cause substantial injury to the interests of other States.
- (3) An attempt is made in article 7 to make a vessel's change of flag correspond more closely to a real change in ownership and to provide basic regulation of the shipping industry in international waters.
- (4) An effort is made to protect underwater and sea-bed installations (articles 31 to 33) and to define and expand freedom of scientific research taking into account the legitimate interests of the coastal State (article 35). Also there are articles not found in the 1958 Geneva Conventions concerning the laying of submarine cables and pipelines (article 27) and overflight (article 34).
- (5) Reference is made to an International Maritime Court to adjudicate disagreements and disputes.

## Part II

Articles 36 and 37 concerning the limits of coastal State jurisdiction in ocean space are entirely new. It will be noted that one easily verifiable limit, 200 miles, is proposed to coastal State jurisdiction for all purposes: this limit

would replace the many and uncertain limits of existing international law. Within the over-all limit of 200 miles the coastal State has certain obligations (see, for instance article 2, etc.) and its authority is further circumscribed in various ways beyond 12 miles from the coast in order to protect important international interests (see, for instance articles 27, 34, 48, etc.).

Article 38 provides for appropriate compensation to States, which might have legitimate claim to the sea-bed of submarine areas more than 200 miles from their coast under the 1958 Geneva Convention on the Continental Shelf.

The provisions concerning baselines contained in the 1958 Geneva Convention on the Territorial Sea have been largely retained with the proviso that the international community may object within a strictly limited period of time to the baselines drawn by a coastal State.

### Part III

Perhaps the most important change from present international law is contained in the distinction made between passage and innocent passage and in the attempt made in article 48 to balance freedom of navigation against the legitimate interests of the coastal State. Other important innovations are contained in articles 58, 59 and 61 concerning the manner in which a coastal State may exploit the living resources of ocean space within its jurisdiction and suggesting an obligation of the coastal State to contribute a portion - to be later defined - of the revenue obtained from the natural resource exploitation under its jurisdiction to the international community in view also of the fact that the bulk of the living and non-living resources of ocean space are found within the new limits of national jurisdiction envisaged. A further innovation is the provision made for an International Maritime Court to adjudicate disputes.

### Part IV

This part of the working paper is founded on the concept that ocean space beyond national jurisdiction is a common heritage of mankind. The provisions of General Assembly resolution 2749 (XXV) and some of the articles contained in the draft conventions submitted by the Governments of Tanzania and of the United States are reproduced in many cases verbatim. Articles 76 and 77 have been adapted from other draft conventions; articles 81 and 82 are a reformulation and expansion of articles 24 and 25 of the 1958 Geneva Convention of the High Seas; articles 83 and 84 are new.

### Part V

This section of the working paper is largely new and is based on the postulate that, in modern circumstances, unregulated freedom in ocean space beyond national jurisdiction is not in the interests either of coastal States or of the international community as a whole; beneficial use of ocean space is restricted and many contemporary problems are insoluble unless the new international legal order, which must replace existing régimes of the seas, makes provision for strong and equitably balanced international institutions with powers to administer ocean space beyond national jurisdiction and to manage its living and non-living resources on behalf of the international community. Basic prerequisites to an orderly economic development of ocean space beyond national jurisdiction and hence to the equitable

sharing by all States in the benefits derived from the exploitation of its natural resources are (a) a credible mechanism for the maintenance of international law and order in ocean space, including the territorial, jurisdictional and ecological integrity of ocean space beyond national jurisdiction and (b) certainty in international law and mechanisms for the peaceful and certain settlement of disputes. This latter requirement necessarily involves the creation of an international court with binding powers of adjudication.

Management, at least rational management, of resources implies scientific research and the knowledge derived therefrom. At the same time development of ocean space and of its resources implies the development and practical application of advanced technologies and dissemination of the knowledge thereof. Hence the importance given to these subjects in the draft and their inclusion among the purposes of the Institutions envisaged.

An effort has been made to ensure an equitable balance in the Institutions by assigning States members of the Institutions to three different categories, not corresponding to customary groupings of States, and requiring an affirmative majority in two of the three categories for the adoption of decisions.

While the Institutional machinery envisaged may appear somewhat complex, it is believed that it can function efficiently and effectively with a comparatively small secretariat and with an administrative expenditure smaller than the present expenditures of some major specialized agencies. It should be noted in this connexion that, since the Fisheries Department of FAO, the International Oceanographic Commission and the Inter-Governmental Maritime Consultative Organization inter alia could appropriately be consolidated in the proposed Institutions, the number of international organizations would not be increased by the creation of institutions for ocean space.

Equitable allocation to States of the benefits derived from the exploitation of the natural resources of ocean space beyond national jurisdiction is a difficult question. It is believed that some concrete benefits to States should become available as soon as possible, even if revenue from the exploitation of natural resources does not cover the administrative expenses of the Institutions. In the second place the working paper takes the position that revenue allocated to international community purposes, such as scientific and fishery research, establishment of aids to navigation, etc., tends immediately to benefit a limited group of States, which are prevalently technologically advanced. This is the reason for the provision in article 17<sup>4</sup> (2) which reserves the bulk of the revenue allocated for distribution to States to those countries with a gross national product of less than \$800 per capita.

Matters of major detail may be considered to be:

(1) Article 90 authorizing the Institutions to accept the transfer to their administration of islands. The purposes of this article is threefold:

(a) to facilitate a solution of the problem of the limits of jurisdiction over ocean space which can be claimed by a State by virtue of its sovereignty or control over certain categories of islands;



(b) to make a constructive contribution to the solution of the problem of micro-territories;

(c) to encourage the gradual establishment of a world network of parks and nature preserves (whether for recreational, scientific or other community purposes) and of scientific stations.

(2) Chapter XXI providing for associate membership in the Institutions.

(3) Articles 157 and 158 dealing with the possible necessity of proclaiming ecological emergencies.

(4) Article 161 providing for the competence of the International Maritime Court with respect to natural and juridical persons who are parties to events which have occurred in International Ocean Space.

(5) Article 165 concerning the functions of the General Secretary.

The manner in which have been treated two matters that have received considerable attention in the Committee on the Peaceful Uses of the Sea-bed may arouse some surprise.

In the first place only one article of a general nature - article 127 - mentions the military uses of ocean space. It has been thought futile in this connexion to attempt to accomplish more than to safeguard the future. If the Institutions envisaged function effectively and act wisely, it is probable that they will be requested in due course to undertake important functions with regard to arms control and disarmament in ocean space.

In the second place comparatively little space has been allocated to the management and exploitation of the natural resources of ocean space beyond national jurisdiction. It should be made clear in this connexion that, the concept of resource management in ocean space beyond national jurisdiction having been firmly established, it was thought preferable to lay down only general guidelines (articles 138 et seq) on the manner in which the management powers of the Institutions should be exercised rather than to attempt a detailed regulation of exploitation without knowledge of the conditions under which exploitation will be undertaken in practice.

## PREAMBLE

The States Parties to this Treaty,

...  
have agreed as follows:

### PART I: OCEAN SPACE

#### Chapter I: Definitions

##### Article 1

National jurisdiction means the legal power of a coastal State to control and regulate a defined area of ocean space adjacent to its coast. Such jurisdiction is subject to the limitations of international law designed to protect the interests of the international community.

Ocean Space comprises the surface of the sea, the water column and the sea-bed beyond internal waters.

National ocean space means that part of ocean space which is under the jurisdiction of a coastal State.

International ocean space comprises all parts of ocean space not subject to national ocean space jurisdiction.

Sea-bed means (a) the floor of the sea or of the ocean and (b) the subsoil or rock underlying the sea floor or the ocean floor.

The term natural resources comprises all living and non-living things or energy, actually or potentially useful to human beings, which are found in ocean space.

The term conservation of the living resources of the seas means the aggregate of measures rendering possible the optimum sustainable yield from these resources. 1/

The term island is used as referring to a naturally formed area of land, surrounded by water, which is above water at high tide. 2/

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. 3/

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1/ 1958 Fishing Convention, Article 2.

2/ 1958 Territorial Sea Convention, Article 10.

3/ 1958 Territorial Sea Convention, Article 11.

A bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not 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. 4/

The term vessel includes boats, ships, submersibles, man-made installations or systems which, whether self-propelled or by some other means, move or can be moved from one part of the ocean space to another. 5/

Convention refers to all provisions of, and amendments to, this Convention and its Annex. 6/

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4/ 1958 Territorial Sea Convention, Article 7.

5/ In view of the progress of technology, the term "vessel" (comprehensively defined) has been substituted for the term "ship" used in the 1958 Geneva Convention.

6/ USA draft Convention (A/8021, Annex V) Article 75 (1).

## Chapter II: General

### Article 2

Considering that the seas and oceans constitute a single ecological system vital to life and that all States have a common interest in the maintenance of the quality of the marine environment, States, whether signatories of this Convention or not, have the obligation:

(a) Not to use their technological capability in a manner that may cause significant and extensive change in the natural state of the marine environment without obtaining the consent of the international community in accordance with the present Convention; 7/

(b) To take effective measures to prevent pollution of ocean space caused by human activities of whatever nature in their land territory or internal waters;

(c) To take and enforce all reasonable regulatory and control measures for the avoidance of pollution in national ocean space which might cause substantial injury to the interests of other States or of the international community;

(d) To take all reasonable regulatory and control measures to prevent their nationals or vessels bearing their flag from creating in ocean space pollution causing substantial injury to the marine environment or to the interests of the international community;

(e) To co-operate with the competent international institutions in the adoption and enforcement of international standards and regulations for the prevention of pollution in ocean space;

(f) Non-compliance with the obligations under paragraphs (a), (b), (c), and (d) shall make the offending party legally responsible when substantial injury is caused to the interests of other States or to those of the international community;

(g) The appropriate organ of the International Ocean Space Institutions may bring to the attention of the International Maritime Court for adjudication and for determination of damages all events that have caused significant change in the natural state of the marine environment or significant pollution in international ocean space. 8/

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7/ Man has acquired the technological capability to change the climate and the natural state of the marine environment over vast areas far from the site of his intervention through, for instance, the diversion of major rivers or of ocean currents. It is suggested that States can legitimately use such technological capability only with the consent of the international community.

8/ Article 2 (b) through 2 (g) makes more precise and expands considerably the responsibility of States under articles 24 and 25 of the 1958 High Seas Convention. It is considered that this is necessary in view of the increasingly serious threat of pollution of the seas.

### Article 3

All States, whether coastal or not, shall have free access to ocean space. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

(a) To the State having no sea coast, on a basis of reciprocity, free transit through their Territory; and

(b) To vessels, flying the flag of that State treatment equal to that accorded to their own vessels, or to the vessels of any other States, as regards access to seaports and the use of such ports. 9/

### Article 4

States situated between the sea and a State having no sea coast shall settle, by mutual agreement with the latter and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions. 10/

### Article 5

1. All States, whether coastal or not, have a right to utilize ocean space in accordance with the present Convention. This right shall be exercised with reasonable regard to the interests of other States and to those of the international community.

2. Subject to the provisions of this Convention all States, whether coastal or not, shall enjoy in ocean space:

(a) freedom of navigation

(b) freedom to lay submarine pipelines and cables

(c) freedom of overflight

(d) freedom of scientific research. 11/

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9/ 1958 High Seas Convention, Article 3 (1).

10/ 1958 High Seas Convention, Article 3 (2).

11/ Article 5 (1) has a substantially different emphasis from article 2 of the 1958 High Seas Convention. In Article 5 (2) freedom of scientific research replaces freedom of fishing.

## Article 6

1. All States have the duty to adopt, and 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 seas. 12/
2. All States have the duty to co-operate with the competent international institutions in the adoption and enforcement of such measures as may be necessary for the conservation of the living resources of the seas.

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12/ Article 1 (2), 1958 Fishing Convention.

### Chapter III: Navigation

#### Article 7

Every State, whether coastal or not has the right to move vessels under its flag in ocean space, subject to the provisions of this convention. 13/

#### Article 8

1. Each State shall lay down the conditions for the grant of its nationality to vessels, for the registration of vessels in its territory and for the right to fly its flag.
2. Vessels have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the vessel; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over vessels flying its flag.
3. Each State shall issue to vessels to which it has granted the right to fly its flag documents to that effect. 14/
4. Vessels shall move under the flag of one State only and, save in exceptional circumstances provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction in ocean space.
5. A vessel may not change its flag save in the case of a real transfer of ownership. It may change its flag only while in port. 15/
6. A vessel which sails under the flag 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 vessel without nationality.
7. Vessels lying in or traversing International Ocean Space may be subject to proceedings before the International Maritime Court and to penalties if it is found that they:

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13/ Article 4, 1958 High Seas Convention. The word "move" has been substituted for the word "sail" in view of the fact that the term "ships" in that convention is replaced by the more general term "vessels" (see note 5).

14/ Article 5, 1958 High Seas Convention.

15/ Article 6, 1958 High Seas Convention has been slightly reworded to make changes of flag correspond more closely to real transfer of ownership and to abate the many problems caused by the use of flags of convenience.

- (a) Are registered at the same time in more than one State;
- (b) Have the nationality of more than one State or have the nationality of no State or are not entitled to fly the flag of an intergovernmental organization;
- (c) Are flying the flag of a State that does not effectively exercise its jurisdiction and control over them in administrative, technical and social matters;
- (d) Do not possess documents proving their right to the flag they are flying;
- (e) Do not conform to such technical, safety and social standards and regulations as may be prescribed by the International Ocean Space Institutions in accordance with the present Convention. 16/

#### Article 9

The provisions of the preceding articles shall not prejudice the status of vessels employed on the official service of an intergovernmental organization flying the flag of the organization. 17/

#### Article 10

1. Warships in International Ocean Space have complete immunity from the jurisdiction of any State other than the flag State. 18/
2. Vessels owned or operated by a State and used only on Government non-commercial service shall, in International Ocean Space, have complete immunity from the jurisdiction of any State other than the flag State, subject to such exceptions as are contained in the present Convention. Nevertheless such vessels shall, in International Ocean Space, be subject to the jurisdiction of the International Maritime Court in the event of non-compliance with any of the provisions of this Convention. 19/

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16/ New provisions aimed at regulating more effectively the shipping industry in international waters.

