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

Malta: Preliminary draft articles on the delimitation  
of coastal State jurisdiction in ocean space and on the  
rights and obligations of coastal States in the area under  
their jurisdiction

Introductory Note

The present preliminary draft articles, which do not necessarily represent the definitive views of the Government of Malta on all the complex matters dealt with therein, are intended to replace and to amplify the articles contained in part II and part III of the Malta draft treaty originally issued as document A/AC.138/53. In addition, some of the subjects mentioned in part I of the Malta draft treaty, such as submarine cables and pipelines, overflight and scientific research, are also dealt with in the present articles in so far as they relate to the rights and obligations of coastal States within ocean space under their jurisdiction.

The present draft articles are based on the same basic concepts as the Malta draft treaty, in so far as such concepts can be applied to ocean space within the jurisdiction of a coastal State. Hence they should be read in conjunction with part IV and part V of the Malta draft treaty which deal with the purposes and functions of future international institutions for ocean space.

The present document has been prepared on the basis of, inter alia, the following considerations:-

(a) that it is necessary to establish a new and more equitable international order in ocean space within the framework of which States can expand their beneficial use of ocean space in contemporary conditions of intensive activities accompanied by increasingly powerful technology without harm to vital international interests or without causing excessive injury to the marine environment.

(b) that such a new order cannot be founded on the basic concepts of traditional law of the sea which is increasingly eroded by advancing technology and multiplying activities in ocean space, but instead must be based on a new balance between coastal State interests and between these and the interests of the international community; in establishing this balance the interests of landlocked countries cannot be overlooked.

(c) that both aerial and maritime navigation, scientific research and the laying and repair of submarine cables are vital international activities which must be protected within national jurisdiction. These activities, in fact, are public international interests which ~~require~~ general regulation but also international protection to a greater or lesser extent everywhere in ocean space.

(d) that the avoidance of significant and extensive ocean pollution and the effective management of the living resources of the sea are both national and international interests of great importance which must be suitably protected within national jurisdiction;

(e) that the only manner credibly to protect the interests and activities mentioned in (c) and (d) above is by giving important functions to appropriate international institutions and to an impartial judicial machinery;

(f) that it is imperative that reasonably precise maximum limits to national jurisdiction in ocean space be recognized by international agreement and that this is impossible unless the traditional concept of separate regimes and limits for the legal continental shelf and the superjacent waters is rejected;

(g) that it is imperative under contemporary conditions to define with some precision the rights and obligations of coastal States within the overall maximum limits of their national jurisdiction in ocean space with regard to major activities in ocean space.

Although the present draft attempts to present an overall view both of limits of national jurisdiction and of the rights and obligations of the coastal State therein, there is no intention to prejudice the question of whether one or several conventions should be adopted by the future conference on the law of the sea and each chapter could be considered separately in the context of different treaties with regard to different maritime activities.

PART I: COASTAL STATE JURISDICTION IN 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, subject to 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 State.

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

An island is a naturally formed area of land, more than one square kilometre in area, surrounded by water, which is above water at high tide.<sup>1/</sup>

An islet is a naturally formed area of land, less than one square kilometre in area, surrounded by water, which is above water at high tide.

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.<sup>2/</sup>

A bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not 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.<sup>3/</sup>

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 ocean space to another. Man-made installations do not possess the legal status of vessels when they are joined to the sea-bed in a manner that denotes a degree of permanency.<sup>4/</sup>

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1/ See 1958 Territorial Sea Convention, Article 10.

2/ See 1958 Territorial Sea Convention, Article 11.

3/ See 1958 Territorial Sea Convention, Article 7 (1).

4/ In view of the progress of technology, it has been considered advisable to substitute the term "vessel" for the term ship used in the 1958 Geneva Conventions. At the same time, in order to clarify questions of jurisdiction, it has been considered desirable explicitly to exclude from the definition of Vessels, man-made installations joined to the sea-bed in a manner that denotes a degree of permanency.

Chapter II: General

Article 2

1. The jurisdiction of a State extends to a belt of ocean space adjacent to its coast, described as national ocean space.
2. This jurisdiction is exercised subject to the provisions of these articles and to other rules of international law.
3. The jurisdiction of a coastal State extends to the air-space above national ocean space.<sup>5/</sup>

Chapter III: Baselines

Article 3

1. The normal baseline for measuring the breadth of national ocean space is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State and deposited with the International Ocean Space Institutions.<sup>6/</sup>
2. The International Ocean Space Institutions shall give wide publicity to the charts deposited with them.

Article 4

1. In localities where the coastline is deeply indented or if there are islands or islets in the immediate vicinity of the coast the method of straight baselines joining appropriate land points not more than 24 nautical miles apart may be employed in drawing the baselines from which the breadth of national ocean space is measured.<sup>7/</sup>
2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast and the areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.<sup>8/</sup>
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>9/</sup>
4. Baselines shall not be drawn from man-made islands, or from offshore fixed or floating installations of whatever nature whether or not joined to the sea-bed.

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<sup>5/</sup> This article corresponds, with modifications, to Article 1 and Article 2 of the 1958 Territorial Sea Convention.

<sup>6/</sup> Slight modification of Article 3, 1958 Territorial Sea Convention.

<sup>7/</sup> Gives more precision to Article 4 (1), 1958 Territorial Sea Convention.

<sup>8/</sup> Article 4 (2), 1958 Territorial Sea Convention.

<sup>9/</sup> Article 4 (3), 1958 Territorial Sea Convention.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from International Ocean Space the national ocean space of another State.<sup>10/</sup>
6. The coastal State must clearly indicate straight baselines on large scale charts which shall be deposited with the International Ocean Space Institutions.<sup>11/</sup>
7. The International Ocean Space Institutions shall give due publicity to the charts deposited. The competent organs of the Institution may object within two years of the deposit of the charts to baselines drawn by the coastal State which do not appear to be consistent with the provisions of these articles: in the event of continued disagreement between the International Ocean Space Institutions and the coastal State the matter shall be submitted for binding adjudication to the International Maritime Court.

Article 5

1. Waters on the landward side of the baseline of national ocean space form part of the internal waters of a State.<sup>12/</sup>
2. Where the establishment of a straight baseline in accordance with article 4 or in accordance with the 1958 Geneva Convention on the Territorial Sea has, or has had, 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 defined in the present Convention shall exist in those waters.<sup>13/</sup>

Article 6

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 these two low-water marks and the waters enclosed thereby shall be considered as internal waters.<sup>14/</sup>
2. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles a straight baseline of 24 nautical miles may 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.<sup>15/</sup>
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 4 is applied.<sup>16/</sup>

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<sup>10/</sup> See Article 4 (5), 1958 Territorial Sea Convention.

<sup>11/</sup> See Article 4 (6), 1958 Territorial Sea Convention.

<sup>12/</sup> Article 5 (1), Territorial Sea Convention.

<sup>13/</sup> See for analogy Article 5 (2), 1958 Territorial Sea Convention.

<sup>14/</sup> Article 7 (4), 1958 Territorial Sea Convention.

<sup>15/</sup> Article 7 (5), 1958 Territorial Sea Convention.

<sup>16/</sup> Article 7 (6), 1958 Territorial Sea Convention.

4. Within one year of the entry into force of the present convention, contracting Parties shall deposit with the International Ocean Space Institutions a list of historic bays under their jurisdiction. Within two years of the deposit of the lists, the competent organs of the Institution may object to the contents of lists deposited with them. In the event of continued disagreement between the Institutions and the States concerned the matter shall be submitted to the International Maritime Court for binding adjudication.<sup>17/</sup>

#### Article 7

1. For the purpose of delimiting national ocean space, the outermost permanent harbour works which form an integral part of a coastal harbour system and which are above water at high tide, shall be regarded as forming part of the coast.<sup>18/</sup>
2. Floating harbour installations which move or can be moved shall not be regarded as forming an integral part of a coastal harbour system.

#### Article 8

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.<sup>19/</sup>

### Chapter IV: Limits of national ocean space

#### Article 9

Jurisdiction over ocean space may not be claimed by a State by virtue of sovereignty or control over (a) reefs and low tide elevations, whether or not lighthouses or other installations have been built on them; (b) islets; (c) man-made islands of whatever size; (d) fixed or floating installations of whatever nature, whether joined to the seabed or not; (e) underwater installations or works of whatever nature.

#### Article 10

1. When reefs, low tide elevations and islets are not situated within national ocean space, as defined in article 11, safety zones not exceeding twelve nautical miles in breadth may be established around such reefs, low-tide elevations and islets.
2. When reefs, low tide elevations and islets are situated within the national ocean space of a State other than the State exercising sovereignty or control over them, the breadth of the safety zones and the regulations to be observed within such zones shall be established by agreement between the States concerned. In the case of disagreement between the States concerned the matter shall be submitted to arbitration or to the International Maritime Court for binding adjudication.

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<sup>17/</sup> Provision required to avoid conflicts and to give certainty to international recognition of the claims of States relating to historic bays.

<sup>18/</sup> See Article 8, 1958 Territorial Sea Convention.

<sup>19/</sup> See Article 13, 1958 Territorial Sea Convention.

3. When the reefs, low-tide elevations and islets are not situated within the national ocean space of any state, the breadth of the safety zones and the regulations to be observed within such zones shall be established by agreement between the State exercising sovereignty or control and the International Ocean Space Institutions. In the case of disagreement between the Institutions and the State exercising sovereignty or control, the matter shall be submitted to arbitration or to the International Maritime Court for binding adjudication.

4. The International Ocean Space Institutions shall pay special regard to the interests of the State exercising sovereignty or control over reefs, islets and low-tide elevations in all matters relating to the uses of ocean space, including exploitation of natural resources, within the safety zones referred to in the foregoing paragraph.

5. The State exercising sovereignty or control over reefs, low-tide elevations and islets has the obligation to erect and maintain on them lighthouses or other facilities designed to reduce dangers to navigation.

#### Article 11

1. The jurisdiction of a State may extend to a belt of ocean space adjacent to its coast, the breadth of which is 200 nautical miles measured from baselines drawn in accordance with the provisions of chapter III of this Convention.

2. The jurisdiction of an island State or of an archipelago State may extend to a belt of ocean space adjacent to the coast of the principal island or islands, the breadth of which is 200 nautical miles measured from baselines drawn in accordance with the provisions of Chapter III of this convention. The principal island or islands of an archipelago State shall be designated by the State concerned and notified to the International Ocean Space Institutions. In the event of disagreement with the designations made by the archipelago State any contracting Party may submit the matter to the International Maritime Court for binding adjudication.

3. When islands are less than ten square kilometres in area, the jurisdiction of the State exercising sovereignty or control may extend only to a belt of ocean space, adjacent to the coasts of such an island, the breadth of which does not exceed twelve nautical miles measured from the applicable baseline.

#### Special rules concerning atolls

#### Article 12

Atolls are a chain of islands or islets crowning a circular or oval reef which encloses a lagoon.

Article 13

1. In the case of atolls the baseline for measuring the breadth of national ocean space is the seaward edge of the reef whether or not the reef is submerged at high tide.
2. If the distance between the low-water marks of the natural entrance points of the reef does not exceed 24 nautical miles, a closing line may be drawn between these low-water marks and the waters enclosed thereby shall be considered as internal waters.
3. Where the distance between the low-water marks of the natural entrance points of the reef exceeds 24 nautical miles straight baselines of 24 nautical miles may be drawn within the reef in such a manner as to enclose the maximum area of water that is possible with lines of that length.

Article 14

1. Jurisdiction over ocean space outside the area enclosed by the reef may not be claimed by a State by virtue of sovereignty or control over an atoll when the total land area of the islets crowning the reef does not exceed one square kilometre.
2. When the islands or islets crowning the reef of an atoll have a total land area exceeding one square kilometre but less than ten square kilometres, the jurisdiction of the State exercising sovereignty or control may extend to a belt of ocean space adjacent to the outer edge of the reef the breadth of which does not exceed twelve nautical miles.

Article 15

The extent of jurisdiction over ocean space which may be claimed by a State by virtue of sovereignty or control over islands and atolls other than those referred to in the foregoing articles of this chapter shall be determined in a special convention or conventions to be negotiated within the framework of the International Ocean Space Institutions taking into account all relevant circumstances.

Article 16

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 ocean space.<sup>20/</sup>

Article 17

1. Contracting Parties agree to surrender against equitable and appropriate compensation their claims to jurisdiction over the sea-bed or waters beyond the limits indicated in these articles.

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<sup>20/</sup> Article 6, 1958 Territorial Sea Convention.



2. The compensation referred to in the foregoing paragraph shall be determined by the International Ocean Space Institutions in the light of all relevant factors including the known resources of the areas of ocean space surrendered and the practical possibilities of exploration in the event that the compensation proffered by the International Ocean Space Institution is considered inadequate by the Contracting Party concerned, the matter shall be submitted for binding adjudication to the International Maritime Court.

3. No compensation may be proffered by the International Ocean Space Institutions in the case of surrender of claims to jurisdiction over areas of ocean space adjacent to (a) reefs and low-tide elevations; (b) man-made islands; (c) fixed or floating installations of whatever nature; (d) underwater installations or works of whatever nature; (e) islets situated within the national ocean space of a State other than the State exercising sovereignty or control over them.

#### Article 18

Ocean space not comprised within the limits indicated in the foregoing articles forms part of International Ocean Space, no part of which is subject to national jurisdiction for any purpose.

### Chapter V: Delimitation of national ocean space

#### Article 19

1. Where two or more States, whose coasts are opposite each other, are separated by an area of ocean space less than 400 nautical miles in breadth, the boundary of national ocean space appertaining to such States shall be the median line every point of which is equidistant from the nearest points of the baselines from which the breadth of national ocean space of each State is measured.

2. Where two States are adjacent to each other the boundary of ocean space appertaining to such States shall be determined by the application of the principle of equidistance from the nearest points of the baselines from which the breadth of national ocean space is measured.<sup>21/</sup>

3. The provisions of the foregoing paragraphs shall not apply where it is necessary by reason of historic title or other exceptional circumstance to delimit the national ocean space of the States opposite or adjacent to each other in a manner which is at variance with those provisions.

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<sup>21/</sup> See for analogy, 1958 Continental Shelf Convention, Article 6.