17/ Article 7, 1958 High Seas Convention.

18/ Article 8 (1), 1958 High Seas Convention.

19/ In view of the increase in the number of State operated vessels and of their increasing diversification it has been thought useful to qualify their immunity under article 9, 1958 High Seas Convention.



## Article 11

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

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

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

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

2. Every State shall take such measures for vessels under its flag as are necessary for the avoidance of pollution of the marine environment.

3. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance. 20/

## Article 12

1. In the event of a collision or any other incident of navigation or in the event of violation in International Ocean Space of the obligations contained in paragraph 1 and 2 of article 11 involving the responsibility of the master or of any other person in the service of a vessel penal, disciplinary, or civil proceedings may be instituted only before the International Maritime Court.

2. In disciplinary matters the International Maritime Court after due legal process, may

(a) recommend to the State which has issued the Master's certificate or the certificate of competence or the licence the withdrawal of such certificates or licences;

(b) pronounce the invalidity of such certificates in International Ocean Space. 21/

## Article 13

In the event of a collision or any other incident of navigation concerning a vessel in national ocean space, involving the penal, disciplinary, or civil responsibility of the master or of any other person in the service of the vessel proceedings may be instituted against such persons either before the judicial

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20/ Article 10, 1958 High Seas Convention.

21/ Article 11, 1958 High Seas Convention, has been changed to provide for the jurisdiction of an international tribunal. This is required to ensure uniform minimum standards of enforcement of international conventions.

and administrative authorities of the flag State or of the State of which such persons are nationals or before the International Maritime Court. 22/

#### Article 14

1. Every State shall require the master of a vessel under its flag in so far as he can do so without serious danger to the vessel, 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 be reasonably expected of him;

(c) After a collision, to render assistance to the other vessel, her crew and her passengers and, where possible, to inform the other vessel of the name of his own vessel, her port of registry and the nearest port at which she will call;

(d) To render assistance to fixed ocean space installations in distress, and to the persons thereon or therein.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on, over and under the sea and shall co-operate with neighbouring States and with the competent international institutions for this purpose. 23/

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22/ Slight modification of article 11 (1), 1958 High Seas Convention.

23/ Article 12, 1958 High Seas Convention has been slightly changed to take into account the existence of fixed ocean space installations.

Chapter IV: Slavery, piracy and narcotic drugs

Article 15

1. Every State has the obligation to adopt effective measures to prevent and punish slavery and conditions akin to slavery in national ocean space.
2. Every State has the obligation to adopt effective measures to prevent and punish the transport of slaves or of persons in conditions akin to slavery in vessels authorized to fly its flag and to prevent unlawful use of its flag for that purpose. Any slave or persons in condition akin to slavery, taking refuge on board any vessel shall, ipso facto, be free. 24/

Article 16

Every State has the obligation to adopt effective measures to prevent and punish the illicit transport of narcotic drugs in vessels authorized to fly its flag. 25/

Article 17

All States have the obligation to prevent and punish piracy and fully to co-operate in its repression in ocean space and in the superjacent atmosphere. 26/

Article 18

Piracy consists of any of the following acts:

(a) Any illegal acts of violence, detention or any act of depredation committed by the crew or passengers of a private vessel or private aircraft, and directed anywhere in ocean space or in the superjacent atmosphere against another vessel, or aircraft or against persons or property on board such a vessel or aircraft;

(b) Any act of voluntary participation in the operation of a vessel, or aircraft with knowledge of facts making it a pirate vessel or aircraft;

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24/ Article 13, 1958 High Seas Convention; the scope of the article has been enlarged to include conditions akin to slavery.

25/ New article intended to assist States in their efforts to combat the illegal trade in narcotic drugs.

26/ The scope of article 14, 1958 High Seas Convention has been broadened.

(c) Any act of inciting or of intentionally facilitating an act described in paragraph one or paragraph two of this article. 27/

#### Article 19

The acts of piracy, as defined in article 18, committed by a warship, government vessel or government aircraft, whose crew has mutinied and taken control of the vessel are assimilated to acts committed by other vessels. 28/

#### Article 20

A vessel or an aircraft is considered a pirate vessel 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 18. The same applies if the vessel, or aircraft has been used to commit any such act, so long as it remains under the control of persons guilty of that act. 29/

#### Article 21

A vessel, or an aircraft may retain its nationality although it has become a pirate vessel, or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived. 30/

#### Article 22

In any place more than twelve nautical miles from the coast or in any place outside the jurisdiction of a State, every State after notification to the State concerned or to the International Ocean Space Institutions, as the case may be, may seize a pirate vessel or aircraft or a vessel or aircraft taken by piracy and under control of pirates and arrest the persons and seize the property on board. If the seizure has taken place anywhere in ocean space outside national ocean space the International Maritime Court shall decide upon the penalties to be imposed and shall determine the action to be taken with regard to the vessels, aircraft or property, subject to the rights of third parties acting in good faith. If the seizure has taken place within the jurisdiction of a State other than the State undertaking the seizure, the two States will decide by mutual agreement the courts that may decide upon the case. 31/

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27/ Article 15, 1958 High Seas Convention: the words "for private ends" have been omitted in order to include within the definition of piracy acts of violence or depredation committed for professed political ends.

28/ Article 16, 1958 High Seas Convention.

29/ Article 17, 1958 High Seas Convention.

30/ Article 18, 1958 High Seas Convention.

31/ Article 19, 1958 High Seas Convention has been modified to take into account the new proposed limit of national jurisdiction (art. 36) and the proposed existence of international institutions.

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### Article 23

Where the seizure of a vessel, or aircraft or of the persons therein 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 vessel or aircraft for any loss or damage caused by the seizure. 32/ In the event of dispute the matter shall be referred to International Maritime Court.

### Article 24

A seizure on account of piracy may only be undertaken by warships or military aircraft or other vessels or aircraft, on government service or on the service of the International Ocean Space Institutions authorized to that effect. 33/

### Article 25

1. A warship or other duly authorized vessel which encounters a foreign vessel in ocean space is not justified in stopping or boarding her unless there is reasonable ground for suspecting

(a) that the vessel is engaged in piracy;

(b) that the vessel is engaged in the slave trade or that there are slaves or persons in conditions akin to slavery in the vessel;

(c) that, though flying a foreign flag or refusing to show its flag, the vessel is in reality of the same nationality as the warship.

2. In the cases provided in sub-paragraphs (a), (b), and (c) above the warship or other duly authorized vessel may proceed to verify the vessel's right to fly its flag. To this end it may send a boat under the command of an officer to the suspected vessel. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the vessel which must be carried out with all possible consideration.

3. If the suspicions prove unfounded and provided that the vessel has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained. In the event of refusal of compensation or disagreement on the amount of compensation the matter shall be adjudicated by the International Maritime Court. 34/

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32/ See article 20, 1958 High Seas Convention. The last sentence has been added to simplify jurisdictional problems.

33/ Article 21, 1958 High Seas Convention.

34/ Article 22, 1958 High Seas Convention: the last sentence has been added.

## Chapter V: Hot pursuit

### Article 26

1. The hot pursuit of a foreign vessel may be undertaken when the competent authorities of the coastal State have good reason to believe that the vessel has seriously violated the laws of that State.
2. The right of hot pursuit ceases as soon as the vessel pursued enters the sea subject to the jurisdiction of its own country or that of a third State.
3. The right of hot pursuit may not be exercised in International Ocean Space without prior notification to the International Ocean Space Institutions.
4. The right of hot pursuit may be exercised only by warships or military aircraft or other vessels or aircraft on government service specifically authorized to that effect.
5. Where a vessel has been stopped or arrested in the International Ocean Space 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. In the event of dispute with regard to compensation or in the event that the right of hot pursuit was exercised in International Ocean Space without prior notification to the International Ocean Space Institutions, the matter shall be adjudicated by the International Maritime Court. 35/

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35/ Article 23, 1958 High Seas Convention, has been simplified and modified to take into account the existence of international institutions.

## Chapter VI: Submarine cables and pipelines

### Article 27

1. All States are entitled to lay submarine cables and pipelines on the bed of the sea subject to the provisions of this Convention.
2. In national ocean space the consent of the coastal State shall be obtained, nevertheless the coastal State shall not normally withhold its consent if the request concerns an area more than twelve nautical miles from the coast and if it is submitted by a responsible entity that gives assurance of abiding by the coastal State's laws and regulations. In the event of refusal of consent the matter shall be adjudicated by the International Maritime Court.
3. In International Ocean Space the consent of the appropriate organs of the International Ocean Space Institutions shall be obtained. Consent shall not be withheld if the request is submitted by a State or responsible entity that gives assurance of abiding by such regulations concerning the laying of submarine cables and pipelines as may be adopted by the International Ocean Space Institutions.
4. When laying submarine cables and pipelines due regard shall be paid to cables and pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.
5. Subject to its right to take reasonable measures for the regulation of navigation, for the prevention of pollution and for the exploration and the exploitation of the natural resources of national ocean space, the coastal State may not impede the maintenance of submarine cables and pipelines. 36/

### Article 28

Every State shall take the necessary legislative measures to provide that the breaking or injury by a vessel flying its flag or by a person subject to its jurisdiction of a submarine cable or pipeline anywhere in ocean space done wilfully or through negligence shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their vessels after having taken all necessary precautions to avoid such a break or injury. 37/

### Article 29

1. Every State shall take the necessary legislative measures to provide that any persons subject to its jurisdiction who cause a break in, or injury to, a cable shall bear the cost of repairs.

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36/ Article 26, 1958 High Seas Convention, has been expanded.

37/ The text enlarges the scope of Article 27, 1958 High Seas Convention, in view of the need to protect international communications to the maximum extent.

2. Every State shall take the necessary legislative measures to provide that any persons subject to its jurisdiction who cause a break in, or injury to a pipeline shall bear the cost of repairs and, in the event that there is any discharge of oil or other harmful agents, shall bear the cost of restoring the marine environment to its natural state. 38/

#### Article 30

Every State shall take the necessary legislative measures to ensure that the owners of vessels who can prove that they have sacrificed an anchor, a net, or any fishing or other gear 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 vessel has taken all reasonable precautionary measures beforehand. 39/

#### Article 31

Every State shall take the necessary legislative measures to provide that the destruction, breaking in, or injury to, fixed surface, underwater or seabed installations of whatever nature in ocean space done wilfully or through negligence, by a vessel flying its flag or by a person subject to its jurisdiction shall be a punishable offence. Should the breaking or injury result in loss of life, this act shall be punishable as homicide. 40/

#### Article 32

Every State shall take the necessary legislative measures to provide that persons subject to its jurisdiction who cause the destruction, breaking in, or injury to, fixed surface, underwater or seabed installations of whatever nature in ocean space shall bear the cost of replacement or repairs and shall compensate for any injuries caused to persons. 40/

#### Article 33

The acts mentioned in articles 28, 29, 30, 31 and 32 shall be adjudicated by the International Maritime Court, when they have occurred in International Ocean Space. 41/

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38/ The text enlarges the scope of Article 28, 1958 High Seas Convention.

39/ Article 27, 1958 High Seas Convention.

40/ These new provisions are required for the protection of the increasing number of ocean space installations and of men under water.

41/ Article 34 is merely an elaboration of the freedom of overflight mentioned in Article 2 of the 1958 High Seas Convention.-----



## Chapter VII: Overflight

### Article 34

1. Every State, whether coastal or not, has the right to fly aircraft over the sea. This right is subject to such regulation of a general and non-discriminatory character as may be adopted by the competent international institutions.
2. In a belt of sea adjacent to the coast not exceeding twelve miles in breadth the right of overflight is limited to passage not prejudicial to the peace, good order and security of the coastal State. 41/

## Chapter VIII: Scientific research

### Article 35

1. Every State, whether coastal or not, has the right to undertake scientific research in ocean space. This right is subject to such regulation of a general and non-discriminatory character as may be prescribed by the International Ocean Space Institutions.

2. The consent of the coastal State shall be obtained in respect of any research conducted within a belt of sea adjacent to the coast not exceeding twelve miles in breadth. Such consent shall not be withheld when:

(a) The request together with the proposed research programme is submitted by a person or entity registered by the International Ocean Space Institutions six weeks before the date it is proposed to initiate the research;

(b) The possibility is offered to nationals of the coastal States to participate in the research; and

(c) The results of the research will be published either by the coastal State or by the International Ocean Space Institutions. The person or entity conducting the research is required to conform to the health, customs, police security and pollution regulations of the coastal State. 42/

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<sup>42/</sup> Scientific research is the prerequisite for resource management and for the beneficial utilization of ocean space. The provisions of article 35 are designed to encourage scientific research and at the same time to take into account the legitimate interests of the coastal State. The International Ocean Space Institutions in a sense guarantee that research conducted by a person or entity registered with them will not harm the interests of the coastal State (see also Article 189 (II)).

## PART II: COASTAL STATE JURISDICTION IN OCEAN SPACE

### Chapter IX: Limits

#### Article 36

National jurisdiction extends to a belt of ocean space adjacent to the coast the breadth of which is 200 nautical miles. Ocean space beyond 200 nautical miles from the coast forms part of International Ocean Space. No part of International Ocean Space is subject to national jurisdiction of any kind unless otherwise expressly provided in the present Convention.

#### Article 37

1. The jurisdiction of an island State or of an archipelago State extends to a belt of ocean space adjacent to the coast of the principal island or islands the breadth of which is 200 nautical miles. The principal island or islands shall be designated by the State concerned and notified to the competent organ of the International Ocean Space Institutions. In the event of disagreement with the designation made by the archipelago State any Contracting Party may submit the question to the International Maritime Court for adjudication.
2. The jurisdiction over ocean space that may be claimed by a State by virtue of its sovereignty or control over islands, other than those referred to in paragraph one, shall be determined in a special convention.

#### Article 38

1. Contracting Parties agree to surrender against equitable and appropriate compensation their claims to jurisdiction over the sea-bed of submarine areas more than 200 nautical miles from their coast which are subjacent to waters less than 200 meters deep.
2. The compensation referred to in paragraph one shall be determined by the International Ocean Space Institutions in the light of all relevant factors including the practical possibilities of resource exploitation. In the event that the compensation proffered is considered inadequate by the Contracting Party concerned, the matter shall be adjudicated by the International Maritime Court.

## Chapter X: Baselines

### Article 39

The baseline for measuring the breadth of national ocean space is the low-water line along the coast as marked on large-scale maps officially recognized by the coastal State and deposited with the International Ocean Space Institutions. <sup>43/</sup>

### Article 40

1. In localities where the coastline is deeply indented, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of national ocean space is measured.
2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.
3. Baselines shall not be drawn to and from low tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them. <sup>44/</sup>
4. Baselines shall not be drawn from artificial islands or from floating harbours or other floating installations, whether anchored or not to the sea-bed.
5. The manner in which an archipelago State may draw the baseline for measuring the breadth of national ocean space shall be determined in the convention referred to in article 37 (2) taking into account the provisions of chapter X of this convention.
6. The system of straight baselines may not be applied by a State in a manner calculated to cut off the national ocean space of another State from International Ocean Space.
7. The coastal State must clearly indicate straight baselines on charts which must be deposited with the International Ocean Space Institutions. The competent organs of these institutions may object within one year of the deposit of the charts to the baselines drawn by the coastal State. In the event of disagreement with the

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<sup>43/</sup> Article 3, Territ. .... Sea Convention, has been slightly modified.

<sup>44/</sup> Article 4 (1), (2), (3), 1958 Territ. .... Sea Convention, has been slightly modified to eliminate reference to "a fringe of islands along the coast" (art. 4 (1)). This reference is unnecessary in view of the proposed breadth of national jurisdiction.

coastal State the matter shall be submitted to the International Maritime Court for adjudication. 45/

#### Article 41

1. 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 the low water marks and the waters enclosed thereby shall be considered as internal waters.
2. 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.
3. The foregoing provisions shall not apply to so-called historic bays or in any case where the straight baseline system provided for in article 40 is applied. 46/

#### Article 42

1. Waters on the landward side of the baseline form part of the internal waters of the State.
2. Where the establishment of a straight baseline in accordance with article 40 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas a right of passage as provided in articles 46 and 47 shall exist in those waters. 47/

#### Article 43

The outer limit of national ocean space is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of national jurisdiction over ocean space. 48/

#### Article 44

For the purpose of delimiting national jurisdiction over ocean space, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast. 49/

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45/ Article 40 corresponds substantially to article 4 (5), (6) of the 1958 Territ. .... Sea Convention. It has been thought desirable, however, to permit the International Ocean Space Institutions to object within a strictly defined time-limit to baselines unilaterally established by States.

46/ Article 7 (4), (5), 1958 Territorial Sea Convention.

47/ Article 5, 1958 Territorial Sea Convention.

48/ Article 6, 1958 Territorial Sea Convention.

49/ Article 8, 1958 Territorial Sea Convention.

#### Article 45

1. Where the coasts of two or more States are opposite or adjacent to each other, none of the States is entitled, failing agreement between them to the contrary, to extend ocean space subject to their jurisdiction beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of ocean space under the jurisdiction of each of the States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstance to delimit national ocean space of each State in a way which is at variance with this provision.
2. The line of delimitation between national ocean space of two or more States lying opposite or adjacent to each other shall be drawn with reference to fixed permanent identifiable points on land where this is possible. The line shall further be marked on large-scale charts officially recognized by the coastal States and deposited with the competent international institutions.
3. In the event of disagreement between the States concerned the question shall be submitted for adjudication by the International Maritime Court. 50/

#### Article 46

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. 51/

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50/ Article 12, 1958 Territorial Sea Convention has been slightly modified.  
51/ Article 13, 1958 Territorial Sea Convention.

## PART III: NATIONAL OCEAN SPACE

### Chapter XI: Navigation

#### Article 47

1. Subject to the provisions of these articles, vessels of all States, whether coastal or not, shall enjoy the right of passage through national ocean space beyond 12 miles from the coast and of innocent passage in other parts of national ocean space.
2. Passage means navigation through national ocean space for the purpose either of traversing it without entering internal waters or of proceeding to internal waters or of making for International Ocean Space from internal waters.
3. Passage includes stopping and anchoring in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.
4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.
5. Submarines are required to navigate on the surface and to show their flag when they approach within 12 nautical miles of the coast. 52/

#### Article 48

1. The coastal State shall not hamper passage through national ocean space. Nevertheless in a belt of sea adjacent to its coast not exceeding 12 nautical miles in breadth, the coastal State may:
  - (a) Prevent passage which is not innocent;
  - (b) Without discrimination among foreign vessels, suspend temporarily in specified areas the innocent passage of foreign vessels if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been published and duly notified to the International Ocean Space Institutions;
  - (c) In the case of vessels proceeding to internal waters, take the necessary steps to prevent any breach of the conditions to which admission of those vessels to those waters is subject.

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52/ Article 14, 1958 Territorial Sea Convention. Article 14 (1) has been modified to ensure maximum freedom of navigation beyond 12 miles from the coast; hence a distinction has been made between passage and innocent passage.

2. Subject to express provisions to the contrary in generally recognized multilateral conventions, the coastal State or States shall not hamper the passage of foreign vessels through straits more than 12 miles wide which are used for international navigation. If a strait is less than 12 miles wide, the coastal State may, if such measures are essential for the protection of its security:

(a) Prevent passage which is not innocent;

(b) Without discrimination among foreign vessels, suspend temporarily the innocent passage of foreign vessels. Such suspension shall take effect only after having been published and duly notified to the International Ocean Space Institutions. The Institutions may object to measures taken by the coastal State restricting or suspending passage through straits used for international navigation. In the event of continued disagreement between the Institutions and the coastal State, the matter shall be submitted to the International Maritime Court for binding adjudication.

3. Any Contracting Party may bring to the attention of the International Ocean Space Institutions the suspension of innocent passage of foreign vessels, through any part of the national ocean space of a coastal State.

4. Within four years of the entry into force of this convention the International Ocean Space Institutions shall prepare a detailed draft convention designed to protect both the vital interests of the coastal State or States and the right of passage through straits used for international navigation. 53/

#### Article 49

1. Regulations and laws enacted by the coastal State with regard to foreign vessels exercising the right of innocent passage must be reasonable and must be applicable to all foreign vessels without discrimination.

2. Regulations and laws enacted by the coastal State with regard to foreign vessels exercising the right of innocent passage that are considered to be unreasonable or discriminatory may be brought to the attention of the International Ocean Space Institutions by the State or States concerned. 54/

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53/ See Articles 15(1) and 16, 1958 Territorial Sea Convention. The intention is to protect freedom of navigation to the maximum extent compatible with the security interests of the coastal State. It is for this reason that, in the case of straits used for international navigation, it is proposed that the right of a coastal State to prevent passage of foreign vessels should extend only to six miles from the coast.

54/ New provisions designed to encourage a reasonable exercise of the jurisdictional powers of the coastal State in the interest of international commerce and navigation.



## Article 50

1. The coastal State is required to give appropriate and immediate publicity through the International Ocean Space Institutions to any dangers to navigation of which it has knowledge within its national ocean space. Failure to comply with this obligation entails legal responsibility.
2. Claims for compensation for damages caused by non-compliance with the obligation in paragraph 1 shall be adjudicated by the International Maritime Court. 55/

## Article 51

1. No charge may be levied upon foreign vessels by reason only of their passage through national ocean space.
2. The coastal State may levy charges upon a foreign vessel passing through national ocean space only for specific services rendered to the vessel. These charges shall be reasonable and shall be levied without discrimination. 56/
3. Disputes on the reasonableness or otherwise of the charges mentioned on paragraph two shall be adjudicated by the International Maritime Court.

## Article 52

1. The criminal jurisdiction of the coastal State shall not be exercised on board a foreign vessel passing through national ocean space in connexion with any crime committed on board the vessel during its passage save only in the following cases:
  - (a) If the consequences of the crime extend to the coastal State; or
  - (b) If the crime is of a nature gravely to disturb the peace of the country or the good order of ocean space under its jurisdiction; or
  - (c) If the assistance of the local authorities has been requested by the captain of the vessel or by the consul of the country whose flag the vessel flies; or
  - (d) If it is essential for the suppression of the slave trade, piracy or the illicit traffic in narcotic drugs.
2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign vessel traversing national ocean space after leaving internal waters.

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55/ Extensions of provisions of Article 15 (2), 1958 Territorial Sea Convention, in the interests of safety of navigation.

56/ Article 18, 1958 Territorial Sea Convention.

3. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.
4. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall act on probable cause only and shall, if the captain so requests, advise the consular authority of the flag State and the International Ocean Space Institutions before taking any steps. The authorities of the coastal State shall facilitate contact between the consular authority of the flag State or the International Ocean Space Institutions and the vessel's crew. In cases of emergency the notification may be communicated while the measures are being taken.
5. In the event that action taken under the provisions of paragraphs 1 and 2 proves to have been unfounded, the vessel, the crew and passengers and the State whose flag the vessel flies shall be compensated for any loss or damage that may have been sustained.
6. Non-compliance with the obligations under paragraph 4 of this article and disputes with regard to the compliance or otherwise with the provisions of paragraphs 1, 2 and 3 may be brought to the attention of the International Ocean Space Institutions and shall be adjudicated by the International Maritime Court. 57/

#### Article 53

1. The coastal State may not take any steps on board a foreign vessel passing through national ocean space to arrest any person or to conduct any investigation in connexion with any crime committed before the vessel entered the area of the sea subject to its jurisdiction, if the vessel proceeding from a foreign port, is only passing through national ocean space without entering internal waters. 58/
2. Non-compliance with the obligations under paragraph 1 of this article may be brought to the attention of the appropriate organs of the International Ocean Space Institutions and shall entail legal responsibility unless the action was taken at the request of the captain of the vessel or of the State whose flag the vessel was flying.

#### Article 54

1. The coastal State may not stop or divert a foreign vessel passing through national ocean space for the purpose of exercising civil jurisdiction in relation to a person on board the vessel.
2. The coastal State may not levy execution against or arrest the vessel for the purpose of any civil proceedings save only in respect of obligations or liabilities assumed or incurred by the vessel itself in the course or for the purpose of its voyage through the waters of the coastal State.

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57/ Article 19, 1958 Territorial Sea Convention, has been slightly amended; paragraphs 5 and 6 are new.

58/ See Article 19 (5), 1958 Territorial Sea Convention.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest for the purpose of any civil proceedings, a foreign vessel lying in waters under its jurisdiction or passing through these waters after leaving internal waters. 59/

#### Article 55

1. Foreign vessels traversing national ocean space shall comply with the rules and regulations enacted by the coastal State in conformity with these articles and other rules of international law, in particular with such laws and regulations relating to transport, navigation and the prevention of pollution. 60/

2. Fishing vessels traversing national ocean space shall observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the area of the sea subject to its jurisdiction. 61/

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59/ Article 20, 1958 Territorial Sea Convention.

60/ Article 17, 1958 Territorial Sea Convention.

61/ See article 14 (5), 1958 Territorial Sea Convention.

Chapter XII: Peaceful uses

Article 56

1. The coastal State shall not emplace nuclear weapons or other weapons of mass destruction in the area of the sea-bed subject to its jurisdiction beyond 12 nautical miles from its coast. 62/
2. The coastal State shall not carry out any nuclear or thermonuclear weapon test explosion in national ocean space. 63/
3. Nuclear and thermonuclear explosions for peaceful purposes are permitted in national ocean space only with the authorization of the International Ocean Space Institutions.
4. Non-compliance with the provisions of paragraphs 1 and 2 may be brought to the attention of the competent organ of the International Ocean Space Institutions by any Contracting Party.

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62/ See 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and on the Subsoil Thereof /resolution 2660 (XXV)/.

63/ See 1963 Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water /resolution 1910 (XVIII)/.

Chapter XIII: Exploitation of natural resources

Article 57

The coastal State may reserve to its nationals the exploitation of the natural resources of national ocean space.

Article 58

1. In view of the common interest of the international community in the maintenance of the living resources of ocean space, the coastal State has the obligation:

(a) To consult with other States and with the International Ocean Space Institutions before undertaking or permitting activities in national ocean space that might substantially reduce the living resources of ocean space outside its jurisdiction;

(b) In consultation with the International Ocean Space Institutions, to adopt and to enforce appropriate measures of conservation and management of living resources within its jurisdiction when:

(i) There is a need for the application of conservation or management measures in the light of existing knowledge of the fishery;

(ii) The measures are recommended by the International Ocean Space Institutions and are based on appropriate scientific findings;

(c) To co-operate with the International Ocean Space Institutions in the conservation and management of the living resources of International Ocean Space.

2. Any dispute which may arise under paragraph one of this article shall be submitted to the International Maritime Court for adjudication. 64/

Article 59

In order to avoid prejudicing the orderly development and rational management of the natural resources of International Ocean Space, the coastal State, in a belt of national ocean space adjacent to the international area not exceeding 25 miles in breadth, has the obligation to exploit natural resources in close co-operation with the International Ocean Space Institutions. The Institutions shall prepare a draft convention designed to give legal form to such co-operation.