4. In the event of disagreement between States adjacent or opposite each other with regard to the manner of delimitation of their respective national ocean space, the matter shall be submitted to arbitration or to the International Maritime Court for binding adjudication at the request of any of the States concerned.
5. In the event of disagreement between a coastal State or States and the International Ocean Space Institutions with regard to the manner of delimitation of international ocean space and national ocean space respectively, the matter shall be submitted to arbitration or to the International Maritime Court for binding adjudication at the request of any Parties concerned.
6. The lines of delimitation between the national ocean space of two States lying adjacent or opposite to each other shall be marked on large scale charts officially recognized by the States concerned and deposited with the International Ocean Space Institutions.<sup>22/</sup>

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<sup>22/</sup> See Article 12 (2), 1958 Territorial Sea Convention.

PART II : RIGHTS AND OBLIGATIONS OF THE

COASTAL STATE WITHIN NATIONAL OCEAN SPACE

Chapter VI : Navigation

Article 20

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.
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.<sup>23/</sup>

Article 21

The coastal State must not hamper in any way the exercise of the right of passage through its national ocean space when such passage conforms with such general and non-discriminatory standards and rules for the regulation of navigation as may be adopted by the International Ocean Space Institutions or as are contained in widely ratified multilateral conventions.<sup>24/</sup>

Article 22

In the absence of relevant standards and rules adopted by the International Ocean Space Institutions or contained in widely ratified multilateral conventions, the coastal State may enact reasonable non-discriminatory regulations with regard to navigation in national ocean space and in particular with regard to maritime safety and traffic, maritime transport and the prevention of Pollution.

Article 23

1. Foreign vessels exercising the right of passage shall comply (a) with the rules and regulations concerning navigation adopted by the International Ocean Space Institutions or enacted by the coastal State or contained in widely ratified multilateral conventions :

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<sup>23/</sup> See Article 14(1) (2) (3), 1958 Territorial Sea Convention.

<sup>24/</sup> See Article 15(1), 1958 Territorial Sea Convention.

(b) with the customs, fiscal, immigration or sanitary regulations of the coastal State to which due publicity has been given through the International Ocean Space Institutions.<sup>25/</sup>

2. Foreign fishing and fish processing vessels exercising the right of passage shall observe such laws and regulations as the coastal State may make and publish through the International Ocean Space Institutions in order to prevent these vessels from fishing or processing fish in national ocean space.<sup>26/</sup>

#### Article 24

The coastal State may require any foreign vessel which does not comply with the provisions concerning the exercise of the right of passage contained in the foregoing articles to leave national ocean space.

#### Article 25

1. Coastal State regulations mentioned in the foregoing articles may be brought to the attention of the International Ocean Space Institutions by any Contracting Party when these regulations are considered discriminatory or an unreasonable impediment to navigation or contrary to general international practice or inconsistent with standards and rules adopted by the Institutions or contained in widely ratified multilateral Conventions.

2. The International Ocean Space Institutions may recommend that the coastal State rescind or modify such regulations as are found to be discriminatory or an unreasonable impediment to navigation or contrary to general international practice or inconsistent with standards and rules adopted by the Institutions or contained in widely ratified multilateral conventions.

3. In the event of continued disagreement between the International Ocean Space Institutions and the coastal State the matter shall be submitted to the International Maritime Court for binding adjudication.

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<sup>25/</sup> See for Analogy, Article 17 and Article 24(1), 1958 Territorial Sea Convention.

<sup>26/</sup> See for analogy, Article 14(5), 1958 Territorial Sea Convention.

Article 26

1. The coastal State is required to give appropriate and immediate publicity through the International Ocean Space Institutions to any dangers or obstacles to navigation of which it has knowledge within its national ocean space.<sup>27/</sup>
2. The coastal State is required within its national ocean space to take effective measures, conforming to international standards and practice, for the safety of navigation, including the installation of appropriate aids to navigation, for assistance to vessels in distress and for the rescue of human life. Such measures and the facilities available shall be notified to the International Ocean Space Institutions.<sup>28/</sup>
3. Failure to comply with the provisions of the foregoing paragraphs of this article entails legal responsibility. In the event of loss of life or of property caused by non-compliance, claims for compensation shall be adjudicated by the International Maritime Court.

Article 27

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 as payment only for specific services rendered to the vessel. These charges shall be reasonable and shall be levied without discrimination.<sup>29/</sup>
3. Disputes on the reasonableness or otherwise of the charges mentioned in the foregoing paragraph shall be adjudicated by the International Maritime Court.

Article 28

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:

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<sup>27/</sup> See Article 15(2), 1958 Territorial Sea Convention.

<sup>28/</sup> See for analogy, Article 12(2), 1958 High Seas Convention.

<sup>29/</sup> See Article 18, 1958 Territorial Sea Convention.

- (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.
3. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.<sup>30/</sup>
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 advise also the consular authority of the flag State and, if the captain so requests, shall advise also 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.<sup>31/</sup>
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 may be brought to the attention of the International Ocean Space Institutions by the State whose flag the vessel flies.

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<sup>30/</sup> See Article 19(1) (2) (4), 1958 Territorial Sea Convention.

<sup>31/</sup> See for analogy Article 19(3), 1958 Territorial Sea Convention.

7. Disputes with regard to the compliance or otherwise with the provisions of the foregoing paragraphs may be submitted to the International Maritime Court for binding adjudication on the initiative either of the flag State or of the coastal State.

Article 29

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 ocean space subject to its jurisdiction, if the vessel, proceeding from a foreign port, is only passing through national ocean space without entering internal waters.<sup>32/</sup>

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 30

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.

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.<sup>33/</sup>

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<sup>32/</sup> See Article 19(5), 1958 Territorial Sea Convention.

<sup>33/</sup> Article 20, 1958 Territorial Sea Convention.

Article 31

1. The rules contained in the foregoing articles shall also apply to Government vessels operated for commercial purposes.
2. The rules contained in the foregoing articles shall also apply to Government vessels operated for non-commercial purposes with the exception of Articles 28, 29, and 30.
3. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which Government vessels operated for non-commercial purposes enjoy under these articles or other rules of international law.<sup>34/</sup>

Article 32

In a belt of ocean space adjacent to its coast, not exceeding twelve nautical miles in breadth measured from the applicable baseline, the coastal State in addition to the measures contemplated in the foregoing articles, may:

- (a) establish compulsory traffic separation schemes, designate safe sea-lanes and establish draft limits for navigation in certain areas;
- (b) require that passage be continuous and expeditious;
- (c) take such measures as may be necessary to bring to the surface of the sea an unknown submersible found lurking in the sea or resting on the sea-bed;
- (d) prevent passage which it deems to be seriously prejudicial to its peace, good order or security;
- (e) Subject to the provisions of articles 36 and 37, suspend temporarily in specified areas the passage of foreign vessels if such suspension is essential for the protection of its security.
- (f) Subject to the provisions of articles 36 and 37, establish precisely delimited zones closed to foreign warships for reasons of national security.
- (g) 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.<sup>35/</sup>

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<sup>34/</sup> See Articles 21 and 22, 1958 Territorial Sea Convention.

<sup>35/</sup> See Article 16(1), (2), (3), 1958 Territorial Sea Convention.