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64/ Article 7 (2), 1958 Fishery Convention, has been considerably strengthened and expanded to encourage international co-operation in the management of the living resources of ocean space.

## Article 60

1. The exploitation of the natural resources of the sea-bed of national ocean space must not result in significant interference with navigation, scientific research, the laying and repair of submarine cables and pipelines or the conservation and management of living resources. 65/

The coastal State has the obligation to take special precautions before authorizing the exploitation of the mineral resources of the sea-bed in areas of national ocean space subject to frequent earthquakes or other natural disasters.

## Article 61

1. The coastal State shall transfer to the International Ocean Space Institutions a portion of the revenue obtained from the exploitation of the natural resources of national ocean space.

2. The Institutions shall prepare a draft convention defining the contribution payable by coastal States to the International Ocean Space Institutions under paragraph one of this article and the modalities of payment. 66/

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65/ Article 5 (1) of the 1958 Continental Shelf Convention has been somewhat modified.

66/ It is believed that a contribution by the coastal State of a proportion of the revenue received through the exploitation of the natural resources of national ocean space is justified, inter alia, by the fact that the coastal State is likely to receive benefits not otherwise easily attainable through the rational management of natural resources beyond its jurisdiction.

## Chapter XIV: Other uses

### Article 62

Subject to the provisions of this Convention, the coastal State may construct, and maintain and operate on or under the sea-bed of national ocean space habitats, installations, equipment and devices for peaceful purposes, provided that:

(a) Appropriate safety zones, which must be respected by vessels of all nationalities, are established around such habitats, installations and devices;

(b) Prompt notice is given to the International Ocean Space Institutions of the location of such habitats or installations and permanent and adequate means for giving warning of their presence are maintained. Any habitats, installations or devices which are abandoned or disused must be entirely removed;

(c) Special precautions are taken in the construction and siting of installations containing radio-active materials, petroleum or other substances which may cause deleterious effects to the living resources or to the quality of the marine environment. No such installations shall be constructed in areas subject to frequent earthquakes;

(d) No habitats, installations or devices are established where interference may be caused to the use of recognized sea lanes essential to international navigation. 67/

### Article 63

1. The coastal State may construct, maintain and operate in national ocean space artificial islands, floating harbours or other installations for peaceful purposes, anchored to the sea-bed, provided that:

(a) Prompt notice is given to the International Ocean Space Institutions of the location of such islands, harbours, or installations;

(b) Permanent and adequate means for giving warning of their presence are maintained;

(c) No interference is caused to sea lanes essential to international navigation.

### Article 64

The coastal State may maintain unanchored floating devices in national ocean space for peaceful purposes provided that they are fitted with adequate means of giving warning of their presence and that they do not constitute a danger to navigation or hamper other activities in ocean space.

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67/ See Article 5 (3), (5), (6), 1958 Continental Shelf Convention.

Article 65

1. Non-compliance with the obligations under articles 62, 63 and 64 shall make the offending party legally responsible in case of accidents or when unjustifiable interference is caused to navigation.
2. The International Maritime Court shall be competent to adjudicate disputes arising from non-compliance with the obligations under articles 62, 63 and 64. 68/

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68/ The provisions contained in articles 63, 64 and 65 are essentially new, but they are the minimum required by technological progress, by the need to ensure responsible use of ocean space and by the need for impartial determination of disputes.



PART IV: INTERNATIONAL OCEAN SPACE

Chapter XV: Basic principles

Article 66

International Ocean Space is the common heritage of all mankind 69/ and, as such, is administered in the name, and on behalf, of the international community by the Institutions established in accordance with article 86 of this Convention.

Article 67

International Ocean Space is not subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof. 70/

Article 68

No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to International Ocean Space or to its resources except as provided in this Convention. Each Contracting Party agrees not to recognize any such claim or exercise of rights. 71/

Article 69

International Ocean Space shall be open to use exclusively for peaceful purposes by all States, whether coastal or landlocked, without discrimination in accordance with the provisions of this Convention. 72/

Article 70

All activities in International Ocean Space shall be governed by the international régime established by the present Convention. 73/

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69/ General Assembly resolution 2749 (XXV), para. 1. The concept of common heritage is extended to ocean space.

70/ General Assembly resolution 2749 (XXV), para. 2.

71/ General Assembly resolution 2749 (XXV), para. 3 slightly modified.

72/ See General Assembly resolution 2749 (XXV), para. 5.

73/ General Assembly resolution 2749 (XXV), para. 4.

#### Article 71

The administration of International Ocean Space and the exploration and exploitation of its resources is exclusively for peaceful purposes and shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether landlocked or coastal, and taking into particular consideration the needs of developing countries. 74/

#### Article 72

Exploration and exploitation of the natural resources of International Ocean Space must not result in any substantial interference with other activities in the marine environment. 75/ Exploration and exploitation of natural resources shall not be permitted in areas where interference may be caused to the use of recognized sea lanes essential to international navigation 76/ or where scientific findings indicate the probability that exploitation may result in extensive pollution of the marine environment.

#### Article 73

In International Ocean Space, States shall act in accordance with the applicable principles of international law and of the Charter of the United Nations; in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States adopted by the General Assembly of the United Nations on 24 October 1970 and in accordance with the provisions of this Convention in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding. 77/

#### Article 74

All activities in International Ocean Space shall be conducted with strict and adequate safeguards for the protection of human life and for the protection of the marine environment. 78/

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74/ General Assembly resolution 2749 (XXV), para. 7; the paragraph has been slightly modified.

75/ See article 8 US draft convention (A/8021, annex V) and article 11 Tanzania draft statute (A/AC.138/33). The word substantial has been substituted for the word "unjustifiable".

76/ See article 5 (6) 1958, Continental Shelf Convention. The article has been slightly modified. The last sentence of article 70 is new and is designed to avoid the dangers inherent in the exploitation of hydrocarbons in seismic areas.

77/ See General Assembly resolution 2749 (XXV), para. 6. The words "and rules" have been omitted to avoid possible confusion, or even conflict between currently existing rules of international law and the provisions of the Convention.

78/ Article 9 US draft convention (A/8021, annex V) and article 12 Tanzania draft statute (A/AC.138/33). Slight verbal amendments.

## Article 75

All activities of exploration and exploitation of resources in International Ocean Space shall be conducted by, or on behalf of, the Institutions established in accordance with article 86 of this Convention or by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their sponsorship, subject to the general supervision and control of the Institutions established in accordance with article 86 of this Convention. 79/

## Article 76

All activities of intergovernmental organizations or of international or multinational organizations or corporations in International Ocean Space are subject to the general supervision and control of the Institutions established in accordance with article 86 of this Convention. 80/

## Article 77

Each Contracting Party shall bear international responsibility for national activities or for activities under its sponsorship in International Ocean Space whether such activities are carried out by governmental agencies or by non-governmental agencies or by individuals. 81/

In particular:

(a) Each Contracting Party shall take appropriate measures to ensure that those conducting activities under its authority or sponsorship comply with the provisions of this Convention; 82/

(b) Each Contracting Party shall make it an offence for those conducting activities under its authority or sponsorship in International Ocean Space to violate the provisions of this Convention. Such offences shall be punishable in accordance with the administrative or juridical procedures established by the Contracting Party sponsoring the activities. The procedures shall be notified to the International Institutions created in accordance with article 85 of this Convention; 83/

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79/ See article 13 Tanzania draft Statute (A/AC.138/33) and article 10, US draft convention (A/8021, annex V). The formulation in text is slightly different.

80/ Substantial modification of article 11 of draft ocean régime prepared by Mrs. E. Borgese of the Centre for Democratic Institutions, Santa Barbara, USA.

81/ Slight modification of (a) article 5 draft ocean space treaty by Sen. C. Pell, (b) article VI draft treaty on exploration and use of ocean bed by Mr. A. Danzig, (c) Article III (B9) draft ocean régime by Mrs. E. Borgese of the Centre for Democratic Institutions, Santa Barbara, U.S.A.

82/ See article 11 (1) US draft convention (A/8021, annex V) and article 14 (1) Tanzania draft statute (A/AC.138/33).

83/ See article 11 (2) US draft convention (A/8021, annex V) and article 14 (2) of Tanzania draft statute (A/AC.138/33).

(c) Each Contracting Party shall be responsible for maintaining public order on vessels and equipment operated by those authorized or sponsored by it and for ensuring that vessels and equipment conform to generally accepted international standards; 84/

(d) Each Contracting Party shall be responsible for damages caused by activities which it authorizes or sponsors to any other Contracting Party or its nationals or to the Institutions established in accordance with article 86 of this Convention; 85/

(e) Each Contracting Party shall be responsible to any other Contracting Party or its nationals or to the Institutions established in accordance with article 86 of this Convention for damages caused by faulty construction, deterioration or breakage of equipment or installations, such as oil storage tanks, emplaced by it in International Ocean Space; 86/

(f) A group of States acting together, pursuant to an agreement among them, shall be jointly and severally responsible under this Convention. 87/

#### Article 78

1. Intergovernmental organizations in International Ocean Space shall themselves bear responsibility for their activities or for activities under their sponsorship. In particular they shall:

(a) take appropriate measures to ensure that those conducting activities under their authority or sponsorship comply with the provisions of this Convention;

(b) be fully responsible for damages caused by activities which they sponsor to any Contracting Party or its nationals or to the Institutions established in accordance with article 86 of this Convention.

2. In the event of repeated and serious violations of the provisions of this Convention or of failure to pay legally assessed damages, an intergovernmental organization may be debarred, temporarily or permanently, from conducting activities in International Ocean Space. 86/

#### Article 79

The Institutions established in accordance with article 86 of this Convention shall bear responsibility for their activities or for activities directly sponsored by them.

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84/ See article 11 (3) US draft convention (A/8021, annex V) and article 11 (3) Tanzania draft statute (A/AC.138/33). Scope of articles quoted has been somewhat expanded.

85/ See article 14 (4) of Tanzania Statute (A/AC.138/33) and article 11 (4) US draft convention (A/8021, annex V). The contents of the articles quoted have been somewhat expanded.

86/ Provisions not found in other drafts.

87/ See article 14 (5) of Tanzania draft statute (A/AC.138/33) and article 11 (5) of US draft convention (A/8021, annex V). The words "through an international organization" have been omitted.

In particular the Institutions shall:

- (a) take appropriate measures to ensure that those conducting activities under their authority or direct sponsorship comply with the provisions of this Convention;
- (b) be fully responsible for damages caused by activities which they directly sponsor to any Contracting Party or to its nationals or to the organizations referred to in article 78.

#### Article 80

1. Each Contracting Party engaged in activities in International Ocean Space shall inform as soon as reasonably possible the Institutions established in accordance with article 86 of any phenomenon which it discovers in International Ocean Space which could constitute a serious danger to the life of persons working in Ocean Space. 88/
2. The Institutions shall inform as soon as reasonably possible each Contracting Party of any phenomenon in International Ocean Space of which they have knowledge which could constitute a serious danger to the life of persons working in ocean space.

#### Article 81

1. The disposal of radioactive wastes in International Ocean Space shall be subject to control and regulation by the Institutions established in accordance with article 86 of this Convention. The Institutions before issuing regulations shall consult with the International Atomic Energy Agency.
2. The Institutions established in accordance with article 86 of this Convention in co-operation with the International Atomic Energy Agency shall maintain a register of the release of radioactive solids and liquids in International Ocean Space and shall monitor International Ocean Space for radioactivity.
3. The use of nuclear energy for peaceful purposes including hydrogen fusion processes in International Ocean Space shall be subject to control and regulation by the Institutions established in accordance with article 86 of this Convention. Before issuing regulations the Institutions shall consult with the International Atomic Energy Agency.
4. Nuclear and thermonuclear explosions of whatever nature are prohibited in International Ocean Space without the express authorization of the Institutions established in accordance with article 86 of this Convention.

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88/ Slight modification of article 9 in draft ocean space treaty by Sen. C. Pell and of article 111 (B14) of draft ocean régime by Mr. E. Borgese of the Centre for Democratic Institutions, Santa Barbara, USA.

## Article 82

The introduction of substances, whether solid or liquid or gaseous, or of energy into International Ocean Space or in the airspace above whether for disposal or for other purposes in quantities that may reasonably be expected to produce significant deleterious effects to human health, to the living resources or to the quality of the marine environment shall be subject to control and regulation by the Institutions established in accordance with article 86 of this Convention. 89/

## Article 83

1. In order to promote international co-operation and the safety of navigation each Contracting Party undertakes to inform the Institutions established in accordance with article 86 of this Convention of the location and nature of any activities conducted under its sponsorship or authority on the sea-bed of International Ocean Space.
2. International or multinational corporations may not conduct activities on the sea-bed of International Ocean Space unless they disclose to the Institutions the proposed location and nature of their activities.
3. The Institutions established under article 86 of this Convention shall as soon as reasonably possible publish the information received under paragraphs 1 and 2 of this article, but confidential technical information shall not be disclosed.

## Article 84

1. The emplacement of nuclear weapons and of other weapons of mass destruction in the sea-bed of International Ocean Space is prohibited.
2. Nuclear and thermonuclear weapon test explosions are prohibited in International Ocean Space. 90/

## Article 85

1. All disputes arising out of the interpretation or application of part IV of this Convention with the exception of article 84 shall be settled or adjudicated in accordance with the provisions of chapter XXIV of this Convention.
2. Any State may bring suspected violations of article 84 to the attention of the Institutions established in accordance with article 86 of this Convention.

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89/ Articles 81 and 82 are a reformulation and a considerable expansion of, *inter alia*, the scope of articles 24 and 25 of the 1958 High Seas Convention.

90/ Cf. the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere in Outer Space and Under Water (resolution 1910 (XVIII)) and the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons on the Sea-bed (resolution 2660 (XXV)).

PART V: THE INTERNATIONAL OCEAN SPACE INSTITUTIONS

Chapter XVI: Establishment and personality

Article 86

The International Ocean Space Institutions (hereinafter also called the Institutions) are hereby established.

Article 87

Each Contracting Party shall recognize the international juridical personality of the Institutions. 91/

Article 88

1. The Institutions shall enjoy in the Territory of each of its Members such privileges and immunities as are necessary for the fulfillment of their purposes.
2. Representatives of the Members of the Institutions and officials of the Institutions shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Institutions.
3. The Assembly of the Institutions may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this article or may propose conventions to Members of the Institutions for this purpose. 92/

Article 89

1. The Institutions have the right to move vessels under their flag in ocean space.
2. Vessels owned or operated by the Institutions and used only for non-commercial purposes shall have immunity from the jurisdiction of any State in International Ocean Space.
3. The Institutions may, exclusively for peaceful purposes, emplace installations in International Ocean Space, giving notice thereof to Members.

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91/ First sentence of article 33, US draft sea-bed convention (A/8021, annex V).

92/ See for analogy United Nations Charter, Article 105.

Article 90

1. The Institutions may accept from any State the transfer to their administration of reefs, sandbanks, or islands having less than 10,000 permanent inhabitants.
2. Reefs, sandbanks, or islands transferred to the administration of the Institutions shall be used by the Institutions only for international community purposes, such as scientific stations, nature parks or preserves, etc.
3. The Institutions shall not accept the transfer to their administration of inhabited islands without consulting the freely expressed wishes of the inhabitants and without being satisfied that there exists among the inhabitants no significant opposition to the transfer of administration.
4. The Institutions shall not accept the transfer to their administration of inhabited islands when it might entail a substantial financial responsibility on the part of the Institutions or when it might involve the Institutions in a political dispute with a Member.
5. The population of islands under the administration of the Institutions shall enjoy a full measure of self-government.
6. The Institutions shall promote the economic, social and education advancement of the inhabitants and shall endeavour to provide them with opportunities of employment.
7. The inhabitants may petition any of the principal organs of the Institutions. Such petitions shall receive careful consideration.
8. The inhabitants of islands under the administration of the Institutions may freely terminate their association with the Institutions on giving two years' notice. 93/

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93/ Article 90 is a very considerable expansion of the concept contained in article 25 of the US draft convention (A/8021, annex V); inter alia, it is designed to facilitate a solution to the problem of very small Non-Self-Governing Territories.



## Chapter XVII: Purposes and principles

### Article 91

The purposes of the International Ocean Space Institutions are:

(1) To maintain international law and order in ocean space and to this end to take effective measures for the prevention and removal of violations of the provisions of this Convention and for the suppression of slavery, piracy and the illicit trade in narcotic drugs and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of disputes or situations which might lead to a breach of the peace or of international law and order in the oceans; 94/

(2) To safeguard the quality of the marine environment for all mankind so that it can be transmitted unimpaired to future generations; 95/

(3) To harmonize the actions of nations in ocean space with a view to securing expanding opportunities for all peoples in the peaceful use of the marine environment; 94/

(4) To encourage the investigation of ocean space and the dissemination of scientific knowledge about ocean space, to promote international co-operation in scientific research in ocean space and to strengthen the ocean research capabilities of technologically less advanced countries; 96/

(5) To promote the development and practical application of advanced technologies for the penetration of ocean space and for its peaceful use by man and to disseminate knowledge thereof;

(6) To provide assistance to Contracting Parties or to their nationals in all matters relating to knowledge and development of ocean space and its resource and in particular to assist Contracting Parties to train their nationals in scientific disciplines and technologies related to the peaceful uses of ocean spaces; 96/

(7) To develop in an orderly manner and to manage rationally International Ocean Space and its living and non-living resources and to ensure the equitable sharing by all States in the benefits derived from the development of the natural resources of International Ocean Space, taking into particular consideration the interests and needs of poor countries, whether landlocked or coastal; 97/

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94/ See for analogy article 1 (1) and (4) of the United Nations Charter.

95/ See for analogy article IV (1) and (8) for the draft ocean régime statute prepared by Mrs. E. Borgese of the Centre for Democratic Institutions, Santa Barbara, USA.

96/ See for general analogy article 5 (2) and article 24 (2) (c) of US draft convention (A/8021, annex V).

97/ See article 2 (1) Tanzania draft statute (A/AC.138/33). The article quoted has been slightly modified.

(8) To promote the harmonization of national maritime laws and the development of international law relating to ocean space; 95/

(9) To undertake in ocean space such services to the international community and such activities as may be consistent with the provision of this Convention.

#### Article 92

In pursuit of the purposes stated in article 91 each Contracting Party shall act in accordance with the following principles:

(1) Each Contracting Party, in order to ensure to itself and to all other Contracting Parties the rights and benefits resulting from membership of the Institutions, shall fulfil in good faith the obligations assumed by it in accordance with the present Convention;

(2) Each Contracting Party shall settle disputes arising from the present Convention in a manner that does not endanger international order in ocean space. In the event that other means of pacific settlement of disputes fail, each Contracting Party undertakes to submit disputes to binding judicial settlement or adjudication in accordance with this Convention;

(3) Each Contracting Party shall refrain from the threat or use of force in International Ocean Space unless expressly authorized by the Institutions;

(4) Each Contracting Party shall respect the territorial, jurisdictional and ecological integrity of International Ocean Space and undertakes to conduct itself therein in accordance with such rules and regulations as may be issued by the Institutions;

(5) Each Contracting Party undertakes to give the International Ocean Space Institutions every assistance in any action they may take in accordance with the present Convention. 98/

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98/ See for analogy, Article 2 of the United Nations Charter.

## Chapter XVIII: Membership

### Article 93

1. The original members of the International Ocean Space Institutions shall be those States which, having participated in the 1973 Conference on the Law of the Sea at \_\_\_\_\_ sign the present Convention and ratify it in accordance with article 205.
2. Any State with a population exceeding 75,000 inhabitants, recognized as independent by not less than thirty other States and which signs the present Convention and ratifies it in accordance with article 205 may become a member of the International Ocean Space Institutions.
3. The admission of any State to membership in the International Ocean Space Institutions under paragraph 2 is effected by a decision of the Assembly upon recommendation of the Council.
4. A Member of the International Ocean Space Institutions which is incapable or unwilling to carry out its obligations under the present Convention or which persistently violates the provisions contained in the present Convention may be suspended from the exercise of the rights and privileges of membership or may be expelled from the Institutions by the Assembly upon the recommendation of the Council. 99/

## Chapter XIX: Organs

### Article 94

1. There are established as the principal organs of the International Ocean Space Institutions: an Assembly, a Council, an International Maritime Court and a secretariat.
2. Major subsidiary organs are an Ocean Management and Development Commission, a Scientific and Technological Commission and a legal Commission. Additional major subsidiary organs may be established by a decision of the Assembly.

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99/ See for general analogy Articles 3 to 6 of United Nations Charter.

## Chapter XX: The Assembly

### Procedure

#### Article 95

1. The Assembly shall comprise all members of the International Ocean Space Institutions. 100/
2. The first session of the Assembly shall be convened .....  
The Assembly shall thereafter meet in regular session once every two years and in such special sessions as occasion may require. Special sessions shall be convened by the General Secretary of the Institutions either on his own initiative or at the request of the Council or of one third of the Members of the Institutions;
3. At meetings of the Assembly a majority of Members shall constitute a quorum. 101/

#### Article 96

The Assembly shall adopt its own rules of procedure.

It shall elect its President for each session. 102/

#### Article 97

The Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

The need for such subsidiary organs as may be established shall be reviewed by the Assembly every six years. 103/

### Functions and Powers

#### Article 98

1. The Assembly may discuss any questions or any matters within the scope of the present Convention or relating to the powers and functions of any organs mentioned

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100/ See United Nations Charter, article 9.

101/ Article 34 (2) and (3) of USA draft convention (A/8021 Annex V) and corresponding provisions (Article 21) in the Tanzania draft statute (A/AC.138/33).

102/ See United Nations Charter, Article 21.

103/ See United Nations Charter, Article 22. The last sentence of Article 90 has been introduced in the hope of restraining bureaucratic proliferation.

in article 94 of this Convention and may make recommendations to the members of the Institutions or to the Council or to both on any such questions and matters. 104/

2. The Assembly may discuss any question relating to the maintenance of international law and order in ocean space or relating to the suppression of slavery, piracy and the illicit trade in narcotic drugs in ocean space.

3. The Assembly may call the attention of the Council to situations which are likely to endanger international law and order in ocean space or the territorial jurisdictional or ecological integrity of International Ocean Space.

#### Article 99

The Assembly may make recommendations for the purpose of:

- (a) promoting international political co-operation in ocean space;
- (b) promoting international co-operation in economic, social, scientific, technological and other fields in ocean space;
- (c) promoting the progressive development of international law with regard to ocean space and particularly to International Ocean Space.

#### Article 100

The Assembly may make recommendations for the peaceful adjustment of any situation which it deems likely to impair the ecology of ocean space or the general welfare of the international community or co-operation among nations in ocean space.

#### Article 101

1. The Assembly shall approve upon recommendation of the Council:

- (a) The draft detailed convention for straits used for international navigation mentioned in article 48 (4) of this Convention;
- (b) The draft convention for the delimitation of the jurisdiction over ocean space which may be claimed by a State by virtue of its sovereignty or control over the islands referred to in article 37 (2) of this Convention;
- (c) A draft convention or conventions between the Institutions and the coastal States concerning the matters referred to in article 59 of this Convention;
- (d) A draft convention between the Institutions and coastal States concerning the matters referred to in article 61 (2) of this Convention;
- (e) Draft conventions with Contracting Parties concerning the compensation to which they have right in accordance with article 38 (2) of this Convention.

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104/ See United Nations Charter, Article 10; also Tanzania draft statute (A/AC.138/33) article 20 (3).

#### Article 102

The Assembly shall approve any agreements between the Institutions and the United Nations or between the Institutions and other intergovernmental organizations.

#### Article 103

1. The Assembly shall consider and approve the budget of the Institutions recommended by the Council.
2. The Assembly may return the budget with its recommendations to the Council for reconsideration: the Council shall then submit an amended budget to the Assembly within one month. 105/
3. In so far as expenditure is not covered by revenue, the expenses of the Institutions shall be borne by the members as apportioned by the Assembly.

#### Article 104

1. The Assembly shall approve upon recommendation of the Council rules relating to the equitable sharing in the benefits derived from the exploitation of the natural resources of International Ocean Space in accordance with article 91 (7) of this Convention.
2. The Assembly may return the rules with its recommendations to the Council. In this case amended rules will be submitted by the Council to the Assembly at the latter's next regular session.

#### Article 105

The Assembly shall approve any rules with regard to the exercise of borrowing powers by the Institutions.

#### Article 106

The Assembly shall approve such rules of a general and non-discriminatory character relating to overflight of ocean space; navigation, maritime safety, communications, marine and ocean bed installations, conservation, management and development of natural resources, the conduct of scientific research, the maintenance of the quality of the marine environment and the harmonization of conflicting uses of International Ocean Space as may be recommended by the Council. 106/

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105/ Compare article 34 (f), USA draft convention (A/8021 Annex V) and corresponding provisions in Tanzania draft statute (A/AC.138/33).

106/ Rules and regulations of a general and non-discriminatory character with regard to the matter mentioned in article 106 are referred to passim in part I of the present document. It is considered that such rules are required in order to facilitate harmonization of different uses of ocean space and to give concrete content to the general principle that a State must pay reasonable regard to the interests of other States in its use of ocean space.

#### Article 107

1. The Assembly shall receive and consider biennial reports from the organs mentioned in article 94 of this Convention.
2. The Assembly may require special reports from the principal organs or from the major subsidiary organs of the Institutions on any matter within the scope of this Convention. 107/

#### Voting

#### Article 108

Each member of the Assembly shall have one vote.

#### Article 109

1. A member which is in arrears in the payment of its financial contributions to the Institutions shall have no vote in the Assembly if the amount of its arrears exceeds the amount of the contributions due from it for the preceding two full years. 108/
2. A member which has not executed in so far as possible a final judgement of the International Maritime Court within one year of its delivery shall have no vote in the Assembly until it commences execution of such judgement.

#### Article 110

Each member of the Assembly shall belong to one of the following categories:

Category A, Category B, Category C.

#### Article 111

1. Shall belong to category A members which are coastal States and which have a population exceeding 90 million inhabitants.
2. Shall also belong to category A members which are coastal States and which possess six of the following qualifications:
  - (a) Have a population greater than 45 million inhabitants;
  - (b) Have a length of coastline exceeding 5,000 kilometres;

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107/ Compare United Nations Charter, Article 15.

108/ See Charter of the United Nations, Article 19.

- (c) Possess more than 1 million gross tons of merchant shipping;
  - (d) Own and operate more than 20 ships and submersibles aggregating not less than 30,000 gross tons for scientific and rescue purposes;
  - (e) Have produced more than 1 million metric tons of fish annually over the previous three years;
  - (f) Have produced annually over the previous three years more than 1 million tons of hydrocarbons or other minerals from the sea-bed of ocean space;
  - (g) Own submarine pipelines or cables in International Ocean Space;
  - (h) Have expended more than \$20 million annually from State funds, over the previous three years for scientific research in ocean space;
  - (i) Have contributed annually over the previous three years more than \$25 million to the Institutions in respect of revenue obtained from the exploitation of natural resources in national ocean space.
3. Members belonging to Category A, shall review the qualifications mentioned in paragraphs 1 and 2 of this article every six years. On such occasions the qualifications mentioned in paragraph 1 and in paragraph 2 (a), (c), (d), (e), (f), (h), and (i) may be increased by not more than 20 per cent.

#### Article 112

Shall belong to Category B all members which are coastal States and which do not belong to Category A.

#### Article 113

Shall belong to Category C all members which are not coastal States.