Article 33

1. Measures taken by the coastal State under sub-paragraphs (a), (b), (d), (e) and (f) of the foregoing article shall be non-discriminatory and shall not take effect unless notified to the International Ocean Space Institutions and duly published.
2. The International Ocean Space Institutions may recommend that the coastal State rescind or modify measures found to be discriminatory or to constitute an unreasonable impediment to navigation. In the event of continued disagreement between the International Ocean Space Institutions and the coastal State the matter shall be submitted to the International Maritime Court for binding adjudication.

Article 34

Foreign warships exercising the right of passage within a belt of ocean space adjacent to the coast of a State not exceeding twelve nautical miles in the breadth measured from the applicable baseline shall not fly their aircraft, practice their weapons, engage in research or intelligence gathering operations or in activities deemed unfriendly by the coastal State nor shall they exercise the right of passage in such a manner as to impede the navigation of other vessels.

Article 35

1. The coastal State may require a foreign warship, which does not comply with the provisions of the foregoing article and disregards any request for compliance to leave national ocean space.<sup>36/</sup>
2. Grave or repeated violations of the provisions of these articles and of Article 42 relating to the exercise of the right of passage by warships may be brought to the attention of the International Ocean Space Institutions by the coastal State.

Special rules applicable to straits used for  
International navigation

Article 36

1. There shall be no suspension of passage through straits more than twenty-four nautical miles wide which are, or can be, used for International navigation.<sup>37/</sup>
2. Subject to the provisions of articles 21, 22, and 23, the coastal State must not hamper passage through straits more than twenty-four miles wide which are, or can be, used for international navigation.

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<sup>36/</sup> See for analogy Article 23, 1958 Territorial Sea Convention.

<sup>37/</sup> See for analogy Article 16(4), 1958 Territorial Sea Convention.

Article 37

1. The coastal State must not hamper passage through straits less than twenty-four miles wide which are, or can be, used for international navigation subject only to the provisions of the following paragraph and of article 38.

2. In the case of straits less than 24 nautical miles wide which are, or can be, used for international navigation, the coastal State or States may as a condition of passage :

(a) require compliance with compulsory traffic separation schemes; with designated safe sea-lanes and, when necessary with safe draft limits :

(b) require that passage be continuous and expeditious ;

(c) require, when passage is hazardous, the use by transiting vessels of pilots designated by the coastal State;

(d) require three days prior notification of the passage of foreign submersibles or of foreign warships. In addition the coastal State may :

(i) take such measures as may be necessary to bring to the surface an unknown submersible found lurking in the strait;

(ii) 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.

3. Measures taken by the coastal State under sub-paragraphs (a), (b), (c) and (d) of the foregoing paragraph shall be non-discriminatory and shall not take effect unless notified to the International Ocean Space Institutions and duly published.

4. The International Ocean Space Institutions may recommend that the coastal State rescind or modify measures found to be discriminatory or unreasonable or to constitute an unnecessary impediment to navigation. In the event of continued disagreement between the International Ocean Space Institutions and the coastal State the matter shall be submitted to the International Maritime Court for binding adjudication.

Article 38

The coastal State or States may take measures to prevent or suspend passage through straits less than 24 nautical miles wide which are, or can be used, for international navigation only in case of reasonable fear of grave and imminent threat to its or their security. Such measures shall be notified to the International Ocean Space Institutions, and shall lapse after thirty days unless the consent of the Institutions to such measures is obtained.

Article 39

1. The coastal State or States are required to take effective measures to maintain and facilitate navigation through straits used for international navigation the breadth of which is less than 24 nautical miles.
2. Failure to comply with the provisions of the foregoing paragraph entails legal responsibility. In the event of accidents caused by non-compliance, claims for compensation for injury to persons or for loss or damage to vessel or cargo shall be adjudicated by the International Maritime Court.

Article 40

1. The coastal State or States may not levy charges or tolls on vessels, their cargo, crew or passengers exercising the right of passage through straits used for international navigation.
2. Nevertheless, when a strait used for international navigation the breadth of which is less than 24 nautical miles
  - (a) requires dredging, the installation and maintenance of aids to navigation or the adoption of other measures to maintain or facilitate safe passage, or
  - (b) when passage of certain types or classes of vessels, in the event of accident, could cause considerable loss of human life or substantial injury to economic activities or to the marine environment in the area.The coastal State or States may request the International Ocean Space Institutions to establish an equitable charge payable without discrimination by all vessels or by all vessels of the relevant class or type, as the case may be, using the strait.
3. The charge mentioned in the foregoing paragraph shall be collected by the coastal State or States and the proceeds shall be paid into a fund administered by the International Ocean Space Institutions, the resources

of which shall be employed to maintain and facilitate safe passage of the strait and to compensate the coastal State or States for any injury or damage which they might suffer from the exercise of the right of passage by foreign vessels.

4. The charge payable by vessels exercising the right of passage through straits less than 24 nautical miles in breadth shall be determined in special conventions between the International Ocean Space Institutions and the State or States concerned.

#### Article 41

1. Vessels exercising the right of passage through straits shall take strict precautionary measures for the avoidance of accidents of navigation and for the prevention of damage to the marine environment or to offshore installations.

2. Liability for damages negligently caused by a vessel exercising the right of passage shall rest with the State whose flag the vessel flies.

3. The courts of the coastal State shall be competent to adjudicate cases involving accidents of navigation and damages to the marine environment or to installations resulting from negligence in the exercise of the right of passage.

#### Article 42

1. Foreign warships passing through straits less than 24 nautical miles wide which are, or can be, used for international navigation shall :

(a) comply with the provisions of Article 34 of this convention ;

(b) comply with such regulations as may be adopted by the coastal State under Article 37 of this convention ;

(c) take strict precautionary measures for the avoidance of accidents to navigation and for the prevention of damage to the marine environment or to offshore installations.

2. Foreign warships passing through straits less than 24 nautical miles wide shall be exempt from any charges which may be levied under Article 40(2) of this convention.

Chapter VII : Overflight

Article 43

1. Subject to the provisions of these articles, aircraft of all States, whether coastal or not, shall enjoy the right of overflight over national ocean space.

Overflight means the right to fly aircraft over national ocean space for the purpose of traversing it or of landing on vessels passing through national ocean space.

Overflight includes landing in national ocean space and low altitude circling and manoeuvring in so far as the same are incidental to aerial navigation or are rendered necessary by force majeure or by distress.

Article 44

The coastal State must not hamper in any way overflight over its national ocean space when such overflight conforms with such regulations of a general and non-discriminatory character as may be adopted by the competent international institutions or as are contained in widely ratified international conventions.

Article 45

In the absence of relevant regulations adopted by the competent international institutions or contained in widely ratified international conventions, the coastal State may enact reasonable and non-discriminatory regulations concerning the conduct of aerial navigation over its national ocean space.

Article 46

Foreign aircraft exercising the right of overflight shall comply with regulations concerning aerial navigation adopted by the competent international institutions or contained in widely ratified multilateral conventions or enacted by the coastal State as the case may be.

Article 47

In exercising the right of overflight foreign aircraft shall not engage in activities which adversely affect the security of the coastal State or in manoeuvres which might endanger shipping or installations in national ocean space.

Article 48

The coastal State may require any foreign aircraft which does not comply with the provisions of the foregoing articles to leave the airspace above national ocean space.

Article 49

1. The coastal State is required to take effective measures conforming to international standards and practice for the safety of aerial navigation over its national ocean space.
2. Failure to comply with the provisions of the foregoing paragraph entails legal responsibility.

Article 50

1. In a belt of ocean space adjacent to its coast not exceeding twelve nautical miles in breadth measured from the applicable baseline, the coastal State, in addition to the measures contemplated in the foregoing article, may :
  - (a) require three days advance notice of overflight by foreign military aircraft,
  - (b) require that overflight be continuous and expeditious
  - (c) prevent overflight which it deems to be seriously prejudicial to its peace, good order or security
  - (d) without discrimination among foreign aircraft, suspend temporarily the exercise of the right of overflight by foreign aircraft over specified areas if such suspension is essential for the protection of its security.

2. The coastal State or States may take measures to prevent or suspend overflight over straits less than 24 nautical miles wide which are, or can be, used for international navigation only in case of reasonable fear of grave and imminent threat to its or their security. Measures taken by the coastal State or States shall be notified immediately to the competent international institutions and shall lapse after thirty days unless the consent of the institutions to such measures is obtained.

Article 51

1. Foreign military aircraft exercising the right of overflight over a belt of national ocean space not exceeding twelve nautical miles in breadth measured from the applicable baseline shall not practice their weapons, engage in intimidating manoeuvres, in research or intelligence gathering operations or in activities deemed unfriendly by the coastal State nor shall they exercise the right of overflight in such a manner as to hamper or endanger transit of commercial aircraft.

2. The coastal State may require a foreign military aircraft, which does not comply with the provisions of the foregoing paragraph, immediately to leave the airspace over which it has jurisdiction.

Article 52

1. The coastal State may establish over a belt of national ocean space adjacent to its coast not exceeding 100 nautical miles in breadth precisely delimited zones of airspace closed to foreign military aircraft for reasons of national security. Such zones shall be established with due regard to the normal exercise of the right of overflight. Measures establishing aerial zones closed to foreign military aircraft shall not take effect unless notified to the competent international institutions and duly published.

2. Subject to the provisions contained in article 50(2), nothing in the foregoing paragraph shall affect the exercise of the right of overflight over straits which area can be used for international navigation.

Chapter VIII : Submarine Cables<sup>38/</sup>

Article 53

Subject to the provisions of these articles, all States, whether coastal or not, shall enjoy the right to lay and to maintain submarine cables on the seabed of national ocean space.

Article 54

The coastal State must not hamper the exercise of the right to lay or to maintain submarine cables on the seabed of national ocean space beyond twelve nautical miles from the coast when cables are laid in accordance with such general and non-discriminatory regulations as may be adopted by the International Ocean Space Institutions or as are contained in widely ratified multilateral conventions.

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<sup>38/</sup> See for analogy, Articles 26-29, 1958 High Seas Convention.

Article 55

In the absence of relevant regulations adopted by the International Ocean Space Institutions or contained in widely ratified multilateral conventions, the coastal State may enact reasonable and non-discriminatory regulations relating to the laying of submarine cables in national ocean space.

Article 56

1. Coastal State regulations mentioned in the foregoing article may be brought to the attention of the International Ocean Space Institutions by any Contracting Party when these regulations are considered discriminatory or unreasonable or inconsistent with regulations adopted by the Institutions or contained in widely ratified multilateral conventions.
2. The International Ocean Space Institutions may recommend that the coastal State rescind or modify regulations which are found to be discriminatory or to constitute an unreasonable impediment to the exercise of the right to lay submarine cables or to be inconsistent with regulations adopted by the Institutions.
3. In the event of continued disagreement between the International Ocean Space Institutions and the coastal State the matter shall be submitted to the International Maritime Court for binding adjudication.

Article 57

1. When laying submarine cables due regard shall be paid to cables already in position on the seabed : in particular the possibility of repairing existing cables shall not be prejudiced.
2. Failure to comply with the provisions of the foregoing paragraph entails legal responsibility.

Article 58

1. States and persons under their jurisdiction which own submarine cables in the national ocean space of another State shall transmit to that State and to the International Ocean Space Institutions a chart showing the position of the cables owned.
2. The coastal State has the obligation to protect submarine cables shown on charts transmitted to it.



Article 59

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 in the national ocean space of another State done wilfully or through culpable 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 vessels after having taken all necessary precautions to avoid such break or injury.

Article 60

1. Every State shall take the necessary legislative measures to provide that any persons who cause a break in, or injury to, a submarine cable shall bear the cost of repairs.
2. Every State shall take the necessary legislative measures to ensure that owners of vessels who can prove that they sacrificed an anchor, a net or any fishing or other gear to avoid injuring a submarine cable in national ocean space shall be indemnified by the owner of the cable, provided that the owner of the vessel has taken all reasonable precautionary measures beforehand.

Article 61

Failure to take the measures mentioned in Articles 58, 59 and 60 may be brought to the attention of the International Ocean Space Institutions by any Contracting Party when interruption or obstruction has been caused to telegraphic or telephonic communications or to the supply of electric energy.

Article 62

1. The laying of submarine cables in a belt of ocean space adjacent to the coast not exceeding twelve nautical miles in breadth measured from the applicable baseline is subject to authorization of the coastal State.
2. The coastal State shall not normally withhold its authorization if the application is submitted by a responsible entity which gives assurance of abiding by the laws and regulations of the coastal State.

Chapter IX : Scientific Research<sup>39/</sup>

Article 63

1. Subject to the provisions of these articles, all States, whether coastal or not, shall enjoy the right to undertake scientific research in national ocean space.
2. Scientific research means any systematic investigation, whether fundamental or applied, and related experimental work, the primary aim of which is to increase knowledge of the marine environment for peaceful purposes.
3. Scientific research activities shall not form the basis for any claims with regard to the exploitation of the natural resources of national ocean space.

Article 64

The coastal State may require thirty days advance notification of the intention to conduct scientific research in its national ocean space.

Article 65

1. In view of the common interest of the international community in the acquisition of knowledge relating to ocean space, the coastal State shall not hamper or obstruct scientific research activities in national ocean space when the person or entity undertaking the research is registered with the International Ocean Space Institutions and complies with such general and non-discriminatory standards and rules as may be adopted by the International Ocean Space Institutions.
2. The person or entity undertaking scientific research in national ocean space is required to comply with the health, customs, police, security and pollution control regulations of the coastal State.

Article 66

In the absence of relevant standards and rules adopted by the International Ocean Space Institutions, the coastal State may enact reasonable and non-discriminatory regulations relating to the conduct of scientific research in its national ocean space.

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<sup>39/</sup> This chapter should be read in conjunction with the Malta draft articles on scientific research contained in document A/AC.138/SC III/L.34. The order of the articles has been changed and some detailed provisions have been added.

#### Article 67

1. Coastal State regulations relating to the conduct of scientific research may be brought to the attention of the International Ocean Space Institutions when these regulations are considered to be discriminatory or to constitute an unreasonable impediment to the exercise of the right of scientific research or to be inconsistent with such general standards and rules as may be adopted by the International Ocean Space Institutions.