#### Article 114

1. Three weeks before each regular session of the Assembly, the members belonging to each of the categories indicated in article 110 shall meet separately.
2. At the meetings referred to in paragraph 1, members belonging to Category A shall:
  - (a) Ascertain whether all members still possess the qualifications required in article 111;
  - (b) Consider requests from members of the Institutions for membership in Category A;
  - (c) Transact such other business as may be necessary under the provisions of this Convention.



3. At the meetings referred to in paragraph 1, members belonging to Category B and to Category C meeting separately shall:

(a) elect as many members from their respective category as are necessary to fill vacancies in the Council or in the major subsidiary organs of the Institutions;

(b) transact such other business as may be necessary under the provisions of this Convention.

4. Decisions taken at the meetings mentioned in paragraphs 2 and 3 may be appealed to the Assembly.

#### Article 115

1. Decisions of the Assembly shall be made by an affirmative majority of the members present and voting and by a majority of members present and voting belonging to two of the categories mentioned in article 110.

2. Decisions by the Assembly relating to the matters mentioned in articles 101, 102, 103, and 104 shall be made by an affirmative majority of members present and voting and by a majority of members in each of the categories indicated in article 110. 109/

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109/ Articles 110 to 115 are designed to ensure that the Assembly cannot take a decision contrary to the vital interests of any member of the Institutions. At the same time the intention is to give credible assurance that decisions by the Assembly will be observed by ensuring that they are supported by the preponderant weight of States.

## Chapter XXI: Associate Members

### Article 116

1. Any State which signs the present Convention and ratifies it in accordance with article 205 but which does not possess the qualifications mentioned in article 93 (2), may become an associate member of the International Ocean Space Institutions.
2. The admission of a State to associate membership in the International Ocean Space Institutions is effected by a decision of the Council.
3. An associate member of the International Ocean Space Institutions which is unwilling to carry out its obligations under the present Convention or which persistently violates the provisions contained in the present Convention may be suspended from the rights and privileges of associate membership or its associate membership may be terminated by the Council. The decision of the Council may be appealed to the Assembly.

### Article 117

1. Associate members may participate without vote in the deliberations of the Assembly.
2. Associate members shall have the right to participate without vote in the discussion before the Council of any question under article 116 (2) (3).
3. Associate members may request to participate without vote in the discussions of matters of particular interest to them by the major subsidiary organs of the Institutions and by any additional subsidiary organs that may be established by the Assembly.

### Article 118

Associate members are exempt from the obligation to contribute to the budgetary expenses of the Institutions, apart from their obligations under article 61 of this Convention.

### Article 119

Associate members shall participate in the equitable sharing of benefits derived from the exploitation of the natural resources of International Ocean Space.

#### Article 120

Associate members shall receive without payment, at their request three copies of all publications of the Institutions, except for documents for the internal use of organs of the Institutions.

#### Article 121

Apart from the provisions of the preceding articles, Associate members shall enjoy all the rights and privileges of members.

## Chapter XXII: The Council

### Composition

#### Article 122

1. The Council shall consist of the following members of the Institutions:
  - (a) all members belonging to category A;
  - (b) an equal number of members belonging to category B;
  - (c) five members belonging to category C.
2. Members belonging to category B and to category C shall be elected by members of their respective categories voting separately due regard being paid in the first instance to population and to the qualifications referred to in article 111 and also to geographical distribution.
3. Council members belonging to category B and to category C shall be elected for a term of four years. In the first election half less one of the members belonging to category B and two of the members in category C shall be chosen for a term of two years. A retiring member shall not be eligible for immediate re-election.

### Procedure

#### Article 123

1. The Council shall be so organized as to be able to function continuously. Each member of the Council shall for this purpose be represented at all times at the seat of the Institutions. 110/
2. The Council may establish such subsidiary organs as it deems necessary for the performance of its functions. 111/ The Council shall review every six years the continued need for such organs as it may establish.
3. The Council shall adopt its own rules of procedure, including the method of selecting its President and the determination of the latter's powers and term of office. 112/
4. Any member of the Institutions which is not a member of the Council may participate without vote in the discussion of any questions by the Council whenever the latter considers that the interests of that member are specially affected. 113/

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110/ See Charter of the United Nations, Article 28 (1).

111/ See Charter of the United Nations, Article 29.

112/ See Charter of the United Nations, Article 30.

113/ See Charter of the United Nations, Article 31.

#### Article 124

1. Each member of the Council shall have one vote.
2. Decisions of the Council shall require the affirmative vote of a majority of its members and of a majority of members in two of the categories referred to in article 110.
3. Members which cannot vote in the Assembly in accordance with article 109 shall not vote in the Council.

#### Functions and powers

#### Article 125

1. In order to achieve prompt and effective action by the Institutions, its members confer upon the Council primary responsibility for the harmonization of the actions of nations and the maintenance of law and order in ocean space and for the maintenance of the ecological, territorial and jurisdictional integrity and the national management and orderly development of International Ocean Space and of its natural resources. Members of the Institutions agree that in carrying out these duties the Council acts on their behalf, except as otherwise provided in this Convention.
2. In discharging its duties the Council shall act in accordance with the purposes and principles of the United Nations and with the purposes and principles of the International Ocean Space Institutions. The specific powers granted to the Council for the discharge of these duties are laid down in Chapter XXIII, XXIV and XXV of the present Convention.
3. The Council shall submit biennial reports to the Assembly for its consideration two months before the opening of each regular session. The Council shall submit promptly to the Assembly such special reports as the latter may request. 114/

#### Article 126

Members and Associate Members of the Institutions agree to accept decisions of the Council in accordance with the present Convention. 115/

#### Article 127

1. The Council may undertake such functions with regard to the military uses of ocean space or with regard to the regulation of armaments in ocean space as may be conferred upon it by a unanimous vote of members in category A referred to in article 110.
2. Abstention from voting shall not be regarded as detracting from the unanimity of the vote on the questions referred to in paragraph 1.

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114/ See for general analogy Charter of the United Nations, Article 24.

115/ Compare Charter of the United Nations, Article 25.

#### Article 128

The Council, after obtaining the advice of the Scientific and Technological Commission, shall give its consent if it considers this appropriate, to such requests as may be received from States relating to the matters referred to in article 2 (a) of this Convention.

#### Article 129

1. The Council shall consider and submit to the Assembly with its recommendations such rules of a general and non-discriminatory character, in accordance with the present Convention, relating to overflight of ocean space, navigation, maritime safety, communications, conservation, management and development of natural resources, scientific research and the maintenance of the quality of the marine environment and the harmonization of conflicting uses of International Ocean Space, as it may consider necessary for an effective pursuit of the Purposes of the Institutions.
2. The rules referred to in paragraph 1 shall be obligatory for all users of International Ocean Space two years after their adoption by the Assembly.
3. Violation of the rules referred to in paragraph 1 entails legal responsibility when injury is caused to the rights and interests of others. Persistent violators may be excluded from the use of the International Ocean Space.

#### Article 130

1. The Council shall consider and submit to the Assembly with its recommendations such non-discriminatory normative principles for the harmonization of activities in International Ocean Space and for the use of technology in, or relating to, ocean space as it may consider necessary to ensure the beneficial use and ecological integrity of the marine environment.
2. Two years after their adoption by the Assembly the normative principles referred to in paragraph 1 shall be considered by the International Maritime Court to form part of international law.

#### Article 131

The Council shall submit to the Assembly with its recommendations within four years of the entry into force of the present Convention:

- (a) A draft convention for straits used for international navigation referred to in article 48 of this Convention;
- (b) A draft convention for the delimitation of the jurisdiction over ocean space which may be claimed by a State by virtue of its sovereignty or control over the islands referred to in article 37 (2) of this Convention;

(c) A draft convention or conventions between the Institutions and coastal States concerning the matters referred to in article 59 of this Convention;

(d) A draft convention between the Institutions and coastal States concerning the matters referred to in article 61 of this Convention.

#### Article 132

This Council shall submit to the Assembly with its recommendations draft conventions with Contracting Parties concerning the compensation to which they have right in accordance with article 38 of this Convention.

#### Article 133

1. The Council shall submit to the Assembly with its recommendations within two years of the entry into force of the present Convention draft rules concerning the equitable sharing in the benefits derived from the exploitation of the natural resources of International Ocean Space.

2. Rules concerning the equitable sharing in the benefits derived from the exploitation of the natural resources of International Ocean Space may be reviewed by the Council every six years. Revised rules shall be submitted to the Assembly for approval.

#### Article 134

The Council shall submit the budget of the Institutions to the Assembly for approval.

#### Article 135

1. The Council shall submit to the Assembly for approval:

(a) Agreements with any State concerning the transfer to the administrations of the Institutions of sandbanks, reefs or islands;

(b) The basic norms governing the administration of inhabited islands.

#### Article 136

The Council shall approve the establishment of:

(a) Scientific stations, nature parks or marine preserves in International Ocean Space;

(b) Such services for international community purposes in ocean space as may be consistent with the provisions of this Convention.

## Article 137

The Council shall make recommendations to States with regard to the policies and measures required in order effectively to achieve the purposes of the Institutions in ocean space as a whole.

## Management and development of International Ocean Space

### Article 138

1. The Council is primarily responsible for the rational management and orderly development of International Ocean Space and of its natural resources.

2. The responsibilities of the Council under paragraph 1 shall be exercised in accordance with article 91 of this Convention. In addition, the Council in exercising its responsibilities for the management and development of resources shall:

(a) Manage the living resources of International Ocean Space in such a manner as to secure the maximum sustainable yield taking into due account the need to preserve the ecological balance of ocean space; to this end commercial fishing in International Ocean Space shall be subject to a system of non-discriminatory licensing based on scientific findings;

(b) Manage and develop the non-living resources of International Ocean Space by means of a system of non-discriminatory licensing taking into due account the need to preserve as far as possible the ecological integrity of ocean space, and the desirability of promoting efficiency of exploitation and of avoiding undue prejudice to the interests of States exporting minerals or raw materials obtained from land sources.

## Licences

### Article 139

1. There shall be fees for licences for the exploitation of the natural resources of International Ocean Space.

2. Licences issued pursuant to paragraph 1 shall be for a limited time and for a determined area.

3. The activities of the licencees shall be inspected at regular intervals by the State whose nationality they possess and may be inspected by the Institution.

4. Licences issued pursuant to paragraph 1 may be revoked only for cause specified in the licence.

5. Expropriation of investments or unjustifiable interference with operations conducted pursuant to a licence is prohibited.



## Article 140

1. Licences for the exploitation of the living resources of International Ocean Space shall:

(a) In the first instance be issued for a period not exceeding four years. The licences are then subject to review. The validity of an extended or amended licence shall not exceed six years;

(b) Be non-exclusive, subject to any historical rights which can be proved by any State;

(c) Be non-transferable;

(d) Be issued to States only. No one State may be granted more than ten licences;

(e) Be issued for an area not exceeding one million square kilometres. The boundaries of the area shall be delimited by longitude and latitude;

(f) Specify maximum quantities of living resources that may be harvested every year in the area and during the period covered by the licence and, when reliable scientific findings reveal the need for urgent application of conservation measures, shall also specify the maximum quantities of each stock of fish or of other living marine resource which may be harvested in the area and during the period covered by the licence;

(g) Provide for an appropriate cash deposit as guarantee of compliance with the conditions of the licence;

(h) Provide appropriate penalties in the event of non-compliance with the conditions of the licence;

(i) Contain such additional provisions as may appear appropriate.

## Article 141

Licences for the exploitation of marine plants and phytozoa of International Ocean Space shall:

(a) Be non-exclusive, subject to any historical rights which can be proved by any State;

(b) Be non-transferable;

(c) Specify maximum quantities of each species of marine plants and phytozoa which may be harvested in the area and during the period covered by the licence;

(d) Provide appropriate penalties in the event of non-compliance with the conditions of the licence;

(e) Contain such additional provisions as may appear appropriate. 116/

#### Article 142

Licences for the exploitation of the non-living resources of International Ocean Space may be issued for purposes of exploitation or for production.

#### Article 143

An exploration licence shall:

(a) In the first instance be issued for a period not exceeding four years and is renewable for a further period of four years subject to an appropriate supplementary payment to the Institutions;

(b) Be non-exclusive and transferable;

(c) Specify the substances for which it is issued;

(d) Be issued for an area delimited by longitude and latitude, not exceeding 500,000 square kilometres;

(e) Contain such additional provisions as may appear appropriate.

#### Article 144

A production licence shall:

(a) Be exclusive and non-transferable;

(b) Be issued for a period not exceeding 30 years. Provision shall be made in each licence for increases in work requirement fees over the period covered by the licence as from the second year thereof;

(c) Specify the substance or substances covered by the licence;

(d) Be of three different categories:

(i) for energy,

(ii) for fluid, or for minerals extracted in a fluid state,

(iii) for substances other than those under (i) and (ii). A separate licence shall be issued in respect of each category;

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116/ It is understood that marine plants are important for the pharmaceutical industry and that certain species are already heavily exploited.

(e) Be issued for an area delimited by longitude and latitude not exceeding 500,000 square kilometres;

(f) Contain detailed work, production and payment requirements;

(g) Contain provisions covering liability for damages;

(h) Provide for an appropriate cash deposit to guarantee financial responsibility and performance of work and production requirements;

(i) Contain appropriate provisions for the protection of the marine environment and for avoidance of conflict with other uses of International Ocean Space. 117/

(j) Contain such additional provisions as may appear appropriate.

#### Article 145

The Council shall approve all licences for the exploitation of the natural resources of International Ocean Space.

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117/ The provisions regarding licensing arrangements are somewhat more elaborate than those contained in the Tanzania draft statute (A/AC.138/33) but are less elaborate than those contained in the USA draft convention (A/8021, Annex V).

Chapter XXIII: Maintenance of law and order in ocean  
space and threats to the integrity of International  
Ocean Space

Article 146

The Council has primary responsibility for the maintenance of law and order in ocean space and for the maintenance of the territorial and jurisdictional integrity of International Ocean Space. In discharging these responsibilities the Council shall act in accordance with the Purposes and Principles of the Charter of the United Nations and with article 91 of this Convention.

Article 147

The Council may investigate any situation or event or any action by States which might be seriously prejudicial to the maintenance of law and order in ocean space or which might endanger the territorial or jurisdictional integrity of International Ocean Space. In such cases the Council shall make and publish a report containing a statement of the facts with regard to the situation, event or action which gave rise to the investigation.

Article 148

Should the Council determine the existence of any situation, event or action which is seriously prejudicial to the maintenance of law and order in ocean space or which endangers the territorial or jurisdictional integrity of International Ocean Space, it may make such recommendations as may appear desirable taking into account, where appropriate, the provisions of Chapter XXIV of this Convention.

Article 149

Should the Council determine that action under Article 148 has proved inadequate or has not been complied with and should it consider that law and order in ocean space is seriously prejudiced or that the territorial or jurisdictional integrity of International Ocean Space is seriously impaired, it may decide what measures not involving the use of force are to be employed to give effect to its decisions. Such measures may include:

(a) Action under Chapter XXIV of this Convention;

(b) Exclusion of a member or an associate member from participation in the equitable sharing of benefits derived from the exploitation of the natural resources of International Ocean Space;

(c) Exclusion of a member or an associate member or of natural or juridical person under its sponsorship from their right to exploit the natural resources of International Ocean Space in accordance with the provisions of this Convention;

(d) Suspension of a member or associate member from participation in the rights and privileges of membership in the Institutions;

(e) Exclusion of any State or of its nationals from their right to make use of International Ocean Space or the airspace above International Ocean Space for some or for all purposes.

#### Article 150

1. The Council may call upon all members of the Institutions or some of them, as it may determine, to ensure compliance with its decisions under article 149 by such action as may be necessary, including the employment of naval and air forces.

2. Members of the Institutions shall join in affording assistance in ensuring compliance with the decisions of the Council, unless the Assembly has taken the action referred to in article 151.

#### Article 151

The Assembly shall be informed immediately of any action taken under article 150. The Assembly may recommend that the Council reconsider the action taken by it.

## Chapter XXIV: Pacific settlement of disputes

### Article 152

1. Members or associate members of the Institutions that are parties to any dispute in ocean space shall, in the first instance, seek a solution by any peaceful means of their choice. In default of agreement the dispute shall be submitted to the Council on the initiative of any of the parties to the dispute. The Council shall endeavour to settle the dispute and shall in any case make and publish a report containing a statement of the facts and such recommendations as may appear desirable. 118/

2. A dispute between members or associate members of the Institutions with regard to any matter expressly provided for in the present Convention shall be submitted to binding adjudication by the International Maritime Court at the request of the Council or of any of the parties to the disputes, in the event that other peaceful means of settlement fail.

### Article 153

A State which is not a member or associate member of the Institutions may submit to the Council any disputes to which it is a party in ocean space if it accepts in advance for the purposes of the dispute the provisions of Chapter XXIV of the present Convention. 119/

### Article 154

A dispute between a member or associate member of the Institutions and the Institutions shall be submitted to the International Maritime Court for binding adjudication at the request of any of the parties to the dispute.

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118/ See for analogy the Charter of the United Nations, Article 33, and Covenant of the League of Nations, Article 15.

119/ See for analogy the Charter of the United Nations, Article 35 (2).

Chapter XXV: Maintenance of the ecological integrity  
of International Ocean Space

Article 155

The Council, or a body designated by the Council, may investigate any event, situation, practice or action which might cause significant and extensive change in the natural state of the marine environment or which might impair ecological integrity of International Ocean Space.

Article 156

1. Should the Council determine that any event, situation, practice or action endangers the natural state of the marine environment or impairs the ecological integrity of International Ocean Space the Council or the body designated by it, shall make and publish a report containing a statement of the facts.
2. If the event, situation, practice or action referred to in paragraph 1 has occurred in national ocean space, the Council on reliable scientific advice shall make such recommendations as may appear necessary on reliable scientific advice to the coastal State or States concerned.
3. If the event, situation, practice or action referred to in paragraph 1 has occurred in International Ocean Space, the Council shall take such action within its powers as it deems necessary or desirable. This may include the regulation of dangerous practices or technologies and the prohibition or licensing of the disposal of harmful substances in International Ocean Space.

Article 157

In the event of imminent danger of serious contamination of extensive areas of International Ocean Space, the Council, after taking scientific advice, may proclaim a regional or a world ecological emergency.

Article 158

1. During a state of regional or world ecological emergency States within the region or all States in the world, as the case may be, whether or not members of the Institutions, shall take promptly such action for the preservation of the ecology of ocean space as may be prescribed by the Council, or by the body designated by the Council for this purpose.
2. The Council, if necessary, shall ensure compliance with its directions by taking any of the actions mentioned in articles 149 and 150. 120/

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120/ It is believed that the imprudent use of certain contemporary or prospective technologies could have such catastrophic results as imperatively to require the co-operation of States, whether or not members of the Institutions.

Article 159

The International Maritime Court shall be the principal judicial organ of the International Ocean Space Institutions. It shall function in accordance with the annexed Statute which forms an integral part of the present Convention.

Article 160

1. All members and associate members of the Institutions are ipso facto parties to the Statute of the International Maritime Court.
2. A State which is not a member or an associate member of the Institutions may become a party to the Statute of the International Maritime Court on conditions to be determined in each case by the Assembly upon recommendations of the Council.

Article 161

The competence of the International Maritime Court shall extend to persons natural or juridical other than States with respect to matters which have occurred in International Ocean Space.

Article 162

1. Each member and associate member of the Institutions undertakes to comply with a final decision of the International Maritime Court in any case to which it is a party.
2. If any member or associate member of the Institutions party to a case fails to perform the obligations incumbent upon it under a final judgement rendered by the Court within one year of its delivery, it shall have no vote in the Assembly of the Institutions and the other party may have recourse to the Council which may, if it deems necessary, take any of the measures referred to in article 149 of this Convention.
3. If the Secretariat or any subsidiary organ of the Institutions fails to perform within one year the obligations incumbent upon it under a final judgement rendered by the Court, the other party may have recourse to the Council, which shall investigate the situation and may, if it deems necessary, take any action within its powers.

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<sup>121/</sup> See for analogy Chapter XIV of the Charter of the United Nations. It has not been possible to annex the proposed draft Statute due to the lack of sufficient time.



4. If any party to a case, other than those referred to in paragraphs 2 and 3, fails to perform within one year the obligations incumbent upon it under a final judgement rendered by the Court, the other party may have recourse to the Council which shall investigate the situation and may, if it deems necessary, take any of the measures referred to in article 149 of this Convention.

#### Article 163

1. The Assembly or the Council or the General Secretary, after consultation with his senior advisers, may request the International Maritime Court to give an advisory opinion on any legal question within the scope of this Convention.

2. Any member or associate member of the Institutions may request the advisory opinion of the Court on the equity or non-discriminatory nature of the principles and rules referred to in articles 129 and 130 as also on the equity or non-discriminatory nature of the licencing systems referred to in article 138.

Article 164

1. The Secretariat shall comprise a General Secretary and such staff as the Institutions may require. The General Secretary shall be appointed by the Assembly upon recommendation of the Council. He shall serve for a term of six years and may be reappointed for one further term.
2. The General Secretary may be relieved of his duties for cause by the Council.
3. The Council shall recommend to the Assembly the appointment of a new General Secretary in the event of the General Secretary becoming physically or mentally incapacitated.

Article 165

The General Secretary shall:

- (a) Be the chief administrative officer of the International Ocean Space Institutions and act in that capacity in all meetings of the Assembly and of the Council;
- (b) Report periodically to the Council and biennially to the Assembly on the activities of the Institutions;
- (c) Prepare the budget of the Institutions, taking into account the provisions of articles 173 and 174 of this Convention and submit it to the Council;
- (d) Inspect at reasonable times and with due consideration the resource exploration and exploitation activities of any State or of its nationals in International Ocean Space;
- (e) Participate in so far as possible in scientific research conducted in International Ocean Space and bring the results thereof to the attention of members and associate members;
- (f) Issue periodic notices to mariners giving publicity to any danger to navigation of which he has knowledge pursuant to article 50 of this Convention;
- (g) Receive notifications of the temporary suspension of innocent passage of foreign vessels pursuant to article 48 (1) of this Convention and bring such notifications to the attention of the Council;

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<sup>122/</sup> See for analogy Chapter XV of the Charter of the United Nations.

(h) Receive from the States the maps referred to in articles 38, 40 (7) and 45 (2) of this Convention and bring them to the attention of the Council and to that of all members and associate members of the Institutions;

(i) Receive notifications pursuant to article 52 (4) of this Convention and bring such notifications to the attention of the Council;

(j) Maintain a register of the disposal of radio-active wastes in International Ocean Space;

(k) Administer under rules laid down by the appropriate organs of the Institutions any inhabited islands which may be transferred to the administration of the Institutions and any scientific stations, marine preserves or nature parks which may be established;

(l) Perform such other functions as may be entrusted to him by the principal organs or by the major subsidiary organs of the Institutions.

#### Article 166

The General Secretary may bring to the attention of the Council any matter which in his opinion may endanger the achievement of the purposes of the Institutions.

#### Article 167

In the performance of his duties the General Secretary shall be assisted by principal advisers, no two of whom may be nationals of the same State. The senior adviser in terms of length of service shall act as General Secretary if the latter becomes temporarily incapacitated.

#### Article 168

1. In the performance of their duties the General Secretary and the staff shall not seek or receive instructions from any Government or from any authority external to the Institutions. They shall refrain from any action which might reflect on their position as international officials responsible only to the Institutions.

2. Each member and associate member of the Institutions undertakes to respect the exclusively international character of the responsibilities of the General Secretary and the staff and not to seek to influence them in the discharge of their responsibilities.

#### Article 169

1. The staff shall be appointed by the General Secretary under general regulations established by the Council.

2. Appropriate staffs shall be permanently assigned to the principal organs and to the major subsidiary organs of the Institutions and, as required, to the other organs of the Institutions.

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

#### Article 170

1. The General Secretary and members of the staff shall not be actively associated with or financially interested in any operations of any enterprise concerned with exploration or exploitation of the natural resources of International Ocean Space.

2. The General Secretary shall request permission of the Council in the event that exceptions to the provisions of paragraph 1 are necessary. 123/

#### Article 171

Disclosure by the General Secretary or by a member of the staff of confidential technical information shall be considered a grave infraction and shall make the offending party legally responsible for damages.

#### Budget

#### Article 172

1. The budget shall cover a period of not less than two years.

2. In preparing the budget of the Institutions the General Secretary shall pay due regard to the need for the greatest possible administrative economy and efficiency. No activities requiring expenditure shall be undertaken without the express authorization of the Assembly or of the Council or of one of the major subsidiary organs of the Institutions unless otherwise provided in this Convention.

3. The General Secretary shall submit biennially to the Assembly and to the Council a cost/benefit analysis of the activities of the Institutions.

4. The General Secretary shall submit every six years to the Council or to the Assembly, as appropriate, a special report on the activities of the subsidiary organs of the Institutions, apart from the major subsidiary organs referred to in Article 94, containing an assessment of the efficiency of the work of these organs and such recommendations as he may consider useful.

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123/ See for analogy Article 65 of the USA draft convention (A/8021, Annex V).

#### Article 173

1. In the event that the revenue from the exploitation of the natural resources of International Ocean Space does not exceed \$50 million per annum, it shall be apportioned in the budget as follows: (a) 30 per cent towards the administrative expenses of the Institutions; (b) 30 per cent for international community purposes in International Ocean Space, such as hydrographic and cartographic activities, promotion of ecological, scientific, technological and fishery research, establishment of aids to navigation, establishment of scientific stations, etc., (c) 30 per cent for the development of the capabilities of Members which are coastal States and whose gross national product does not exceed \$800 per caput, to conduct activities in ocean space.
2. The General Secretary shall submit proposals to the Council with regard to the most appropriate use of the remainder of the revenue. 124/

#### Article 174

1. In the event that the revenue from the exploitation of the natural resources of International Ocean Space exceeds \$50 million, the excess over \$50 million shall be applied in the first place to cover the administrative expenses of the Institutions. After covering the administrative expenses of the Institutions, (a) not less than 40 per cent of the revenue shall be reserved for the development of the capability of coastal Members beneficially to use ocean space; (b) not less than 15 per cent of the revenue shall be reserved to land-locked Members and to Associate Members for the improvement of their ecology or for the development of their capabilities beneficially to use ocean space or lakes and rivers; (c) not less than 15 per cent of the revenue shall be allocated for international community purposes and (d) not less than 10 per cent shall be allocated for the prevention and relief of disasters of whatever nature in, or originating in, ocean space. The General Secretary shall submit proposals to the Council with regard to the most appropriate use of the remainder of the revenue.
2. The Council shall decide on an equitable system of allocation to States of the revenue referred to in paragraph 1 (a), taking into account that not less than 85 per cent of this revenue shall be allocated to States whose gross national product does not exceed \$800 per caput. 125/
3. The Council shall decide on an equitable system of allocation with regard to the revenue referred to in paragraph 1 (b).

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124/ The intention is to ensure that concrete benefits from the international management of International Ocean Space become available to States and to the international community as soon as possible and even if revenue from the exploitation of natural resources does not cover the administrative expenses of the Institutions.

125/ Compare article 35, Tanzania draft statute (A/AC.138/33).

#### Article 175

The provisions of Articles 173 and 174 are without prejudice to the obligation of the Council to submit to the Assembly rules with respect to the equitable sharing of benefits derived from the exploitation of the natural resources of International Ocean Space.