2. The International Ocean Space Institutions may recommend that the coastal State rescind or modify regulations which are found to be discriminatory or to constitute an unreasonable impediment to the exercise of the right of scientific research or to be inconsistent with such general standards and rules as may be adopted by the International Ocean Space Institutions.

3. In the event of continued disagreement between the International Ocean Space Institutions and the coastal State the matter shall be submitted to the International Maritime Court for binding adjudication.

#### Article 68

The coastal State may require a foreign vessel or aircraft undertaking scientific research, which does not comply with the standards and rules adopted by the International Ocean Space Institutions or enacted by the coastal State concerning the conduct of scientific research, to leave national ocean space.

#### Article 69

1. Underwater habitats, installations, equipment or devices for scientific purposes may not be established on or in the sea-bed of ocean space under the jurisdiction of a coastal State without the latter's consent.

2. The coastal State has the right to inspect and the obligation to protect habitats, installations, equipment and devices for scientific purposes established with its consent on or in the sea-bed of ocean space under its jurisdiction and to ensure that they comply with the provisions of Article 74 and with such relevant standards and rules as may be adopted by the International Ocean Space Institutions.

3. The coastal State may remove underwater habitats, installations, equipment or devices established without its consent on or in the sea-bed of ocean space under its jurisdiction and to keep any scientific data found therein.

#### Article 70

1. Floating installations of whatever nature for scientific purposes joined to the sea-bed may not be established in ocean space under the jurisdiction of a coastal State without the latter's consent.

2. The coastal State has the right to inspect and the obligation to protect floating installations of whatever nature for scientific purposes joined to the sea-bed established with its consent in ocean space under its jurisdiction. The coastal State must ensure that such installations comply with the provisions of Article 74 and with such relevant standards and rules as may be adopted by the International Ocean Space Institutions.

3. The coastal State may remove floating installations for scientific purposes joined to the sea-bed established without its consent in ocean space under its jurisdiction and to keep any scientific data found therein.

#### Article 71

Authorization of the coastal State shall be obtained in respect of scientific research conducted within a belt of ocean space adjacent to the coast not exceeding twelve nautical miles in breadth measures from the applicable baseline.

#### Article 72

1. In the case of scientific research conducted by surface vessels the authorization of the coastal State shall not be withheld:

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

(b) When the person or entity conducting the research undertakes to provide the full data obtained and an interpretation thereof to the coastal State three months before publication and before release of such data to any other person or entity;

(c) When the possibility is offered to the coastal State to appoint its nationals to participate in the research;

(d) When the person or entity conducting the research undertakes to refrain from publishing or from releasing to other persons or entities for a period of time not exceeding five years, such scientific data as the coastal State may request;

(e) When the person or entity conducting the research expresses willingness reasonably to adjust the proposed research programme to accommodate research goals of the coastal State;

(f) When the person or entity conducting the research offers an equitable share of the samples from the proposed research to the coastal State.

2. The coastal State may refuse further access for scientific purposes to national ocean space within twelve nautical miles of its coast to persons or entities which do not comply with the obligations assumed by them when obtaining the authorization mentioned in Article 71.

Article 73

1. In the case of scientific research conducted by means of unanchored floating devices, the consent of the coastal State shall not be withheld;

(a) when the request together with precise information on the character of the proposed research is submitted by a person or entity registered with the International Ocean Space Institutions six weeks before the date that it is proposed to introduce the devices in the sea;

(b) when the coastal State is given the opportunity to appoint its nationals to witness the introduction of the devices into the sea;

(c) when the devices are clearly and distinctively marked and are fitted with adequate means of giving warning of their presence and do not constitute a danger to navigation or hamper other activities in ocean space;

(d) when the person or entity conducting the research undertakes to provide the full scientific data obtained and an interpretation thereof to the coastal State before publication and before release of such data to any other person or entity;

(e) When the person or entity conducting the research undertakes to refrain from publishing or from releasing to other persons or entities for a period of time not exceeding five years, such scientific data as a coastal State may request.

2. The coastal State may refuse further access for scientific purposes to national ocean space within twelve nautical miles of its coast to persons or entities which do not comply with the obligations assumed by them when obtaining the authorization mentioned in Article 71.

3. The coastal State has a right to inspect and an obligation to protect unanchored floating devices for scientific purposes introduced in its national ocean space with its consent. The coastal State must ensure that such devices comply with the provisions of Article 75 of this convention.

Article 74

1. The coastal State may construct, maintain and operate (a) underwater habitats, installations, equipment or devices for scientific purposes on or in the sea-bed of its national ocean space; (b) floating installations of whatever nature for scientific purposes joined to the sea-bed, provided that:

(a) such general and non-discriminatory standards and rules as may be adopted by the International Ocean Space Institutions are observed;

(b) no interference is caused to sea lanes necessary to international navigation;

(c) other activities in ocean space are not unreasonably hampered;

(d) appropriate safety zones are established around such habitats, installations or devices;

(e) the International Ocean Space Institutions are promptly notified of the location of such habitats, installations or devices and of the breadth of the safety zones which have been established around them;

(f) any habitats, installations, equipment or devices that are abandoned or disused are entirely removed.

2. Non-compliance with the obligations contained in the foregoing paragraph shall make the coastal State legally responsible in the event of accidents of navigation.

#### Article 75

1. The coastal State may maintain and operate unanchored floating devices for scientific purposes in its national ocean space provided that such devices (a) are clearly and distinctively marked; (b) are provided with adequate means of giving warning of their presence; (c) do not constitute a danger to navigation or unreasonably hamper other activities in ocean space; (d) comply with such general and non-discriminatory standards and rules as may be adopted by the International Ocean Space Institutions.

2. Non-compliance with the obligations contained in the foregoing paragraph shall entail legal responsibility on the part of the coastal State in the event of accidents of navigation.

### Chapter X: Peaceful Uses

#### Article 76

1. No State may utilize the sea-bed of national ocean space of another State for military purposes without the latter's consent.

#### Article 77

1. Nuclear or thermonuclear weapon test explosions and the emplacement of nuclear weapons or other weapons of mass destruction on the sea-bed are prohibited in national ocean space.

2. The foregoing provision shall not affect the rights of the coastal State under the 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.

#### Article 78

Nuclear and thermonuclear explosions for peaceful purposes in national ocean space are permitted only with the authorization of the International Ocean Space Institutions.

Article 79

Non-compliance with the provisions of the foregoing articles may be brought to the attention of the International Ocean Space Institutions by any Contracting Party.

Chapter XI: Exploitation of natural resources

Article 80

1. The exploration and exploitation of the natural resources of national ocean space shall be conducted with reasonable regard to other uses of national ocean space, in particular with navigation, scientific research and the laying and repair of submarine cables and pipelines.
2. The coastal State shall have the obligation to transfer to the International Ocean Space Institutions a portion of the financial benefits received from the exploitation of the natural resources of national ocean space. The Institutions shall prepare a special draft convention on this matter for consideration by Contracting Parties.

Chapter XII: Living Resources of National Ocean Space

Article 81

1. The term "conservation of living resources" means the aggregate of measures rendering possible the optimum sustainable yield from such resources.
2. Conservation programmes shall be formulated with a view to securing in the first place a supply of food for human consumption.