#### Article 176

1. Each Member and Associate Member of the Institutions has a right to an equitable share in the revenue referred to in Article 174.
2. Members and Associate Members nevertheless agree that the funds allocated to each shall normally not be distributed in cash but shall be used to defray the cost of projects designated by them and designed to enhance their capabilities beneficially to use ocean space or, in the case of land-locked Members and Associate Members, also of projects designed to improve the ecology of their country. 126/

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126/ The intention is to encourage technologically less advanced countries to develop their capability to make efficient and productive use of ocean space and thus to diminish their dependence on foreign expertise. Cash distribution is unlikely in most cases to produce lasting benefits.

Chapter XXVIII: Major subsidiary organs

A. Ocean Management and Development Commission

Composition and procedure

Article 177

There is established an Ocean Management and Development Commission.

Article 178

1. The Ocean Management and Development Commission shall comprise all Members belonging to Category A referred to in Article 111, an equal number of Members belonging to Category B and five Members belonging to Category C.
2. Members belonging to Category B and to Category C shall be elected by Members of their respective categories voting separately, due regard being paid to population and to the qualifications for membership in Category A referred to in Article 111 and also to geographical distribution. Not more than half the Members of the Ocean Management and Development Commission belonging to Category B or to Category C shall also be members of the Council or of the Legal Commission.
3. Members of the Ocean Management and Development Commission belonging to Category B and to Category C shall be elected for a term of four years. In the first election half less one of the Members belonging to Category B and two of the Members belonging to Category C shall be chosen for a period of two years. A retiring Member shall not be eligible for immediate re-election.

Article 179

1. Each Member of the Ocean Management and Development Commission shall have one vote.
2. Decisions of the Commission shall be made by an affirmative vote of a majority of the Members present and voting including a majority of members present and voting belonging to two of the categories referred to in Article 110.
3. Members which cannot vote in the Assembly in accordance with Article 109, shall not vote in the Commission.

Article 180

1. The Ocean Management and Development Commission shall be so organized as to be able to function continuously. Each Member of the Commission shall for this purpose be represented at all times at the seat of the Institutions.

2. The Commission may, with the consent of the Council, establish such subsidiary organs as it deems necessary for the performance of its functions. The Commission shall review every six years the continued need for such subsidiary organs as it may establish.

3. The Commission shall adopt its own rules of procedure.

4. The Commission shall invite any Member or Associate Member of the Institutions to participate, without vote, in its deliberations on any matter of particular concern to that Member or Associate Member.

#### Article 181

1. The Ocean Management and Development Commission may make arrangements for representatives of the United Nations and of the specialized agencies established by intergovernmental agreement and brought into relationship with the United Nations in accordance with Article 63 of the United Nations Charter to participate without vote in its deliberations, and for its representatives to participate in the deliberations of the United Nations and of the specialized agencies.

2. The Ocean Management and Development Commission may make suitable arrangements for consultation with intergovernmental and non-governmental organizations and institutions which are primarily concerned with matters within its competence.

3. Intergovernmental fishery bodies shall be brought into relationship with the Ocean Management and Development Commission.

#### Functions and powers

#### Article 182

1. The Ocean Management and Development Commission may make or initiate studies and reports with respect to any matter relating to the use of ocean space by man, to the management of International Ocean Space and to the development of its resources.

2. The Commission shall submit a biennial report on its activities to the Assembly and report periodically to the Council.

3. The Commission shall prepare and submit to the Council for its consideration a non-discriminatory system, or systems, of licensing the exploitation of the natural resources of International Ocean Space, taking into account the need for resource conservation and management.

4. The Commission shall recommend to the Council the approval and cancellation of licences for the exploitation of the natural resources of International Ocean Space. The Commission shall supervise compliance with the provisions of all licences issued and shall report thereon periodically to the Council.

5. The Commission shall prepare and submit to the Council for its consideration draft general rules relating to navigation, communications, maritime safety, sea- and ocean-bed installations and devices, conservation, management and exploitation of the natural resources in International Ocean Space.



6. The Commission shall prepare and submit to the consideration of the Council a draft model agreement or agreements with regard to the matters referred to in Article 61 of this Convention. The agreement or agreements may contain provisions which are regional in scope.
7. The Commission shall prepare draft conventions with coastal States Members of the Institutions with regard to the matters referred to in Article 59 of this Convention. Such draft conventions shall be submitted to the Council.
8. The Commission may prepare draft conventions of a general and non-discriminatory nature with respect to any matter relating to the use of ocean space by man unless otherwise provided in this Convention.
9. (a) The Commission, in consultation with the Scientific and Technological Commission, shall prepare and submit to the Council for its consideration:
  - (i) draft agreements with any State concerning the transfer of the administration of the Institutions of sandbanks, reefs or islands;
  - (ii) draft basic norms concerning the administration of inhabited islands;
- (b) The Commission shall give instructions to the General Secretary on the administration of sandbanks, reefs and islands which may be transferred to the administration of the Institutions and shall supervise the administration thereof.
10. The Commission shall prepare plans for the development of International Ocean Space and for the rational utilization of its resources, taking into account the need to avoid pollution and to preserve the ecological balance of the marine environment.

## B. Scientific and Technological Commission

### Composition and procedure

#### Article 183

There is established a Scientific and Technological Commission.

#### Article 184

1. The Scientific and Technological Commission shall comprise all Members belonging to Category A referred to in Article 111, an equal number of Members belonging to Category B and five Members belonging to Category C.
2. Members belonging to Category B and to Category C shall be elected by Members of their respective categories voting separately, due regard being paid to scientific and technological capability and to geographical distribution.
3. Members of the Scientific and Technological Commission belonging to Category B and to Category C shall be elected for a term of four years. In the first election half less one of the members belonging to Category B and two of the members belonging to Category C shall be chosen for a period of two years.

#### Article 185

1. Each Member of the Scientific and Technological Commission shall have one vote.
2. Decisions of the Commission shall be made by a majority of the members present and voting.

#### Article 186

1. The Scientific and Technological Commission shall meet at least twice a year.
2. The Commission may, with the consent of the Council, establish such subsidiary organs as it deems necessary for the performance of its functions. The Commission shall review every six years the continued need for such subsidiary organs as it may establish.
3. The Commission shall adopt its own rules of procedure.
4. The Commission shall invite any Member or Associate Member of the Institutions to participate without vote in its deliberations on any matter of particular concern to that Member or Associate Member.

#### Article 187

The Scientific and Technological Commission may make arrangements for representatives of the United Nations and of the specialized agencies established by intergovernmental agreement and brought into relationship with the United Nations in accordance with Article 63 of the United Nations Charter to participate without vote in its deliberations, and for its representatives to participate in the deliberations of the United Nations and of the specialized agencies.

#### Article 188

The Scientific and Technological Commission shall make suitable arrangements for consultation with institutions and organizations of scientists, technicians and technologists primarily interested in questions relating to ocean space.

#### Functions and powers

#### Article 189

1. The Scientific and Technological Commission shall promote through concerted action by Members and Associate Members of the Institutions the scientific investigation of ocean space and the development of technologies for the exploration of ocean space and of its resources and for its peaceful use by man.
2. The Commission shall disseminate as widely as possible knowledge concerning the matters referred to in paragraph 1.

3. The Commission shall make recommendations to the Council concerning measures required to safeguard the quality of the marine environment and shall prepare, as appropriate, draft regulations or conventions thereon.
5. The Commission shall advise the Council on the proclamation of a regional or a world ecological emergency in ocean space and on requests received from States in accordance with Article 2 (a) of this Convention.
6. The Commission may advise at their request Members or Associate Members of the Institutions on measures required to avoid pollution of national ocean space.
7. The Commission shall advise the Ocean Management and Development Commission on the scientific, ecological and technological aspects of licensing the exploitation of the natural resources of International Ocean Space and of the exploration of its non-living resources.
8. The Commission shall be consulted on all matters within its competence by the Ocean Management and Development Commission and particularly on the scientific aspects of the matters referred to in Article 182 (5) and (9) of this Convention. The Commission shall advise the General Secretary on the administration of scientific stations and nature parks or preserves.
9. The Commission shall prepare and submit to the Council for its consideration draft technical, safety and social standards and regulations with regard to vessels, fixed installations or devices lying or floating in or traversing International Ocean Space.
10. The Commission shall prepare and submit to the Council for its consideration draft regulations concerning communications and broadcasting in International Ocean Space.
11. The Commission shall decide the requirements for inscription of, and on each request for inscription by persons or entities in the register referred to in Article 35 (2) of the present Convention. The register shall be kept in the custody of the General Secretary.

#### Article 190

The Commission shall submit a biennial report on its activities to the Assembly and to the Council.

#### C. Legal Commission

##### Composition and procedures

#### Article 191

There is established a Legal Commission.

#### Article 192

1. The Legal Commission shall comprise all Members belonging to Category A referred to in Article 111, an equal number of Members belonging to Category B and five Members belonging to Category C.
2. Members belonging to Category B and to Category C shall be elected by Members of their respective categories voting separately. Not more than half the members of the Legal Commission belonging to Category B or to Category C shall also be members of the Council or of the Ocean Management and Development Commission.
3. Members of the Legal Commission belonging to Category B and to Category C shall be elected for a term of four years. In the first election half less one of the Members belonging to Category B and two of the Members belonging to Category C shall be chosen for a term of two years. A retiring Member shall not be eligible for immediate re-election.

#### Article 193

1. Each Member of the Legal Commission shall have one vote.
2. Decisions of the Commission shall be made by a majority of the members present and voting including a majority of members present and voting belonging to two of the categories referred to in Article 110.
3. Members which cannot vote in the Assembly pursuant to Article 109 shall not vote in the Commission.

#### Article 194

1. The Legal Commission shall meet at least twice a year.
2. The Commission may, with the consent of the Council, establish such subsidiary organs as it deems necessary for the performance of its functions. The Commission shall review every six years the continued need for such subsidiary organs as it may establish.
3. The Commission shall adopt its own rules of procedure.
4. The Commission shall invite any Member or Associate Member of the Institutions to participate without vote in its deliberations on any matter of particular concern to that Member or Associate Member.

#### Functions and powers

#### Article 195

1. The Legal Commission shall promote the harmonization of national maritime laws and the development of international law relating to ocean space.

2. The Commission shall submit a biennial report on its activities to the Assembly and shall report periodically to the Council.

3. The Commission shall prepare and submit to the Council within two years of the entry into force of the present Convention:

(a) a draft of the convention for straits used for international navigation referred to in Article 48 (4) of this Convention;

(b) a draft of the convention for the delimitation of the jurisdiction over ocean space that may be claimed by a State by virtue of its sovereignty or control over the islands referred to in Article 37 (2) of this Convention;

4. The Commission shall prepare and submit to the Council draft conventions for the harmonization of national maritime laws and for the development of international law relating to ocean space.

Chapter XXIX: Miscellaneous provisions

Article 196

Every Treaty and every international agreement concerning ocean space entered into by any Member or Associate Member of the Institutions after the present Convention comes into force shall be registered with the Secretariat and published by it.

Article 197

The seat of the Institutions shall be at

Article 198

1. Regional arrangements for any or all of the purposes of this Convention may be established with the consent of the Council at any time not less than four years after the entry into force of this Convention. 127/
2. The Council shall determine the requirements for the establishment of regional arrangements and their scope, taking into account the wishes of the States in the region and the need for economic and efficient operation of the Institutions.

Article 199

1. Amendments to the present Convention may be proposed by a Contracting Party six years after its entry into force.
2. Amendments must be approved by a majority of Members of the Council including a majority of Members in each of the categories referred to in Article 110 and by an affirmative majority of Members in the Assembly.
3. Amendments shall come into force when ratified by two thirds of the Members of the Institutions belonging to Category A and by a majority of Members belonging to Category B and to Category C.
4. Amendments shall not apply retroactively.

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127/ It is believed desirable that regional arrangements should be established only after the Institutions have had the opportunity of becoming solidly organized.

#### Article 200

1. The present Convention shall have a duration of 20 years from the date of entry into force.
2. On the expiration of 20 years there shall be convened a General Conference on Ocean Space at which the present Convention shall be reviewed.

#### Article 201

1. Any Contracting Party may withdraw from this Convention by written notification addressed to the General Secretary. The General Secretary shall promptly inform the other Contracting Parties of any such withdrawal.
2. The withdrawal shall take effect two years from the date of the receipt by the General Secretary of the notification.

Chapter XXX: Transitional arrangements

Article 202

At the time of the entry into force of this Convention Members of Category A referred to in Article 111 shall be deemed to be

Article 203

There shall be due protection for investments made in International Ocean Space prior to the coming into force of this Convention, when such investments have been notified to the United Nations.

Article 204

1. All authorizations by a Contracting Party to exploit the mineral resources of International Ocean Space granted prior to the entry into force of this Convention shall be continued without change for a period of five years provided that they are conducted in accordance with the provisions of this Convention.
2. After the expiration of the period of five years, a licence in accordance with the provisions of this Convention shall be issued in respect of all activities referred to in paragraph 1.



Chapter XXXI: Final clauses

Article 205

1. The present Convention shall be ratified by the signatory States in accordance with their respective constitutional processes.
2. The ratifications and the original of the present Convention shall be temporarily deposited with the Secretary-General of the United Nations, who shall transfer them to the custody of the General Secretary of the International Ocean Space Institutions when he has been appointed. Duly certified copies of the present Convention shall be transmitted by the General Secretary to the Governments of all Contracting Parties.
3. The present Convention shall come into force upon deposit of ratifications by five signatory States each with more than 90 million inhabitants and by a majority of the other signatory States. A protocol of the ratifications deposited shall thereupon be drawn up by the Secretary-General of the United Nations who shall communicate copies thereof to all the signatory States.
4. The texts of the present Convention are equally authentic.