Article 82

1. It shall be the responsibility in the first instance of the coastal State to formulate and implement appropriate and effective programmes of conservation of the living resources of national ocean space. Such conservation programmes shall not discriminate between national and foreign fishermen and shall be based on appropriate and reliable scientific findings.
2. Conservation programmes shall include:
  - (a) measures of biological management which may be necessary or desirable to maintain or increase the stock of living resources of national ocean space;
  - (b) measures of economic management which may be necessary or desirable to maintain fishing effort in national ocean space at levels providing maximum net returns in relation to potential sustained catch;
  - (c) measures of regulation -- including, inter alia, licensing, closed areas, closed seasons, limitations on size and condition of specific living resources which may be caught and limitations on type of gear -- designed to render possible the successful implementation of measures of biological and economic management.
3. Programmes of conservation of the living resources of national ocean space shall be given due publicity by the coastal State and shall be communicated to the International Ocean Space Institutions.

Article 83

1. In view of the vital interest of the international community in the maintenance of the productivity of fisheries, the coastal State has the obligation:

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

(b) to maintain the quality of the marine environment in national ocean space in a state which (i) does not adversely affect fish spawning areas within its jurisdiction; (ii) does not produce significant deleterious effects on the living resources of ocean space outside its jurisdiction;

(c) to co-operate with the International Ocean Space Institutions in the formulation and implementation of programmes of conservation of living resources of its national ocean space when the recommendations of the Institutions are based on reliable and appropriate scientific findings;

(d) to co-operate with coastal States in the region in the formulation and implementation of programmes of conservation of the living resources of national ocean space when there is need for the application of regional conservation measures in the light of the existing knowledge of the fishery.

Article 84

1. The International Ocean Space Institutions, and persons or entities under their sponsorship, may conduct in national ocean space beyond twelve nautical miles from the coast giving prior notice thereof to the coastal State investigations for the purpose of obtaining such biological samples and scientific information relating to the living resources of ocean space as may be necessary to formulate rational and effective programmes of conservation.

2. The coastal State shall be offered reasonable opportunity to appoint its nationals to participate in the investigations mentioned in the foregoing paragraph and, in any case, shall be provided with the full data obtained and an interpretation thereof by the International Ocean Space Institutions.

3. The International Ocean Space Institutions have the obligation to assist, at its request any State to formulate and to implement appropriate and effective programmes of conservation of the living resources of its national ocean space.



Article 85

The International Ocean Space Institutions and the coastal State or States concerned shall elaborate in close consultation and shall implement through appropriate regional bodies programmes for the conservation of such living resources of national ocean space the migratory range of which extends into international ocean space. The living resources to which reference is made include, inter alia, anadromous resources and sea mammals.

Article 86

Disagreements between coastal States or between the International Ocean Space Institutions and a coastal State relating to matters contained in Articles 83 and 85 shall be submitted to the International Maritime Court for binding adjudication.

Article 87

Every State shall take the necessary legislative measures to provide that violations of programmes of conservation of living resources adopted by the coastal State or jointly by the coastal State and the International Ocean Space Institutions, by vessels flying its flag or persons subject to its jurisdiction shall be a punishable offence.

Article 88

1. The coastal State may reserve to its nationals the exploitation of some or of all the living resources of its national ocean space.
2. The International Ocean Space Institutions and the coastal State or States concerned shall elaborate and implement in close consultation, if necessary through appropriate regional bodies, non-discriminatory programmes for the exploitation of such living resources of national ocean space the migratory range of which extends into international ocean space.
3. Nothing in the foregoing paragraphs shall affect traditional subsistence fishing or the catching of fish for immediate human consumption by foreign fishermen in national ocean space: such activities shall be defined and regulated in special conventions negotiated between States in the region.
4. Notwithstanding the provisions of sub-paragraph 1, the coastal State has an obligation to provide adjacent land-locked countries with access to the living resources of its national ocean space on conditions similar to those applicable to its own nationals.

Article 89

1. The coastal State has the obligation to exploit, or permit the exploitation of, the living resources of its national ocean space in accordance with appropriate and effective programmes of conservation.

2. Failure to comply with the provisions of the foregoing paragraph entails legal liability for damages and may be brought to the attention of the International Ocean Institutions, when such failure causes a significant reduction of fish stocks or produces significant deleterious effects on the living resources of ocean space outside the jurisdiction of the coastal State.

#### Article 90

1. The coastal State may inspect with due consideration in its national ocean space foreign flag fishing and fish processing vessels.
2. The coastal State may seize a foreign flag fishing or fish processing vessel and its cargo and arrest the persons on board when upon inspection it is found that the vessel has gravely and intentionally violated programmes of conservation of living resources or when it is found that the vessel has engaged in fishing in national ocean space in contravention of the laws of the coastal State.
3. The coastal State shall promptly inform the consular authorities of the flag State of the offending vessel and, if the captain so requests, the International Ocean Space Institutions of the measures taken with respect to the vessel, its cargo and crew.
4. The courts of the coastal State shall in the first instance be competent to adjudicate the offences to which reference is made in paragraph 2. The captain and crew of the offending vessel shall have access to legal assistance of their choice and, before trial, shall be subject only to such personal restraint as may be necessary to prevent their departure from the jurisdiction of the competent court of the coastal State. The flag State of the offending vessel shall be promptly informed of the disposition of the case.
5. Appeal from the courts of the coastal State shall lie to the International Maritime Court.

#### Article 91

Activities of foreign fishing and fish processing vessels within national ocean space, as defined in article 11 shall be brought into conformity with the provisions of article 88 within five years of the entry into force of this convention.

#### Chapter XIV: Mineral and Other Non-living Resources of National Ocean Space

#### Article 92

It shall be the responsibility of the coastal State to formulate and implement such programmes of conservation of the mineral and other non-living resources, of national ocean space as may appear to be necessary or desirable.

Article 93

1. The coastal State may reserve to its nationals the exploitation of the mineral and other non-living resources of national ocean space.
2. Notwithstanding the provisions of the foregoing paragraph, the coastal State has an obligation to provide adjacent land-locked countries with access to the mineral and other non-living resources of its national ocean space on conditions similar to those applicable to its own nationals.

Article 94

1. The exploitation of the mineral resources of national ocean space by a coastal State must not cause significant change in the natural state of the marine environment of ocean space beyond its jurisdiction or significant interference with navigation, scientific research or the laying and repair of submarine cables and pipelines.
2. The coastal State has the obligation to take special precautions before undertaking or authorizing the exploitation of petroleum and natural gas in areas of national ocean space subject to frequent natural disasters.
3. Non-compliance with the provisions contained in the foregoing paragraph entails legal responsibility and may be brought to the attention of the International Ocean Space Institutions by any Contracting Party.

Article 95

1. If any single geological petroleum or natural gas structure or field or any single geological structure or field of any other mineral deposit extends across the line dividing the national ocean space of two or more coastal States, they shall seek to reach agreement as to the manner in which the structure or field can be most efficiently exploited and the manner in which the costs and proceeds relating thereto shall be apportioned.
2. In the event of disagreement between the coastal States concerned, the matter shall be submitted to arbitration or to the International Maritime Court for an advisory opinion at the request of any of the States concerned.
3. The provisions of the foregoing paragraphs shall apply also to the International Ocean Space Institutions in the event that a petroleum or natural gas structure or field or any single geological field or structure of any other mineral deposit extends across the line dividing national ocean space from international ocean space.

Chapter XV: Waste Disposal and Storage <sup>40/</sup>

Article 96

1. No State may utilize the national ocean space of another State for the purpose of waste disposal and for storage of petroleum or other substances without the consent of that State.
2. No State may utilize international ocean space for the purpose of waste disposal or for storage of petroleum or other substances without the consent of the International Ocean Space Institutions.

Article 97

1. Subject to the provisions of such international conventions to which it may be a Party, every coastal State may utilize its national ocean space for the purpose of waste disposal and of storage of petroleum and other substances provided that effective measures are taken to prevent pollution of international ocean space or of ocean space subject to the jurisdiction of another State.
2. In undertaking or permitting waste disposal or storage of petroleum or other substances in its national ocean space every coastal State must comply with such international standards and rules as may be adopted by the International Ocean Space Institutions or as are contained in widely ratified international Conventions.
3. Every coastal State has the obligation to take strict precautions in the disposal and storage of radioactive wastes and of toxic organic and inorganic chemical wastes in its national ocean space.
4. Radioactive wastes and toxic chemical wastes shall be stored in special clearly delimited sites, the location of which shall be communicated to the International Ocean Space Institutions. No such sites shall be established in areas subject to frequent natural disasters.

Article 98

1. When the failure on the part of the coastal State to take the measures and precautions indicated in the foregoing article causes significant pollution in international ocean space the International Ocean Space Institutions may submit the matter to the International Maritime Court for binding adjudication and determination of damages.
2. When the failure on the part of the coastal State to take the measures and precautions indicated in the foregoing article causes, significant pollution in the

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<sup>40/</sup> This chapter should be read in conjunction with the Malta draft articles on the preservation of the marine environment contained in document A/AC.138/SC.111/L.33.

national ocean space of another State, this State may bring the matter to the attention of the International Maritime Court for binding adjudication and determination of damages.

#### Article 99

1. Every coastal State has the obligation in so far as its capabilities permit to monitor the quality of the marine environment of its national ocean space, where desirable, in co-operation with other States in the region.
2. Every coastal State has the obligation to co-operate with the International Ocean Space Institutions in the monitoring of the quality of the marine environment.
3. The International Ocean Space Institutions may conduct in national ocean space beyond twelve miles from the coast investigations for the purpose of obtaining scientific data on the quality of the marine environment, giving prior notice thereof to the coastal State. The coastal State shall be offered reasonable opportunity to appoint its nationals to participate in the investigations and, in any case, shall be provided with a summary of the full data obtained and an interpretation thereof by the Institutions.

#### Chapter XVI: Submarine Pipelines

##### Article 100

1. No State may utilize the national ocean space of another State for the purpose of laying submarine pipelines without the consent of that State.
2. Notwithstanding the provisions of the foregoing paragraph, the coastal State may not impede the maintenance of submarine pipelines already in position on the sea-bed of its national ocean space.

##### Article 101

1. Every coastal State may utilize its national ocean space for the purpose of laying submarine pipelines, provided that:
  - (a) due regard is paid to pipelines already in position on the sea-bed;
  - (b) the possibility of repairing existing pipelines is not prejudiced;
  - (c) the pipelines conform to such international standards of construction as may be adopted by the International Ocean Space Institutions;
  - (d) the pipelines cause no significant interference with other uses of ocean space and in particular with navigation, the exploitation of living resources and the laying and maintenance of submarine cables.
2. Every coastal State has the obligation to take and enforce in its national ocean space strict precautions in the construction, siting and maintenance of submarine

pipelines containing petroleum or substances which may cause serious deleterious effects to human health, to the living resources or to the quality of the marine environment. No such pipelines shall be laid in areas subject to frequent natural disasters.

3. Failure on the part of the coastal State to comply with the provisions contained in the foregoing paragraphs of this article entails legal responsibility and the payment of damages in the event of significant deleterious effects on ocean space or its resources outside the jurisdiction of that State.

#### Article 102

1. States and persons under their jurisdiction which own or administer submarine pipelines in the national ocean space of another State shall transmit to that State and to the International Ocean Space Institutions a chart showing the position of the submarine pipelines owned or administered by them.

2. The coastal State has the obligation to protect submarine pipelines shown on the charts transmitted to it.

#### Article 103

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 pipeline in the national ocean space of another State done wilfully or through culpable negligence shall be a serious 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 vessels after having taken all necessary precautions to avoid such break or injury.

#### Article 104

1. Every State shall take the necessary legislative measures to provide that any persons who cause a break in, or injury to, a submarine pipeline shall bear the cost of repairs and shall be responsible for the payment of damages in the event that deleterious effects have been caused to the quality of the marine environment or to the living resources therein.

2. Every State shall take the necessary legislative measures to ensure that owners of vessels who can prove that they sacrificed an anchor, a net or any fishing or other gear to avoid injuring a submarine pipeline in national ocean space shall be indemnified by the owner of the pipeline provided that the owner of the vessel has taken all reasonable precautionary measures beforehand.

Article 105

Failure to take the precautions and measures mentioned in articles 101 and 102 may be brought to the attention of the International Ocean Space Institutions by any Contracting Party when interruption has been caused to the flow of petroleum, water, gas or other substance contained in the pipeline.

Chapter XVII: Other Non-extractive Uses

Other uses of national ocean space may conveniently be classified as:

- (a) uses of the sub-soil of the sea-bed;
- (b) uses of the surface of the sea-bed;
- (c) uses of the water column;
- (d) uses of the surface of the sea.

These latter in turn may involve man-made islands - that is islands created by man from natural materials, dredged or otherwise transported, to form an area of land surrounded by water which is above water at high-tide - surface installations, systems and devices permanently joined to the sea-bed created from man-made materials, floating installations, systems and devices joined to the sea-bed but which can be moved, floating installations and systems which are dynamically positioned and floating systems and devices which are neither joined to the sea-bed nor dynamically positioned.

From the point of view of jurisdictional areas, man-made islands, offshore installations, systems and devices may be located in national ocean space (including a belt of ocean space adjacent to the coast not more than 12 nautical miles in breadth) or in international ocean space.

From the point of view of activities, man-made islands, offshore installations, systems and devices (whether installed on the surface of the sea, in the water column or on or under the sea-bed) may be used for some or all of the following purposes:

- (a) military purposes;
- (b) scientific purposes;
- (c) industrial purposes;
- (d) mineral extractive purposes, including extraction of minerals from sea water;
- (e) international communications purposes (offshore harbours, airports, telecommunications, etc.);
- (f) international community purposes (monitoring marine environment for pollution; aids to navigation etc.);
- (g) energy production purposes, including nuclear energy production;
- (h) other purposes.

In view of the multiplicity of purposes for which man-made islands, offshore installations, systems and devices can be used, it would appear desirable to clarify the present state of technology, the practical purposes for which such islands, installations and devices may be used, and the implications of such uses for international order in ocean space, for navigation, fisheries and other activities before suggesting detailed regulations with regard to safety zones, jurisdictional questions, standards, harmonization with other activities of vital international interest, etc.